

INVESTMENT FUNDS ALERT

USEC ISSUES FINAL RULE REGARDING MUTUAL FUND AND ETF DISCLOSURE REQUIREMENTS AND ADOPTS NEW PROSPECTUS DELIVERY OPTION¹

On January 13, 2009, the Securities and Exchange Commission (SEC) expanded the disclosure requirements of registered open-end investment companies to, among other things, create a new “summary” section at the beginning of each mutual fund’s statutory prospectus that will include previously required items and new items in a standard format. The rule also includes new requirements and alternative disclosures for exchange traded funds (ETFs). The SEC also adopted a new prospectus delivery regime to allow mutual funds to satisfy their obligations with the delivery of a “summary” prospectus and providing access to the statutory prospectus on their Web site as part of a layered disclosure system. As explained in the adopting release, the amendments are designed to provide mutual fund investors with information in an easier to use format.

The amendments will become effective on March 31, 2009. Mutual funds will be required to comply with the amendments to Form N-1A with respect to new registration statements and post-effective annual update amendments or amendments that add a new series required for filings on or after January 1, 2010, although funds may elect to comply prior to that date.

AMENDMENTS TO FORM N-1A

Summary Section

The SEC amended Form N-1A to create a summary section of the statutory prospectus, which is intended to be a standardized concise statement of the most important terms to an average investor and will consist of both currently existing items of Form N-1A and new disclosures. The summary section will provide

¹ Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Securities Act Release 8998, Investment Company Act Release 28584 (Jan. 13, 2009).

information on the fund's (1) investment goals and objectives,² (2) costs (including the fee table and example),³ (3) investment risks and prior Performance,⁴ (4) fund management, (5) terms for purchase and sale of fund shares, (6) tax information and (7) financial intermediary compensation.

The summary section is intended to be short (approximately three or four pages long) and will be required to be in "plain English." For prospectuses relating to multiple funds, each fund must have its own separate summary section, except certain information may be integrated if it is identical for multiple funds, including information regarding purchase and sale of fund shares, tax information and financial intermediary compensation. Funds (other than those that serve as investment options for retirement plans and variable insurance contracts) are prohibited from modifying or omitting or reordering information (including information regarding the purchase and sale of fund shares) required in the summary section.

The SEC did not adopt amendments that would have required the inclusion of the fund's ten largest holdings in the summary prospectus section nor the requirement to update summary prospectuses on a quarterly basis as originally proposed. The SEC concluded that the quarterly disclosure of those positions may not be useful to investors because they may change immediately after disclosure and may not be indicative of the overall portfolio. The SEC, however, adopted a new instruction to the risk return bar chart that requires a fund that provides updated performance information on its Web site or by a toll-free or collect telephone number to disclose the Web site or telephone number in its summary prospectus.

New Disclosure for ETFs

The SEC also adopted many of the proposed amendments to Form N-1A originally proposed in March of 2008⁵ to better tailor disclosure to ETFs. The adopted amendments to Form N-1A require prospectuses for ETFs to (1) disclose the principal U.S. markets on which its shares are traded, (2) modify the explanation of the "example" in the fee table to reference the effect of brokerage fees, (3) disclose the number of shares an ETF will issue in exchange for a basket of assets, (4) explain the potential for premiums or discounts (unless the ETF issues shares in creation units of not less than 25,000) for the ETF's share price versus the price of the portfolio securities, (5) modify the disclosure of how share prices are derived to reference market price instead of price being a function of net asset value and (6) disclose the number of days that the market price of the ETF's shares traded above and below its net asset value during the past fiscal year and any intervening quarters in tabular format unless such information is disclosed on the ETF's Web site. The SEC also exempted ETFs from disclosing

² Corresponds to previous Item 2(a) of Form N-1A (the risk/return summary).

³ Corresponds to fee table in previous Item 3 of Form N-1A with, among other things, new legends regarding the potential to receive discounts for large investments and the effect of portfolio turnover and instructions permitting captions reflecting the effect of fee waivers.

⁴ Corresponds to investments, risks and performance in previous Item 2 of Form N-1A with new instructions to the bar chart and table.

⁵ Exchange Traded Funds, Securities Act Release No. 8901, Investment Company Act Release No. 28193 (proposed Mar. 11, 2008).

how to buy and redeem shares from an ETF and from including fees relating to the purchase or redemption of creation units so long as the ETF issues or redeems shares in creation units of at least 25,000 shares. The SEC declined to adopt amendments that would have required an ETF to disclose market prices of the ETF's shares out of concern that the information could confuse investors or amendments that would have required a comparison of an index-based ETF's performance versus the index on which it is based because funds other than ETFs could be index-based.

NEW DELIVERY OPTION WITH THE SUMMARY PROSPECTUS

Summary Prospectus

The SEC also replaced Rule 498 under the Securities Act of 1933, as amended (the "Securities Act"), with a new rule, which permits the transmittal of a summary prospectus to satisfy prospectus delivery requirements under Section 5(b)(2) of the Securities Act if the fund's summary prospectus, statutory prospectus, SAI and the most recent annual and semi-annual report are available on a Web site⁶ and will be sent to investors in paper form within three business days if requested. A fund that uses a summary prospectus to meet the prospectus delivery requirements or to accompany other communications related to an offering must (1) send or give the summary prospectus to investors no later than the carrying or delivery of the fund security or the transmittal of those communications, (2) file the summary prospectus no later than the date of first use and (3) ensure that the materials it is required to post are available in a form that is convenient for reading or printing for at least 90 days after the carrying or delivery of the mutual fund shares or the transmittal of the communications, as applicable.⁷ In addition, the summary prospectus and other information posted on the Web site must allow for linking between the summary prospectus and further information provided in the statutory prospectus or SAI or constantly visible links to the table of contents of the statutory prospectus or SAI. A fund is required to update the summary prospectus at the same time that it updates the statutory prospectus.

A summary prospectus must provide the same information as the prospectus summary section described above (in the same order), along with a cover page or beginning that contains certain required information and legends. The summary prospectus may also incorporate information contained in the statutory prospectus and the SAI by reference (other than the information in the summary section of the statutory prospectus), as well as information in shareholder reports already incorporated by reference into the statutory prospectus. A summary prospectus that incorporates information by reference must specify the source and the date of the source, as well as the page, paragraph, caption, or otherwise if only part of the source is incorporated. As with the prospectus summary section, each fund must have its own separate summary prospectus, although the same summary prospectus may cover multiple

⁶ The Web site on which the required documents are posted may not be the SEC's EDGAR or IDEA system.

⁷ A brief failure to meet the Web site requirements will not violate the Securities Act if the fund has reasonable procedures to ensure that the specified materials are available and takes prompt action to remedy any unavailability at the earlier of the time at which it knows or reasonably should have known about such unavailability.

classes of the same fund. Summary prospectuses may not be bound with any other materials when transmitted other than as part of a group of summary prospectuses that are each investment options in a variable annuity variable life insurance contract.

CONTACT INFORMATION

If you have any questions regarding this alert, please contact—

Mark H. Barth	mbarth@akingump.com	212.872.1065	New York
David M. Billings	dbillings@akingump.com	44.20.7012.9620	London
J.P. Bruynes	jbruynes@akingump.com	212.872.7457	New York
James A. Deeken	jdeeken@akingump.com	214.969.4788	Dallas
Christopher M. Gorman-Evans	cgorman-evans@akingump.com	44.20.7012.9656	London
Barry Y. Greenberg	bgreenberg@akingump.com	214.969.2707	Dallas
Robert M. Griffin Jr.	bgriffin@akingump.com	44.20.7012.9676	London
Leon B. Hirth	lhirth@akingump.com	212.872.1059	New York
Ira P. Kustin	ikustin@akingump.com	212.872.1021	New York
Arina Lekhel	alekhel@akingump.com	212.872.8018	New York
Burke A. McDavid	bmc david@akingump.com	212.872.1083	New York
Prakash H. Mehta	pmehta@akingump.com	202.887.4248	Washington, D.C.
Lisa A. Peterson	lpeterson@akingump.com	817.886.5070	Dallas
Eliot D. Raffkind	eraffkind@akingump.com	214.969.4667	Dallas
Fadi G. Samman	fsamman@akingump.com	202.887.4317	Washington, D.C.
William L. Sturman	wsturman@akingump.com	212.872.1035	New York
Ann E. Tadajweski	atadajweski@akingump.com	212.872.1087	New York
Simon Thomas	swthomas@akingump.com	44.20.7012.9627	London
Stephen M. Vine	svine@akingump.com	212.872.1030	New York