

# Investment Services Bulletin

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Fall 2003

## AMENDMENTS TO INVESTMENT COMPANY ADVERTISING RULES

*The SEC recently adopted amendments to the investment company advertising rules which, among other things, eliminate the Rule 482 “substance of which” requirement and call for enhanced advertising disclosure. The amendment eliminating the “substance of which” requirement from Rule 482 took effect on November 15, 2003. Fund advertisements submitted for publication after March 31, 2004 must comply with the enhanced disclosure requirements. This bulletin highlights practical applications of the rule amendments.*

### **Summary of the Rule Amendments**

The amendments to the investment company advertising rules and registration forms are designed to provide more timely, informative and balanced information in fund advertising. As a result of the amendments, funds:

1. May include in their Rule 482 advertisements information “the substance of which” is *not* included in the fund’s prospectus (or SAI).
2. May no longer use Rule 134 (or “tombstone”) advertisements.
3. Must include enhanced disclosure in Rule 482 advertisements, including:
  - in performance advertisements, information on how to obtain performance data current to the most recent month-end (or performance information current to the most recent month-end);
  - in performance advertisements, a legend that states prominently and within close proximity to the fund’s performance data

(and *not* in a footnote) that past performance does not guarantee future results and current performance may be higher or lower than the performance data quoted;

- in performance advertisements, prominent identification (adjacent to the performance data) of the period(s) of the performance data; and
- prominent statements advising an investor to consider the fund’s investment objectives, risks, and charges and expenses before investing, and explaining that the prospectus contains this and other information about the fund.

### ***How do the amendments affect a fund’s statement of additional information (“SAI”) disclosure?***

Due to the elimination of the “substance of which” requirement, funds will no longer be required to include in their SAIs performance data or the related boilerplate disclosure about the methods used to calculate performance in fund advertising. In addition, funds will be able to eliminate other disclosure that was included in their SAIs to comply with the Rule 482 “substance of which”

requirement, such as information on comparative market indices and other benchmarks that may be used to compare fund performance or on sources that may be quoted.

*These disclosures are no longer required as of November 15, 2003.*

### ***How do the amendments affect fund advertisements?***

All Rule 482 advertisements will be required to include enhanced disclosure, and performance advertisements will be required to include more current performance data or information on how to obtain more current performance data. In addition, the narrative disclosure required to be included in Rule 482 advertisements must be prominent, and the performance disclaimers, where applicable, must be prominent and presented in close proximity to performance data.

### ***Currentness of Performance Data***

Performance advertisements generally must include a toll-free or collect telephone number or refer to a website where investors may obtain more current performance information.

- Performance data provided via toll-free or collect telephone number or website must be current to the most recent month-end and available to investors within seven business days of month-end.
- The telephone number or website provided may be that of a third-party intermediary.
- Unless the telephone number provided is dedicated exclusively to providing updated month-end performance information to investors, the narrative disclosures required in a Rule 482 advertisement must also be provided on the telephone line.
- Where a website provides updated month-end performance information, the website must also include the narrative disclosures required by Rule 482.

- Advertisements including performance information more current than the most recent month-end must also include a telephone number or website for month-end information.

Performance advertisements are not required to include a telephone number or website for month-end information when the advertisement includes performance data that is current to the most recent month ended seven business days prior to the date of use. Examples include:

- a website that is continuously updated so that it always includes performance current to the most recent month ended within seven business days of month-end; or
- an advertisement in a daily newspaper that appears on a particular day and includes performance current to the most recent month ended seven business days prior to the date that the advertisement appears.

### ***Presentation of Narrative Information—Prominence and Proximity***

The amendments require advertisements to present the required narrative disclosures about the prospectus and the performance data in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement.

- When performance data is presented in a type size smaller than the major portion of the advertisement, the narrative disclosure relating to fund disclosure may appear in a type size no smaller than the performance data.
- For advertisements delivered through an electronic medium, the required narrative disclosures may be presented in any manner reasonably calculated to draw investor attention to them.

- Radio and television advertisements must give the required narrative disclosures emphasis equal to that used in the major portion of the advertisement. If a major portion of a TV ad is spoken, the narrative disclosures should be spoken.

Narrative disclosures that specifically relate to fund performance must be presented in close proximity to the performance data in all Rule 482 performance advertisements. In print advertisements, the required disclosures must appear in the body of the text, not in a footnote. In addition, the dates during which the quoted performance occurred must be adjacent to, and have no less prominence than, the performance quotation itself.

*In preparing advertisements, fund companies and their underwriters should always be mindful that compliance with Rule 482 does not relieve the fund or the underwriter of any obligations under the antifraud provisions of the federal securities laws. Portrayals of past income, gain or growth of assets may be misleading where the portrayals omit explanations, qualifications, limitations or other statements necessary or appropriate to make these portrayals of past performance not misleading*

### Sample Rule 482 Advertisement under Amended Rule 482

#### Average Annual Total Return (for periods ended 9/30/03)

	<i>Quarter</i>	<i>1 Year</i>	<i>5 Years</i>	<i>10 Years</i>
Fund Name	%	%	%	%

*The performance shown above represents past performance. Past performance is no guarantee of future results and current performance may be higher or lower than the performance shown above. Investment results and principal value will fluctuate so that shares, when redeemed, may be worth more or less than their original cost. To obtain performance data current to the most recent month-end, [call toll-free or collect phone number/access our website at website address].*

*Average annual total returns include reinvestment of dividends and capital gains. [The Fund charges a maximum sales load of \_\_\_\_%, which is not reflected; if reflected, performance would be lower than shown above.]*

*You should consider the Fund's investment objectives, risks and charges and expenses carefully before you invest. The Fund's prospectus, which can be obtained by calling [phone number], contains this and other information about the Fund. Read the prospectus carefully before you invest or send money.*

Note: The type size, type style and location of the narrative text are intended to demonstrate the prominence and proximity requirements of amended Rule 482. The underlined narrative text reflects the enhanced disclosure required by amended Rule 482.

If you have any questions regarding material in this issue of the *Investment Services Bulletin*, please contact a member of the Investment Services Group.

The *Investment Services Bulletin* is published by the law firm of Vedder, Price, Kaufman & Kammholz, P.C.. It is intended to keep our clients and interested parties generally informed on developments in the investment services industry. It is not a substitute for professional advice.

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