
SEC Adopts XBRL Requirements for Fund Risk/Return Summaries

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On February 11, 2009, the Securities and Exchange Commission ("SEC") issued a release adopting rule changes that will require mutual funds to file their risk/return summaries in the eXtensible Business Reporting Language ("XBRL") interactive data format.¹ Specifically, funds will be required to provide their risk/return summaries in XBRL format as an exhibit to any registration statement or post-effective amendment on Form N-1A that includes or amends risk/return summary information, as well as in an exhibit to any form of prospectus filed under Rule 497(c) or (e) of the Securities Act of 1933 (the "Securities Act") that contains risk/return information that varies from that contained in their most recent registration statement or post-effective amendment. Under the new requirements, funds will also be required to make XBRL data they file with the SEC available on their own websites (if the fund complex has a website) on the calendar day on which they file with the SEC or the date on which they were required to do so, whichever is earlier. The data must remain posted as long as the registration statement to which it relates remains current.

An exhibit to a registration statement or post-effective amendment containing XBRL information may be filed as a post-effective amendment under Securities Act Rule 485(b) and need only contain the new exhibit, facing page signature page, transmittal letter explaining the amendment and a revised exhibit index.

The XBRL rules will introduce additional filing requirements for funds and their advisers and administrators. In particular, funds will be required to file XBRL data in a separate post-effective amendment, filed after, and apart from, the filing to which the data relates. The post-effective amendment in which XBRL data is contained must be filed after the effective date of the post-effective amendment to which it relates, but not later than 15 business days after that date. (XBRL data for Rule 497 filings may be filed simultaneously with a 497(c) or 497(e) filing of a definitive prospectus, or in a separate filing made no later than 15 business days after the Rule 497 filing to which it relates.)

Compliance Date

XBRL submissions will be required for initial registration statements and annual updates to effective registration statements that are to become effective after January 1, 2011. A form of

prospectus filed under Rule 497(c) or (e) is required to include an XBRL risk/return summary exhibit only if the relevant fund has already submitted an XBRL exhibit with its registration statement or post-effective amendment.

The XBRL Format

The XBRL format is maintained by XBRL International, a consortium of approximately 550 organizations from the worldwide financial reporting community.² In 2006, the SEC contracted with XBRL U.S., the consortium's U.S. arm, to develop a standard list of tags for financial reporting in interactive format consistent with US GAAP and SEC regulations.³ Under its contract with the SEC, XBRL US is currently developing the standard list of tags for the risk/return summary section of fund prospectuses and for schedules of investments.

The SEC has concluded that XBRL-filed information offers a variety of advantages for data users, including the opportunity for data users to download risk/return summary information directly into spreadsheets, analyze it and use it within their own investment models. Certain fund complexes have already begun making XBRL filings through the SEC's voluntary program. These filings may be viewed via the SEC's prototype site, found at a.viewerprototype1.com/viewer.

The Voluntary Program

The SEC's voluntary program for XBRL filings has been revised to allow participation by funds with respect to risk/return summary information up until the compliance date of January 1, 2011, and with regard to financial statement information indefinitely. Voluntary filings benefit from Rule 402 of Regulation S-T and are not deemed filed as part of a registration statement or subject to liability. In addition, funds may submit XBRL portfolio holdings information through the voluntary program without having to submit other financial information in interactive data format. Although it is possible for funds to choose to file under the new Rules after July 15, 2009, early adopters may wish to consider participating in the voluntary program as an alternative to early filing under the revised rules and new Rule 406T, described below.

Consequences of Non-Compliance

Amended Rule 485 under the Securities Act now provides for the automatic suspension of a registrant's ability to file post-effective amendments under paragraph (b) of that rule if the registrant fails to submit the required XBRL data or make the data available on its website by the required date. The suspension takes effect when the filer fails to meet the requirement to file XBRL data or post it on its website, and is lifted when the required filing or posting is made. The suspension does not affect any post-effective amendments filed before the suspension became effective, nor post-effective amendments filed solely for purposes of submitting XBRL data to cure a failure to submit or post such data.

The Release states that the SEC considers automatic suspension an appropriate means of ensuring compliance with the amended rules, despite commenters' concerns that substantial penalties may result from minor violations. The Release also confirms that the suspension will apply to all series of a series investment company. Thus, a mistaken omission of XBRL data for one

series will have import for the filing cycle of the entire multi-series registrant.

The failure to provide the required XBRL information will not affect a fund's ability to incorporate by reference the fund's prospectus or SAI into another document, such as a "summary prospectus."⁴

New Rule 406T and XBRL Liability

The SEC previously adopted new Rule 406T of Regulation S-T in a recent, separate release.⁵ New Rule 406T addresses liability for interactive data. Under new Rule 406T, XBRL filings are subject to the anti-fraud provisions of Section 17(a)(1) of the Securities Act (fraud in the offer or sale of a security), Section 10(b) of, and rule 10b-5 under, the Securities Exchange Act of 1934 (the "Exchange Act") (fraud in connection with the purchase or sale of a security), and Section 206(1) of the Investment Advisers Act of 1940 (the "Advisers Act") (fraud by an investment adviser). XBRL filings are not deemed filed as part of a registration statement or prospectus, however, for purposes of liability under Sections 11 (liability for signatories of Securities Act registration statements) or 12 (offers or sales in violation of the prospectus delivery requirements or by means of a false or misleading prospectus) of the Securities Act. They are not deemed filed for purposes of Section 18 of the Exchange Act (liability to buyers and sellers of persons who made or caused to be made a false statement in an SEC filing) and Section 34(b) of the Investment Company Act of 1940 (the "1940 Act") (which makes it unlawful to make a false statement or material omission in a 1940 Act registration statement). They are deemed filed for purposes of Rule 103 of Regulation S-T; thus, a fund will generally not be subject to liability for electronic transmission errors beyond its control if it corrects the errors through an amendment as soon as reasonably practicable after becoming aware of the problem.

XBRL filings are subject to liability for a failure to comply with Rule 405 of Regulation S-T, the rule that sets forth certain basic tagging requirements and imposes additional tagging requirements by reference to the EDGAR Filer Manual. An electronic filer is deemed to have complied with Rule 405, and is not subject to liability under the anti-fraud provisions, if:

- it makes a good faith attempt to comply with Rule 405; and,
- after becoming aware that the interactive data file fails to comply with Rule 405, it promptly amends the interactive data file to comply with Rule 405.

Rule 405 provides a non-exclusive safe harbor under which a correction made by the later of 24 hours or 9:30 a.m. EST on the next business day after the filer becomes aware of the need for a correction is deemed "promptly" made.

These liability provisions apply only until October 31, 2014. After that date, XBRL filings will be subject to the same liability provisions as other filings.

¹ Securities Act Release No. 9006; Exchange Act Release No. 59391; Investment Company Act Release No. 28617 (February 11, 2009) (the "Release"), available at www.sec.gov/rules/final/2009/33-9006.pdf. The effective date of the Release is July 15, 2009.

² The Release uses "interactive data format" to refer to the specifically mandated XBRL. The terms

are effectively interchangeable in the Release and this alert. The members of the XBRL consortium include major companies, organizations and government agencies. It is an open standard, free of license fees. See www.xbrl.org/WhatIsXBRL.

³ See the XBRL-US Domain Working Group US GAAP Investment Management Taxonomy, available at xbrl.org/Taxonomy/rr-summarydocument-20070516-acknowledged.htm.

⁴ See p. 37 of the Release.

⁵ Securities Act Release No. 9002; Exchange Act Release No. 59324; Trust Indenture Act Release No. 2461; Investment Company Act Release No. 28609 (Jan. 30, 2009), available at www.sec.gov/rules/final/2009/33-9002.pdf.