source of payment on their ABS.⁷¹ The Commission's treatment of short-form issuers under proposed Rule 434 is predicated, in part, on the fact that significant issuer-specific information is available through Exchange Act reports. There is no equivalent source of information about the special-purpose issuer in ABS offerings.

In addition, most ABS offerings are registered as delayed offerings under the Commission's shelf registration rule. While the base prospectus includes a general description of the securities that may be offered from time to time, the terms of a specific ABS offering are included in the prospectus supplement. Such supplement details the characteristics of specific pool assets and the structure of the transaction, and is of significant length and complexity. The Commission's proposed rule would provide that only a summary of such information be physically delivered in short-form delayed shelf offerings. In the case of ABS offerings, a summary of such terms would not serve as an adequate substitute for the complete description in the prospectus supplement.

Treating ABS offerings the same as non-short-form offerings under the proposed rule, and thereby requiring use of a preliminary prospectus, also would not be appropriate. Offerings of ABS differ significantly from conventional offerings of corporate securities. The principal focus in ABS offerings is on the structure of the transaction and the nature of the collateral generating the payment streams supporting the ABS. As a particular offering evolves, a variety of structures may be considered as the sponsor attempts to meet investors' needs by adjusting the impact of, e.g., prepayment rate and cash flow variables on particular classes within the structure. The process of developing a satisfactory structure typically extends almost to the time when the security is priced. Consequently, a preliminary prospectus (or, in the case of a delayed shelf offering, a preliminary prospectus supplement) is virtually never utilized.

Finally, even in the rare instance when an ABS offering may employ a preliminary prospectus, the complexity of the disclosure and the structural modifications occurring during the course of the offering do not lend themselves to incremental delivery of prospectus information. Nevertheless, comment is requested regarding

whether any ABS offerings could be accomplished within the strictures of the proposed rule while maintaining the present quality of prospectus disclosure.

c. Offerings of Structured Securities. As in the case of asset-backed securities, the SIA Proposal would extend relief to structured securities. The Commission's proposed Rule 434, however, would exclude offerings of such securities. These securities usually have terms that are highly complex, with many employing one or more indices as a basis for determining the issuer's payment obligations (e.g., coupon, principal, redemption payments). Structured securities often are designed with specific market risks in mind, as well as risks relating to the issuer. Consequently, a structured security's value is derived not only from the creditworthiness of its issuer, but also from any underlying assets, indices, interest rates or cash flow upon which the security is predicated.

The incremental distribution of information proposed under the rule, when combined with the complex nature of these securities, may result in material disclosure not being readily accessible to investors. Additionally, issuers of securities with complex terms or formulas for the calculation of payment obligations may not be able to develop a summary description (as contemplated by the rule for short-form offerings) that is an adequate substitute for the complete description presently delivered to investors. A complete description of offering-specific information is of particular importance to investors in making an investment decision, given the market risks resulting from the structure of these

Comment is solicited regarding the exclusion or inclusion of these securities with respect to the proposed rule. Comment is requested as to whether the proposed incremental delivery procedure would impede an investor's ability to consider and evaluate material information about structured securities. Can structured securities be adequately summarized? Also, are there additional concerns that further warrant the exclusion of structured securities? Comment also is solicited regarding whether "structured securities" as used in proposed Rule 434 should be defined. If so, how should such securities be defined? For example, should such definition conform to the proposed definition in Rule 15c6-1(c)(2) discussed below?

d. *Investment Companies*. The proposed rule provides that it does not apply to the offering of any security of any company registered or required to

be registered under the Investment Company Act of 1940 72 or any company that is treated as a business development company under that Act.

In making its proposal, the SIA did not specifically address the applicability to registered investment companies. The Commission understands that open-end investment company (mutual fund) initial offerings typically do not raise the prospectus delivery logistical concerns that have led to these proposals. Mutual fund shares are normally offered on a continuous basis, and a preliminary prospectus is not generally printed. Moreover, the Commission has concerns that separate delivery of a document that supplements and modifies a prospectus may be inconsistent with efforts to simplify investment company prospectuses.

Comment is requested on whether adoption of a T+3 settlement period will raise prospectus delivery concerns with respect to initial offerings of closed-end funds and unit investment trusts.

Commenters favoring the application of proposed Rule 434 to investment companies should address the effects of the proposal on retail investors' ability to understand their investment in these types of companies, as well as the specific investment company-related rules that would require modification.

5. Feasibility of the Proposal

A number of concerns have been raised about the feasibility of the SIA Proposal for issuers and underwriters and the utility of the disclosure to investors. ⁷³ Comment is requested with respect to each of the issues raised under the following captions.

a. Investor Confusion and Resistance. Investors may be obliged to read multiple documents to ascertain the required information about the transaction and securities. While prospectuses included in short-form registrations currently are not self-contained, given the incorporation by reference of issuer-specific information, would investors expect and require an integrated disclosure document for other offerings, e.g., initial public offerings?

Because a supplementing memorandum could reflect additions to, or changes from, the disclosure contained in a preliminary prospectus, thereby modifying or superseding such information, would investors be confused and frustrated in attempting to determine the important and relevant information? Is this process further

⁷¹ While the sponsor/depositor associated with the offering may be a seasoned, reporting company, the reporting history of the sponsor/depositor usually is not relevant because there is no recourse to the sponsor/depositor.

^{72 15} U.S.C. § 80a-1 et seq.

⁷³ See the Four Firms letter, *supra* note 15.