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We solicited comment regarding whether it should be permissible for a contract prospectus and application to be accompanied by other rule 482 advertisements for the underlying funds that are not a part of the prospectus itself. Three commenters supported permitting the practice. None opposed permitting the practice.

We agree that rule 482 advertisements for the underlying funds not contained in the contract prospectus itself should be permitted to be delivered simultaneously with the contract prospectus and the accompanying contract application, and we are adopting a revision to rule 482 to clarify that this practice is permitted.⁶⁴ We are persuaded that whether the delivery of the additional rule 482 advertisements is made together with the contract material or separately from it is a question of form rather than substance.

F. Compliance Dates

The amendment eliminating the "substance of which" requirement from rule 482 will take effect on November 15, 2003. Fund advertisements submitted for publication after March 31, 2004, should comply with all other amendments adopted in this release. This timeframe is consistent with the transition period requested by most commenters. Some variable insurance commenters requested a 12-month transition period, but, in light of the modifications we have made to the proposal (e.g., month-end performance may be provided by Web site rather than by telephone), we do not believe that such a lengthy transition period is necessary.

III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits associated with its rules. To provide funds with the ability to disclose more timely information in advertisements, the amendments adopted today remove the "substance of which" requirement contained in rule 482 under the Securities Act, and rescind the provisions in rule 134 under the Securities Act that apply to funds. In addition, the amendments reinforce the antifraud protections in the fund advertising rules, and require enhanced disclosure of certain information in fund advertisements designed to encourage advertisements that convey balanced information to prospective investors. Finally, the amendments make certain organizational changes to

rule 482 and technical amendments to the registration forms.

In the Proposing Release, we provided an analysis of the costs and benefits of the amendments then proposed, and we requested comments.⁶⁵ Three commenters commented directly on this cost/benefit analysis, while others raised cost and benefit issues with regard to specific substantive provisions without specifically mentioning the cost/benefit analysis.

A. Benefits

The amendments modify rule 482 of the Securities Act and related rules and forms to provide more timely, informative, and balanced information in fund advertising for the benefit of investors. The amendments also simplify and clarify the advertising rules, thus, reducing regulatory compliance costs, and these cost savings may be passed on to investors.

1. Enhanced Disclosure of Information to Investors

Currently, the regulations concerning advertising include significant disclosure requirements. The amendments, as adopted, enhance the disclosure required to be provided to investors in fund advertising in several respects:

- *Availability of Monthly Performance Figures.* Performance advertisements will have to disclose a toll-free or collect telephone number or a Web site where an investor may obtain performance data current to the most recent month-end, unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use.⁶⁶ Easy access to and awareness of this information will benefit investors not only by providing potentially more timely performance data and reducing the ability of funds to selectively use performance data, but also by highlighting for investors the limitations of relying too heavily on any one set of performance figures. In addition, availability of updated monthly performance data will make it easier for investors to compare performance among competing funds.

- *Legend.* If an advertisement provides performance figures, the amendments require the inclusion of a legend stating that past performance does not guarantee future results, and that current performance may be lower or higher than the data quoted.⁶⁷ This

legend will benefit investors by making them more aware of the limitations of relying on performance data for investment decisions and thus may result in more informed investment decisions.

- *Availability of Information Regarding Investment Objectives, Risks, and Charges and Expenses.* Rule 482 advertisements will have to highlight the availability of information concerning the fund's investment objectives, risks, and charges and expenses.⁶⁸ This provision will benefit investors by directing them to important information that could affect their returns, and will allow investors to more easily compare the objectives, risks, and costs of competing funds.

- *Prominence Requirements.* Rule 482 advertisements will be required to present certain disclosures, including those discussed above, (i) in a size and type style at least as prominent as that used in the major portion of the advertisement (or, in the case of performance-related disclosures, in a type size no smaller than that of the performance data when the performance data is presented in a type size smaller than that of the major portion of the advertisement), or (ii) in the case of radio or television advertisements, with emphasis equal to that used in the major portion of the advertisement.⁶⁹ These provisions help to ensure that advertisers do not marginalize or minimize the presentation of the required disclosure described above.

- *Proximity Requirement.* In addition, the required disclosures regarding performance data will have to be presented in the body of the advertisement in close proximity to the performance data and not in a footnote. With regard to television or radio advertisements, the required disclosures will also have to be presented in close proximity to the performance data.⁷⁰ The length of and the date of the last day in the base period used in computing yield quotations, average annual total returns, after-tax returns, and other performance measures will have to be adjacent to the performance data.⁷¹ As with other disclosure requirements, this provision will help investors to more easily find information necessary to evaluate the performance figures shown and will

⁶⁸ 17 CFR 230.482(b)(1)(i). This disclosure would also be required in an advertisement used with a profile pursuant to rule 498 under the Securities Act. 17 CFR 482(b)(1)(ii).

⁶⁹ 17 CFR 230.482(b)(5).

⁷⁰ *Id.*

⁷¹ 17 CFR 230.482(d)(1)(iv), (d)(2)(v), (d)(3)(iv), (d)(4)(vi), (d)(5)(v), and (e)(1)(i).

⁶⁵ See Proposing Release, *supra* note, at Section IV, "Cost/Benefit Analysis," 67 FR at 36723-26.

⁶⁶ 17 CFR 230.482(b)(3)(i).

⁶⁷ *Id.*

⁶⁴ 17 CFR 230.482(c)(1).