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A CLIENT ALERT FROM PAUL HASTINGS

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Recent Technical Amendments to Form N-1A

BY THE INVESTMENT MANAGEMENT PRACTICE GROUP

As discussed in a prior Client Alert,¹ the Securities and Exchange Commission (the "Commission") has recently adopted a number of new rules as well as rule amendments (collectively, the "Summary Prospectus Rules") designed to simplify mutual fund prospectus disclosure.² The Summary Prospectus Rules include amendments to Form N-1A, the registration form for registered open-end management investment companies. We've prepared the following table to highlight some additional changes from the old version of Form N-1A (the "Old Form N-1A") to the newly adopted version of Form N-1A, which became effective on March 31, 2009 (the "New Form N-1A"), that were not explicitly set forth in the Summary Prospectus Rules adopting release.³

Old Form N-1A	New Form N-1A
Cover Page of Old Form N-1A listed the address of the Commission as "450 5th Street, N.W., Washington, D.C. 20549-6009."	Cover Page of New Form N-1A lists the address of the Commission as "100 F Street, N.E., Washington, D.C. 20549-1090."
Old Form N-1A did not provide a definition of an "Exchange-Traded Fund."	New Form N-1A contains a definition of "Exchange-Traded Fund" under Item A ("Definitions") of the General Instructions. ⁴
Old Form N-1A did not provide a definition of "Market Price."	New Form N-1A contains a definition of "Market Price" under Item A ("Definitions") of the General Instructions. ⁵
General Instruction C.3.(a) and Item 6(g) of Old Form N-1A allowed for information regarding purchase and redemption procedures (other than information about frequent purchases and redemptions of fund shares required by Item 6(e)) to be provided in a separate document.	New Form N-1A does not provide an equivalent option—disclosure must now be included in the prospectus and/or SAI.

Old Form N-1A	New Form N-1A
<p>Instruction 6 for Item 1(b)(1) of Old Form N-1A provided: "A Fund that provides a separate disclosure document to investors under Item 6(g) must include the statement required by Item 6(g)(3)."</p>	<p>New Form N-1A does not include an equivalent instruction—disclosure must now be included in the prospectus and/or SAI.</p>
<p>Old Form N-1A did not include an equivalent instruction.</p>	<p>New Form N-1A provides an updated phone number for the Commission's Public Reference Room (202-551-8090) and zip code for the Commission's Public Reference Section (20549-1520), which are to be included in the statement required under Item 1(b)(3).⁶</p>
<p>Instruction 2(e) for Item 2 of Old Form N-1A provided: "When more than one Fund or Series is offered in the prospectus, do not intersperse returns of one Fund or Series with returns of another Fund or Series."</p>	<p>New Form N-1A does not include an equivalent instruction, as it is no longer relevant.</p>
<p>Old Form N-1A did not include an equivalent instruction.</p>	<p>Instruction 1(b) for Item 3 of New Form N-1A provides: "The narrative explanation regarding sales charge discounts is only required by a Fund that offers such discounts and should specify the minimum level of investment required to qualify for a discount as disclosed in the table required by Item 12(a)(1)."</p>
<p>Instruction 5(b) for Item 3 of Old Form N-1A provided: "The New Fund may reflect expense reimbursement or fee waiver arrangements that are expected to reduce any Fund operating expense or the estimate of 'Other Expenses' (regardless of whether the arrangement has been guaranteed) in a footnote to the table. If the New Fund provides this disclosure, also disclose the period for which the expense reimbursement or fee waiver arrangement is expected to continue, or whether it can be terminated at any time at the option of the Fund."</p>	<p>Item 3 of New Form N-1A does not include such instruction. Any fee waiver disclosure for new funds is subject to Instruction 3(e) for Item 3.⁷</p>
<p>Instruction 2 for Item 5(a)(2) of Old Form N-1A required that, if a disclosed "Portfolio Manager" is "a member of a committee, team, or other group," the prospectus must also contain an accompanying brief description of "the person's role on the committee, team, or other group (e.g., lead member), including a description of any limitations on the person's role and the relationship between the person's role and the roles of other persons who have responsibility for the day-to-day management of the Fund's portfolio."</p>	<p>The accompanying brief description requirement is not required by Item 5 of New Form N-1A; however, it is required under Item 10 (as part of the statutory prospectus).</p>

Old Form N-1A	New Form N-1A
Old Form N-1A did not contain an equivalent requirement.	Item 5 and Item 10 of New Form N-1A require that the prospectus state the name and address of the fund's sub advisers.
Old Form N-1A did not contain an equivalent requirement.	Item 11(a)(1) provides: "if the Fund is an Exchange-Traded Fund, [provide] an explanation that the price of Fund shares is based on market price."
Item 6(b) of Old Form N-1A provided that the description of the procedures for purchasing the Fund's shares include any minimum initial or subsequent investment requirement.	The equivalent Item in New Form N-1A (Item 11 (b)) does not provide that the description include any minimum initial or subsequent investment requirement. Minimum initial or subsequent investment requirement for purchasing shares must now be disclosed in response to Item 6 of New Form N-1A.
The Instruction for Item 18(a) of Old Form N-1A provided: "A Fund may incorporate the information required by Item 18(a) [information regarding purchase of fund shares] into the SAI by reference to a separate disclosure document that may be provided to investors with the SAI or separately, in response to investor requests. File the separate document, if any, with Part B of Form N-1A."	The equivalent Item in New Form N-1A (Item 23) does not include such instruction—such purchase information must be included in the SAI only.
Old Form N-1A did not contain an equivalent requirement.	Item 27(b)(7)(iv) of New Form N-1A and its applicable instructions require that an Exchange-Traded Fund "[p]rovide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (<i>i.e.</i> , premium or discount) for the most recently completed five fiscal years (or the life of the Fund, if shorter). The Fund may omit this table from the annual report if the Fund provides an Internet address at the Fund's Web site, which is publicly accessible, free of charge, that investors can use to obtain the premium/discount information required in Item 11(g)(2)."

Old Form N-1A	New Form N-1A
Old Form N-1A did not contain an equivalent requirement.	Instruction 1(e) for Item 27(d) of New Form N-1A provides: "If the Fund is an Exchange-Traded Fund: (i) Modify the narrative explanation to state that investors may pay brokerage commissions on their purchases and sales of Exchange-Traded Fund shares, which are not reflected in the example; and (ii) If the Fund issues or redeems shares in creation units of not less than 25,000 shares each, exclude any fees charged for the purchase and redemption of the Fund's creation units."



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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¹ SEC Adopts "Summary Prospectus" and Related Rules Designed to Improve Mutual Fund Prospectus Disclosure, distributed in January 2009.

² SEC Release No. 33-8998, *Enhanced Disclosure and New Prospectus Delivery Option For Registered Open-End Management Investment Companies*, <http://www.sec.gov/rules/final/2009/33-8998.pdf> (the "Adopting Release"). As discussed in our prior Client Alert, the Summary Prospectus Rules apply only to registration statements of open-end management investment companies filed on Form N-1A.

³ This Client Alert supplements the information contained in our prior Client Alert. See *supra* note 1.

⁴ “Exchange-Traded Fund” means a Fund or Class, the shares of which are traded on a national securities exchange, and that has formed and operates pursuant to an exemptive order granted by the Commission or in reliance on an exemptive rule adopted by the Commission. See General Instruction A of New Form N-1A.

⁵ “Market Price” refers to the last reported sale price at which Exchange-Traded Fund shares trade on the principal U.S. market on which the Fund’s shares are traded during a regular trading session or, if it more accurately reflects the current market value of the Fund’s shares at the time the Fund uses to calculate its net asset value, a price within the range of the highest bid and lowest offer on the principal U.S. market on which the Fund’s shares are traded during a regular trading session. See General Instruction A of New Form N-1A.

⁶ Item 1(b)(3) of New Form N-1A requires that the back cover page of the prospectus contain a statement that (i) information about the Fund (including the SAI) can be reviewed and copied at the Commission’s Public Reference Room in Washington, D.C., (ii) information on the operation of the Public Reference Room may be obtained by calling the Commission at 1-202-551-8090, and (iii) reports and other information about the Fund are available on the EDGAR Database on the Commission’s Internet site at <http://www.sec.gov>, and copies of this information may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov, or by writing the Commission’s Public Reference Section, Washington, D.C. 20549-1520.

⁷ Instruction 3(e) to Item 3 of New Form N-1A states that funds with expense reimbursements or fee waivers may place two additional captions directly below “Total Annual Fund Operating Expenses” in the fee table if the expense reimbursements or fee waiver is in effect for no less than one year from the effective date of the fund’s registration statement (one caption may show the amount of the reimbursement/waiver, and a second caption may show the fund’s net expenses after reimbursement/waiver). These additional line items may not be used if the expense reimbursement or fee waiver arrangement may be terminated without agreement of the fund’s board of directors (*e.g.*, unilaterally by the fund’s investment adviser) during the one-year period. If a fee waiver or expense reimbursement arrangement, in fact, terminates less than a year after the effective date of a fund’s registration statement, the fund generally would be required to supplement or “sticker” its prospectus to reflect the termination.

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