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October 22, 2008

Ms. Florence E. Harmon
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Roundtable on Modernizing the SEC's Disclosure System (File No. 4-567)

Dear Ms. Harmon:

The Investment Company Institute¹ supports the Commission's consideration of ways to modernize the current SEC disclosure system.² As both producers and consumers of information filed with the Commission, Institute members offer an important perspective. We welcome the opportunity to provide our initial thoughts on the Commission's Initiative. Our comments address both the market's current use of disclosure information and potential revisions to the Commission's disclosure system.

I. Background

As the Release explains, the principal objective of the Initiative is to enhance the usefulness of disclosure to investors; improved efficiency for preparers of disclosure is also important. We strongly support these objectives.³ In particular, ICI has been an ardent supporter of proposals that enhance the availability and utility of information to mutual fund investors, while maximizing efficiencies and minimizing expenses that are passed along to shareholders.

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.11 trillion and serve almost 90 million shareholders.

² See Roundtable on Modernizing the SEC's Disclosure System, SEC Release Nos. 33-8962; 34-58657 (Sept. 26, 2008) ("Release"). As noted in the Release, the roundtable ("Roundtable") is part of the Commission's 21st Century Disclosure Initiative ("Initiative").

³ To the extent the Initiative provides the Commission with tools to better fulfill its mission of protecting investors, maintaining orderly markets, and facilitating the formation of capital, we believe this is also a worthwhile objective.

The Commission's pending proposal to permit open-end management investment companies to provide investors a summary of key information (a "Summary Prospectus"), and make additional information available on the Internet, is an excellent example of taking advantage of modern technology to better inform investors while achieving certain efficiencies. The Proposal is based on extensive research showing what information fund investors want and use. And, if adopted as recommended by the Institute,⁴ it should result in cost savings for funds and their investors, as well reduce paper consumption and waste. We continue to strongly urge the Commission to move forward with the Summary Prospectus proposal as soon as possible.

More broadly, we believe that the wide range of issues considered in the Summary Prospectus proposal, and the volume of research supporting it, represent a useful model for the Initiative.⁵ We believe the Initiative should begin with a thorough evaluation of the efficacy of the information currently available to investors, how such information is made available, and how it is most often used. Only then can the Commission properly consider whether and, if so, how the provision of such information may be improved through the application of modern technology and practices. Our specific comments are set forth below.

II. The Market's Current Use of Disclosure Information

A thorough examination of the market's current use of disclosure information is the appropriate place to start any inquiry regarding modernization of the disclosure system. Commission staff working on the Initiative should consider, among other things, the information investors find most useful and how they obtain it, the information required by the Commission and how it is provided, and whether there are any gaps in information, unnecessary requirements, or redundancies. Some preliminary observations on these issues are offered below.

A. Information Investors Find Most Useful

It is critical to ask first *what* information should be offered to investors before asking *how* it should be presented. In the case of mutual fund investors, the Institute believes that much of this work has been done. Broadly speaking, there is widespread agreement – among industry participants,

⁴The Institute continues to strongly oppose a quarterly updating requirement for the Summary Prospectus for a number of reasons, including that the substantial operational burdens and costs such a requirement would entail would deter the majority of funds from adopting it. See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, dated Feb. 28, 2008, available at <http://www.sec.gov/comments/s7-28-07/s72807-92.pdf>.

⁵ We recognize that the Summary Prospectus proposal represents the culmination of more than a decade of research and initiatives regarding mutual fund disclosure. We do not mean to suggest that the Initiative take such a prolonged approach.

investor groups, analysts and others – about the key information that fund investors want and need.⁶ Some information is also available regarding information investors do *not* use.⁷ The Commission should consider – and potentially supplement – this research in determining, for purposes of the Initiative, the universe of information that should be made available to fund investors.⁸ Only then should the question of how to present this information be addressed.

Investment companies are also consumers of disclosure information, as large investors in the securities markets. Given the wide variety of investors in the broader securities markets and their many and varied information needs, the Commission may need to explore further types of information that should be provided. From our perspective, Commission and private sector efforts generally work well with respect to information about publicly traded equity securities; however, we continue to urge the Commission and the Municipal Securities Rulemaking Board to use the full range of their authority, and seek additional powers from Congress as necessary, to assist funds and other investors by taking steps to improve the content and timing of disclosure regarding municipal securities.⁹

B. How Investors Obtain Information

The Commission's EDGAR system serves as an important source of useful information for a diverse audience that includes investors, financial advisors, analysts, academics, and the media, among others. The Institute agrees with comments made at the Roundtable, however, that the Commission cannot and should not seek to be the exclusive source of information on public companies or investment companies. The private sector, including issuers, third party vendors, and media outlets, for example, plays an equally important role in disseminating investment-related information that should and will continue under any new SEC disclosure regime. These participants are able to adapt quickly to

⁶ See Letter from Karrie McMillan, *supra* note 4.

⁷ See, e.g., Mandatory Disclosure Documents Telephone Survey, Submitted to the Securities and Exchange Commission, July 30, 2008 (finding that nearly two-thirds of investors who received mutual fund prospectuses said they rarely, very rarely or never read prospectuses when they received them); Investment Company Institute, *Understanding Investor Preferences for Mutual Fund Information* (2006), available at http://www.ici.org/stats/res/rpt_06_inv_prefs_full.pdf (finding that 80 percent of investors who had purchased mutual fund shares outside a work-based retirement plan found concise descriptions of investments more helpful than very detailed descriptions).

⁸ We understand from communications with the Commission staff that this process is underway with respect to the information contained in mutual fund annual and semi-annual reports to shareholders. We fully support this effort and have offered our assistance to the staff.

⁹ See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, U.S. Securities and Exchange Commission, dated Sept. 22, 2008, available at <http://www.sec.gov/comments/s7-21-08/s72108-12.pdf>.

investors' changing needs and market developments. Additionally, some investors, including many fund advisers, perform "hands on" research, including meeting with company management and visiting company facilities. In short, information obtained from SEC filings is only one part of the research process, and this is not a bad thing. As one Roundtable speaker put it, private sector and SEC efforts should be "complementary."

One example of such complementary efforts, also mentioned at the Roundtable, is fund websites. Many fund companies, including those represented at the Roundtable, have devoted substantial resources to developing and maintaining websites that respond to the needs and desires of existing and potential customers (including retail and institutional investors as well as intermediaries).¹⁰ Fund groups have found websites to be an effective, user-friendly medium to provide extensive and timely information, including information required to be filed with the Commission, as well as additional information that may be useful to investors. And generally speaking, retail investors may be more inclined to visit fund websites than to search for fund information on the EDGAR system.¹¹ As fund industry representatives observed at the Roundtable, websites have been a particularly valuable communication tool during recent market turmoil.

As investors become ever more accustomed to seeking investment information on the Internet,¹² and in the interest of further reducing paper consumption and waste, we encourage the Commission to consider as part of any disclosure modernization initiative additional instances in which provision of required fund disclosure solely on the Internet, or on the Internet with paper copies available upon request, may be appropriate.

C. Unnecessary Information and Potential Redundancies

The Institute encourages the Commission, as part of its disclosure modernization efforts, to (1) eliminate requirements for disclosure of information that is not used either by investors or the

¹⁰ See, e.g., <http://www.vanguard.com>; <http://www.americanfunds.com> (websites mentioned by speakers at the Roundtable).

¹¹ Fund investors also get information from a variety of other sources including financial advisors and third-party data providers that may mine the data from EDGAR.

¹² A recent Institute survey of investors found that 95 percent of people who purchased mutual fund shares in the last five years have Internet access. Investment Company Institute, *Investor Views on the U.S. Securities and Exchange Commission's Proposed Summary Prospectus* (March 14, 2008) available at http://www.ici.org/stats/res/lppr_08_summary_prospectus.pdf, at 18. Earlier ICI studies, as well as a recent SEC telephone survey of investors in stocks, bonds, and mutual funds, found similarly high use of the Internet among investors. See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, U.S. Securities and Exchange Commission, dated Aug. 29, 2008, available at <http://www.sec.gov/comments/s7-28-07/s72807-148.pdf>, at notes 16-20 and accompanying text.

Commission and (2) seek to eliminate duplicative disclosure requirements. For example, it is our understanding that Form N-SAR, which funds file with the Commission twice each year, has had limited utility. In addition, some of the information it contains is disclosed elsewhere. The SEC staff has begun to identify those redundancies, and we urge the staff to move forward with a proposal to rationalize the disclosure requirements of Form N-SAR and other Commission filings. We note that rationalizing disclosure and filing requirements could add to the benefit side of the cost-benefit equation.

III. Important Considerations for Potential Revisions to the Current Disclosure System

Only after the Commission has assessed the information necessary for investors and its own surveillance needs should it develop a new system for disclosure. The Release states that the staff working on the Initiative will propose such a system to collect, manage, and provide structured data to the Commission and the public. While the concept of populating the Commission's disclosure system with structured, or tagged, data is appealing in theory,¹³ we believe that in practice such a system would require the consideration of a number of issues, and ultimately may only work for certain types of information.¹⁴ In commenting on the proposal to require XBRL tagging of the risk/return summary section of mutual fund prospectuses, the Institute urged the Commission to proceed methodically, and identified a number of issues that merit further, careful consideration.¹⁵ Many of those same issues, discussed further below, are also relevant to any future structured data initiatives. In connection with its pending proposal to require mutual funds to submit their risk/return summaries in XBRL, and as the Commission considers a potentially vast expansion of data tagging requirements, it should address these issues.

¹³ To the extent that tagging may provide opportunities to improve data accuracy and integrity, create efficiencies in assembling required data, enhance data accessibility and facilitate comparative and other analyses, it is easy to understand the Commission's enthusiasm. Structured data could also significantly enhance the Commission's ability to fulfill its regulatory mission.

¹⁴ The Institute generally has been supportive of the Commission's efforts to experiment with structured data. For example, we enthusiastically supported the Commission's proposal to permit funds to submit, voluntarily, the risk/return summary portion of their prospectuses in eXtensible Business Reporting Language ("XBRL"). *See, e.g.*, Letter from Donald J. Boteler, Vice President – Operations and Continuing Education, and Elizabeth R. Krentzman, General Counsel, Investment Company Institute, to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, dated March 14, 2007, available at <http://www.sec.gov/comments/s7-05-07/s70507-6.pdf>. We believe, however, that there is much more to be learned about XBRL before such technology is mandated.

¹⁵ Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence E. Harmon, Acting Secretary, U.S. Securities and Exchange Commission, dated Aug. 1, 2008, available at <http://www.sec.gov/comments/s7-12-08/s71208-13.pdf> ("ICI Risk/Return Summary XBRL Comment Letter").

A. The Challenges of Using Structured Data for Narrative Information

While structured data has obvious benefits in the context of certain financial or other quantitative information,¹⁶ its application to narrative text is more challenging and the benefits more speculative. The Institute's experience with creating the XBRL taxonomy for the risk/return summary portion of fund prospectuses for use in the Commission's voluntary filing program revealed important questions, many of which – as we have stated previously – remain unanswered. As an example, the Institute's XBRL working group debated at length how to handle the tagging of the section of the risk/return summary that describes a fund's investment strategies. This disclosure typically consists of a paragraph or two of narrative describing how a fund goes about making investment decisions. Possible solutions ranged from developing tags for every conceivable strategy to simply tagging the entire section "strategy." It was apparent that the former approach would likely be far more useful to end users, in that it would enable them to search for funds that rely on a specific strategy. Under the latter approach, users would only be able to view the strategy description after selecting funds to compare.

Generating a comprehensive list of strategy tags, however, proved problematic. We started down this path, reviewing about 100 prospectuses and making a list of the investment strategies they contained. Not only was the list very long, but it also included many instances of categories that overlapped but were not identical (*e.g.*, capital growth and long-term capital growth; global securities and international securities). We realized that an investor looking for a certain type of fund might miss out because of subtle differences in categorization. Similar issues arose with respect to the required disclosure of fund investment objectives and principal risks.

Another possible approach discussed by the working group was the development of a limited list of broad fund categories (*e.g.*, "growth," "income," "fixed income"), along the lines of the "style boxes" used by some fund information service providers. But there are no official or fixed definitions for these classifications, and many fund companies find them narrow and arbitrary. The idea that funds would make regulatory filings under such labels raised legal concerns that simply are not present when a third party assigns a label to a fund. Given these issues, and knowing that the taxonomy was intended at that time for testing through voluntary use, the working group ultimately took the simpler approach of single "strategy," "objective," and "risk" tags. As noted above, however, this approach probably is not optimal for end users.

¹⁶ For the reasons discussed in our comment letter on the Commission's proposal to require XBRL tagging of operating company financial statements, the Institute does not believe the Commission should require investment companies to file their financial statements with the Commission in XBRL. *See* Letter from Donald J. Boteler, Vice President – Operations and Continuing Education, Investment Company Institute, to Florence E. Harmon, Acting Secretary, U.S. Securities and Exchange Commission, dated Aug. 1, 2008, available at <http://www.sec.gov/comments/s7-11-08/s71108-58.pdf>.

A related issue is that the tagging of narrative disclosure has the potential to affect the substance of the disclosure. Unlike quantitative data, narrative disclosure often may not readily lend itself to comparisons across funds or companies unless, perhaps, it follows very strict requirements that standardize the format and content. While the requirements for fund disclosure (the prospectus, for example) are quite detailed and specific, there is ample room for variety in the final product. The Commission should consider the impact that tagging requirements could have on the quality of narrative disclosure. We note that a movement toward greater standardization would seem to create a tension with the historical view of the Commission and its staff that funds should be encouraged (or even required) to avoid “boilerplate” disclosures.¹⁷

B. Investor Protection Considerations

A system in which investors can pick and choose bits and pieces of information represents a significant departure from the traditional approach to disclosure under the federal securities laws. As we have previously indicated, the federal securities laws and regulations historically have sought to prevent registrants from providing investors with information that, viewed in isolation, may be misleading, and to ensure that investors receive the key information they need, along with a notice that more information is available upon request.¹⁸ If investors have the ability to view a random subset of the available information, there may be serious investor protection and liability implications that must be thoroughly vetted and resolved before proceeding with mandatory tagging.¹⁹

A similar issue raised at the Roundtable involves the notions of prominence and placement of particular items of disclosure, in relation to other disclosures within a given disclosure document. Currently, the federal securities laws and regulations are quite prescriptive in this regard, presumably on

¹⁷ See, e.g., Disclosure Regarding Approval of Advisory Contracts by Directors of Investment Companies, SEC Release Nos. 33-8433; 34-49909; IC-26486 (June 23, 2004), 69 Fed. Reg. 39798 (June 30, 2004).

¹⁸ ICI Risk/Return Summary XBRL Comment Letter, *supra* note 15, at 20-21.

¹⁹ Similar concerns were expressed with respect to the Commission’s proposal to mandate the filing of public company financial statements in XBRL. See, e.g., Letter from James Campbell, Vice President and Corporate Controller, Intel Corporation, to the Securities and Exchange Commission, dated July 25, 2008, available at <http://www.sec.gov/comments/s7-11-08/s71108-21.pdf>.

We believe narrative disclosures in particular are best understood holistically within the context of the complete financial statements and footnotes. We often refer the reader between footnotes so they have an understanding of the impact of various items on the financial statements. A separately tagged portion of text that meets a specific U.S. GAAP or Commission regulation can provide investors with an incomplete or distorted view when that disclosure is accessed out of context of other narrative and numeric disclosures.

the theory that such requirements are necessary or appropriate to protect investors.²⁰ It is difficult to envision how or whether these concepts might be carried over to a structured data system or, if not, whether any alternative protections might be needed.²¹

We reiterate our previous recommendation that the Commission further explore the purpose and nature of XBRL or other structured data, gain a better understanding of how and through which media structured data is likely to be accessed, and consider whether or how to protect investors from being misled if they choose to view only certain pieces of information. At a minimum, we believe that some type of cautionary disclosure should be provided. Equally important is the need to provide appropriate liability protection so that issuers will not be held liable for material omissions if an investor chooses only to review select information.

C. Cost-Benefit Analysis

The Release seeks comment on benefits and costs to preparers and users of information that would accompany the implementation of a system that requires all, or virtually all, data to be filed in a structured format. In our comment letter on the Commission's proposal to mandate XBRL tagging of the mutual fund risk/return summary, the Institute emphasized that more information is needed before the Commission can establish that the benefits of that proposal are reasonably likely to justify its costs.²² We noted that, as the Commission itself acknowledged, there is a lot of uncertainty about both benefits and costs, and we discussed specific areas in which further study is necessary.

Similarly, the Commission will need to study further whether and to what extent any disclosure system or structured data format it is contemplating actually will improve investor access to information about funds, create internal efficiencies for funds, improve accuracy of fund data, and/or assist the Commission's work with respect to funds. In addition, the Commission will have to analyze the costs, such as costs for creating structured data to comply with any new system. In this regard, the Commission should keep in mind factors such as the large number of funds that would be subject to new requirements and the extensive amount of narrative disclosure that funds currently are required to file.

²⁰ See, e.g., SEC Form N-1A (requiring, for example, certain disclosure to appear on the cover page of a fund prospectus, and some items to be presented in a particular order). Similar requirements would apply to the proposed Summary Prospectus.

²¹ The Commission has had occasion to consider and address how to "translate" these types of requirements, which originally were adopted with paper documents in mind, into roughly equivalent requirements for other media. See, e.g., Rule 482 under the Securities Act of 1933 (providing, for example, that certain legibility requirements for statements required in fund advertisements relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them). But allowing investors to "cherry pick" which information they view presents different issues.

²² ICI Risk/Return Summary XBRL Comment Letter, *supra* note 15, at 11-15.

D. Changes to the Regulatory Framework

The Release asks whether changes to the Commission's disclosure regulations would be required for a transition toward a system of disclosure using structured data, and away from a forms-based approach. We believe "changes" may be an understatement – particularly in the mutual fund context, a shift to the type of system contemplated by the Release would require a complete overhaul of the disclosure framework. As noted above, one fundamental consideration is the move from a regulatory structure that has historically sought to prevent registrants from providing investors with information that, viewed in isolation, may be misleading. Adequate protections for investors and issuers alike will be necessary to ensure that investors are not misled and issuers are not held liable simply because investors fail to view all relevant information.

Regulations governing the information to be provided would also need to be revisited. Many forms dictate the relationship of disclosures to one another. For example, disclosure forms may require that information be provided in a certain order, or that certain information be given elevated prominence.²³ Additionally, some information may be permitted or required only if certain conditions are met.²⁴ A shift away from a forms-based environment would necessitate a reconsideration of whether these mandated relationships between disclosure elements should be maintained and, if so, how this may be achieved in a structured data environment.

Finally, a move away from forms begs the question of what disclosure, if any, must be delivered (whether electronically or in paper) to investors. A form-free environment suggests that investors would be expected to actively seek access to information they desire; requiring issuers to generate documents (*i.e.*, forms) for distribution to investors essentially defeats the purpose of such a transition. While the Institute does not necessarily oppose such a transition, we believe that far more consideration of these issues is necessary before a structured data environment is imposed on operating and investment companies.

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²³ For example, Form N-1A specifies the order in which certain information for funds and series should be presented when more than one fund or series is offered in the prospectus. *See also supra* note 20.

²⁴ For example, Form N-1A requires specific disclosures only for money market funds, and permits funds that have been in existence for more than 10 years to include returns for the life of the fund.

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The Institute appreciates the opportunity to comment on these issues. If you have any questions about our comments or need additional information, please contact me at 202/326-5815, Frances Stadler at 202/326-5822 or Mara Shreck at 202/326-5923.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

cc: Andrew J. Donohue, Director
Division of Investment Management