

SUPPORTING STATEMENT
Rule 482

A. JUSTIFICATION

1. Necessity for the Information Collection

Like most issuers of securities, when an investment company^{NOTEREF_Ref264296814 \h * MERGEFORMAT} (“fund”) offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933 (“Securities Act”). In recognition of the particular problems faced by funds that continually offer securities and wish to advertise their securities, the Securities and Exchange Commission (“Commission”) has previously adopted advertising safe harbor rules. The most important of these is rule 482 under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information. Rule 482 advertisements are deemed to be “prospectuses” under Section 10(b) of the Securities Act.^{NOTEREF_Ref264296814 \h * MERGEFORMAT}

Rule 482 contains certain requirements regarding the disclosure that funds are required to provide in qualifying advertisements. These requirements are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. For example, a fund is required to include disclosure advising investors to consider the fund’s investment objectives, risks, charges, and expenses, and other information described in the fund’s prospectus or accompanying profile (if applicable), and highlighting the availability of the fund’s prospectus. In addition, rule 482 advertisements that include performance data of

^{NOTEREF_Ref264296814 \h * MERGEFORMAT} “Investment company” refers to both investment companies registered under the Investment Company Act of 1940 (“Investment Company Act”) and business development companies.

^{NOTEREF_Ref264296814 \h * MERGEFORMAT} 15 U.S.C. 77j(b).

open-end funds or insurance company separate accounts offering variable annuity contracts are required to include certain standardized performance information, information about any sales loads or other nonrecurring fees, and a legend warning that past performance does not guarantee future results. Such funds including performance information in rule 482 advertisements are also required to make available to investors month-end performance figures via Web site disclosure or by a toll-free telephone number, and to disclose the availability of the month-end performance data in the advertisement. The rule also sets forth requirements regarding the prominence of certain disclosures, requirements regarding advertisements that make tax representations, requirements regarding advertisements used prior to the effectiveness of the fund's registration statement, requirements regarding the timeliness of performance data, and certain required disclosures by money market funds.

Target date retirement funds (hereinafter "target date funds") are designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically among asset classes over time without the need for each investor to rebalance his or her own portfolio repeatedly. NOTEREF_Ref264296814 \h * MERGEFORMAT A target date fund is typically intended for investors whose retirement date is at or about the fund's stated target date. Target date funds generally invest in a diverse mix of asset classes, including stocks, bonds, and cash and cash equivalents (such as money market instruments). As the target date approaches and often continuing for a significant period thereafter, a target date fund shifts its asset allocation in a manner that is intended to

NOTEREF_Ref264296814 \h * MERGEFORMAT See, e.g., Youngkyun Park, Investment Behavior of Target-Date Fund Users Having Other Funds in 401(k) Plan Accounts, 30 Employee Benefit Research Institute Issue Brief, at 2 (Dec. 2009).

become more conservative – usually by decreasing the percentage allocated to stocks.

Market losses incurred in 2008, coupled with the increasing significance of target date funds in 401(k) plans, have given rise to a number of concerns about target date funds. In particular, concerns have been raised regarding how target date funds are named and marketed.

For example, one concern is the potential for a target date fund’s name to contribute to investor misunderstanding about the fund. Target date fund names generally include a year, such as 2010. The year is intended as the approximate year of an investor’s retirement, and an investor may use the date contained in the name to identify a fund that appears to meet his or her retirement needs. This naming convention, however, may contribute to investor misunderstanding of target date funds.

See, e.g., Josh Charlson et al., Morningstar Target-Date Series Research Paper: 2009 Industry Survey, at 6 (Sept. 9, 2009) (“2009 Morningstar Paper”); Investment Company Institute, 2010 Investment Company Fact Book, at 116 (2010) (“2010 Fact Book”).

See Investment Company Institute, The U.S. Retirement Market, Third Quarter 2009 at 31 (Feb. 2010) (approximately 67% of assets held by target date funds as of September 30, 2009, were attributable to defined contribution plans). A 401(k) plan is a defined contribution plan that meets the requirements for qualification under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

See, e.g., statement of Karrie McMillan, General Counsel, Investment Company Institute, at Target Date Fund Joint Hearing (June 18, 2009) (“McMillan statement”), available at <http://www.dol.gov/ebsa/pdf/ICI061809.pdf>, at 6-7 (stating that the expected retirement date that is used in target date fund names is a point in time to which investors easily can relate).

See, e.g., Transcript of Public Hearing on Target Date Funds and Other Similar Investment Options before the U.S. Securities and Exchange Commission and the U.S. Department of Labor, at 65 (June 18, 2009), available at <http://www.sec.gov/spotlight/targetdatefunds/targetdatefunds061809.pdf> (“Joint Hearing Transcript”) (testimony of Marilyn Capelli-Dimitroff, Chair, Certified Financial Planner Board of Standards, Inc.) (stating that target date funds may be “fundamentally misleading” to investors because they can be managed in ways that are inconsistent with reasonable expectations created by the names).

Investors may not understand, from the name, the significance of the target date in the fund's management or the nature of the schedule by which a target date fund's asset allocation is adjusted (the "glide path") up to and after that date. For example, investors may expect that at the target date, most, if not all, of their fund's assets will be invested conservatively to provide a pool of assets for retirement

needs.^{NOTEREF _Ref264296814 \h * MERGEFORMAT} They also may mistakenly assume that funds that all have the same date in their name are managed according to a uniform asset allocation strategy.^{NOTEREF _Ref264296814 \h * MERGEFORMAT}

Another concern is the degree to which the marketing materials provided to 401(k) plan participants and other investors in target date funds may have contributed to a lack of understanding by investors of those funds and their associated investment strategies and risks. A number of participants at a June 2009 joint hearing on target date funds held by the Commission and the Department of Labor expressed concern regarding target date fund marketing.^{NOTEREF _Ref264296814 \h * MERGEFORMAT} For example, one participant stated that "there are significant problems with how [target date funds] are presently marketed," and that "what is lacking is clear and understandable information on the investment strategy and potential risks associated with that

^{NOTEREF _Ref264296814 \h * MERGEFORMAT} See *id.* at 87 (testimony of David Certner, Legislative Counselor and Legislative Policy Director, AARP) (hypothesizing that investors who were looking at 2010 target date funds were "thinking something much more conservative than maybe the theoretical notions of what the payouts are going to be over a longer lifetime period").

^{NOTEREF _Ref264296814 \h * MERGEFORMAT} See *id.* at 272 (testimony of Ed Moore, President, Edelman Financial Services) (asserting that the practice of funds referring to themselves by year is misleading because each fund is permitted to create its own asset allocation in the absence of industry standards regarding portfolio management and construction).

^{NOTEREF _Ref264296814 \h * MERGEFORMAT} See Joint Hearing Transcript, *supra* note 7.

strategy.”^{NOTEREF _Ref264296814 \h * MERGEFORMAT} Another participant cited a survey that her organization had conducted, which involved showing a composite description of target date funds derived from actual marketing materials to survey subjects, the majority of whom perceived that those materials made “a promise that [did] not, in fact, exist.”^{NOTEREF _Ref264296814 \h * MERGEFORMAT} According to that participant, some of the survey respondents who reviewed the marketing materials thought that target date funds made various promises, such as “funds at the time of retirement,” a “secure investment with minimal risks,” similarity to “a guaranteed investment” during a market downturn, or “a comfortable retirement.”^{NOTEREF _Ref264296814 \h * MERGEFORMAT}

Commission staff has reviewed a sample of target date fund marketing materials and found that the materials often characterized target date funds as offering investors a simple solution for their retirement needs. The materials typically presented a list of funds with different target dates and invited investors to choose the fund that most closely matches their anticipated retirement date. Even though the marketing materials for target date funds often included some information about associated risks, they often accompanied this disclosure with slogan-type messages or other catchphrases encouraging investors to conclude that they can simply choose a fund without any need to consider their individual circumstances or monitor the fund over time.

The simplicity of the messages presented in these marketing materials at times belies the fact that asset allocation strategies among target date fund managers differ and

^{NOTEREF _Ref264296814 \h * MERGEFORMAT} Id. at 153 (testimony of Mark Wayne, National Association of Independent Retirement Plan Advisors).

^{NOTEREF _Ref264296814 \h * MERGEFORMAT} Id. at 178 (testimony of Jodi DiCenzo, Behavioral Research Associates). A copy of the survey results is available at <http://www.sec.gov/comments/4-582/4582-1a.pdf>.

^{NOTEREF _Ref264296814 \h * MERGEFORMAT} Id.

that investments that are appropriate for an investor depend not only on his or her retirement date, but on other factors, including appetite for certain types of risk, other investments, retirement and labor income, expected longevity, and savings rate. The investor is, in effect, relying on the fund manager's asset allocation model, which may or may not be appropriate for the particular investor. The model's assumptions could be inappropriate for an investor either from the outset or as a result of a change in economic or other circumstances, such as job loss, unexpected expenditures that lead to decreased contributions, or serious illness affecting life expectancy.

As one step to address potential investor misunderstanding of target date funds, the Commission has proposed amendments to rule 482 under the Securities Act that, if adopted, would require: (i) for advertisements relating to a target date fund whose name includes a date, disclosure of the asset allocation of the fund at the target date (or for advertisements that are submitted for publication or use on or after the target date, a fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the advertisement for publication or use); (ii) for print or electronic advertisements relating to a single target date fund, a table, chart, or graph that depicts the actual percentage allocation of the fund among types of investments from the inception of the fund through the most recent calendar quarter ended prior to the submission of the advertisement for publication and the future intended allocations of the fund; (iii) for print or electronic advertisements relating to multiple target date funds with different target dates that all have the same pattern of asset allocations, either separate presentations for each target date fund that meet the requirements of clause (ii) or a single table, chart, or graph that depicts the intended allocations of the funds among types of investments; (iv) for advertisements that relate to a single target date fund and are

submitted for publication prior to reaching the “landing point” at which the asset allocation becomes static or that relate to multiple target date funds with different target dates that all have the same pattern of asset allocations, a statement preceding the table, chart, or graph that explains the table, chart, or graph and provides certain information about the glide path and landing point; (v) enhanced disclosures relating to the landing point in radio and television advertisements that are submitted for use prior to the landing point for funds whose names include a target date; and (vi) statements alerting investors to certain risks and considerations relating to an investment in a target date fund.

NOTEREF_Ref264296814 \h * MERGEFORMAT

2. Purpose of the Information Collection

Rule 482 advertisements must be filed with the Commission or, in the alternative, with the Financial Industry Regulatory Authority

(“FINRA”). NOTEREF_Ref264296814 \h * MERGEFORMAT This information collection differs from many other federal information collections that are primarily for the use and benefit of the collecting agency.

Rule 482 contains requirements that are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance, and in the case of the amendments, to address the concerns that have been raised regarding the potential for investor misunderstanding to arise from target date fund names and marketing materials. The Commission is concerned that in

NOTEREF_Ref264296814 \h * MERGEFORMAT The Commission also proposed amendments to rule 34b-1 that would apply the same requirements, other than those described in clause (v), to sales material that accompanies or follows the delivery of a prospectus meeting the requirements of Section 10(a) of the Securities Act (15 U.S.C. 77j(a)).

NOTEREF_Ref264296814 \h * MERGEFORMAT See Rule 24b-3 under the Investment Company Act [17 CFR 270.24b-3], which provides that any sales material, including rule 482 advertisements, shall be deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with FINRA.

the absence of such provisions fund investors may be misled by deceptive rule 482 advertisements and may rely on less-than-adequate information when determining in which funds they should invest their money. As a result, the Commission believes it is beneficial for funds to provide investors with balanced information in fund advertisements in order to allow investors to make better-informed decisions.

3. Role of Improved Information Technology

The Commission's electronic filing system (Electronic Data Gathering, Analysis and Retrieval or "EDGAR") is designed to automate the filing, processing and dissemination of full disclosure filings. The system permits public companies to transmit filings to the Commission electronically. This automation has increased the speed, accuracy and availability of information, generating benefits to investors and financial markets.

The vast majority of fund advertisements are filed with FINRA under Investment Company Act rule 24b-3, which allows any sales material filed with FINRA to be deemed to be filed with the Commission.^{NOTEREF _Ref264296814 \h * MERGEFORMAT} Rule 482 advertisements that are required to be filed with the Commission are to be filed electronically on EDGAR. (17 CFR 232.101(a)(1)(i) and (iv)). The public may access filings on EDGAR through the Commission's Internet web site (<http://www.sec.gov>) or at EDGAR terminals located at the Commission's public reference rooms.

4. Effort to Identify Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule.

^{NOTEREF _Ref264296814 \h * MERGEFORMAT} 17 CFR 270.24b-3.

5. Effect on Small Entities

The proposed amendments to rule 482, if adopted, would apply to registered investment companies that are target date funds. The Commission estimates that no target date funds are small entities. Therefore, we do not expect that the proposed amendments to rules 482 would affect any small entities.

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. The current disclosure requirements for fund advertisements do not distinguish between small entities and other entities. To the extent smaller funds advertise, their burden to prepare advertisements may be greater than for larger funds due to economies of scale. This burden would include the cost of reviewing an advertisement to confirm that it meets the requirements of rule 482.

The Commission considered special requirements for small entities. The Commission believes, however, that imposing different requirements on smaller fund companies would not be consistent with investor protection. The use of different standards for small entities may create a risk that investors may receive false or misleading information. In addition, the Commission believes that uniform disclosure standards for all fund advertisements should allow investors to compare funds more easily when making an investment decision. Allowing different standards for small entities may create confusion for investors who wish to compare funds.

6. Consequences of Less Frequent Collection

Since fund advertising is voluntary, the Commission does not determine the frequency with which funds advertise pursuant to rule 482. Therefore, short of not requiring any collection for advertisements governed by rule 482, the Commission cannot

require less frequent collection. Not requiring disclosure of the information required by rule 482 would harm investors by denying them information that may be useful in making investment decisions. If such advertisements did not contain this disclosure, investors could receive inadequate information or could receive confusing, false, or misleading information. As a result, investor confidence in the securities industry could be adversely affected.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Not applicable.

8. Consultation Outside the Agency

Rule 482 has previously been amended through rulemaking actions pursuant to the Administrative Procedures Act. In these rulemaking actions, comments are generally received from registrants, trade associations, the legal and accounting professions, and other interested persons. In addition, the Commission and the staff of the Division of Investment Management also participate in an ongoing dialogue with representatives of the fund industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

The Commission has solicited and will consider comment on the proposed amendments, and on the collection of information that would be imposed by the amendments.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

The burden hour estimate for complying with rule 482 is based on consultations with industry representatives and on the Commission's experience with the contents of disclosure documents. The number of burden hours may vary depending on, among other things, the complexity of the document, the number of funds included in a single document, and whether preparation of the document is performed by fund staff or outside counsel. The number of funds used to estimate the burden hours is an estimate based on the Commission's statistics. The estimates of average burden hours are made solely for purposes of the Paperwork Reduction Act of 1995

(“PRA”) NOTEREF _Ref264296814 \h * MERGEFORMAT and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Rule 482 is part of Regulation C under the Securities Act (17 CFR 230.400-498). Regulation C describes the disclosure that must appear in the registration statements under the Securities Act and Investment Company Act. However, the burden associated with rule 482 is included within the collection entitled rule 482, and rule 482 is not considered part of Regulation C for information collection purposes.

The Commission estimates that there are approximately 357 funds that are either a registered management investment company or a separate series of a registered management investment company that would fall within the proposed definition of “target date fund” for purposes of the proposed amendments to rule

NOTEREF _Ref264296814 \h * MERGEFORMAT 44 U.S.C. 3501 et seq.

482. NOTEREF _Ref264296814 \h * MERGEFORMAT We believe that part of the PRA burden will be incurred on an initial one-time basis and that part of the PRA burden will be ongoing.

The Commission estimates that internal marketing personnel and compliance attorneys of a target date fund subject to the proposed amendments would spend, as an initial one time burden in order to comply with the proposed amendments, an average of 15 hours, consisting of: (1) one hour to prepare and review the fund's intended target date (or current) asset allocation disclosure; (2) 10 hours to prepare and review the table, chart, or graph that depicts the glide path of the fund, the statement preceding the table, chart, or graph, and the enhanced disclosures relating to the landing point in radio and television advertisements; and (3) four hours to prepare and review the statement alerting investors to certain risks and considerations relating to an investment in a target date fund. We estimate the initial one-time burden for all target date funds to comply with the proposed amendments to be approximately 5,355 hours.¹

We also estimate certain ongoing costs with respect to advertisements associated with the proposed amendments to rule 482. First, we anticipate that there will be ongoing costs associated with the proposed requirement that a target date fund submitting an advertisement for publication or use on or after the date that is included in the fund's name must disclose, immediately adjacent to the fund's name, the fund's actual asset

NOTEREF _Ref264296814 \h * MERGEFORMAT This estimate is based on Commission staff analysis of data obtained from Morningstar Direct. The Commission staff believes that all funds that meet the proposed definition of a target date fund currently use a date in their names and would be subject to all of the proposed amendments to rules 482 and 34b-1.

¹ 357 target date funds x 15 hours = 5,355 hours. As noted above, the Commission has proposed similar disclosures under rules 482 and 34b-1 (see note 14 above). We believe that the hour burden associated with initial compliance would not be duplicated under both rules and do not believe that there would be any additional burden associated with rule 34b-1 because the proposed amendments would not affect the level of review needed by funds to comply with rule 34b-1. Therefore, we have assigned the initial one-time burden to rule 482.

allocation as of the most recent calendar quarter ended prior to the submission of the advertisement. We estimate that internal marketing personnel and compliance attorneys of a target date fund subject to the proposed amendments would spend an average of one hour per response on an ongoing basis to update the asset allocations disclosed immediately adjacent to the fund's name.

We estimate that 58,368 responses² to rule 482 are filed annually by 3,540 registered investment companies offering approximately 16,225 funds, or approximately 3.6 responses per fund annually.³ Therefore, we estimate that the 357 target date funds would file 1,285 responses to rule 482 annually.⁴ Of these responses, we estimate that 15% would be responses submitted on or after the date that is included in the fund's name.⁵ In the first year, we estimate that the ongoing burden associated with the proposed requirement that a target date fund submitting an advertisement on or after the date that is included in the fund's name must disclose the fund's actual asset allocation as

² The estimated number of responses to rule 482 is composed of 58,093 responses filed with the Financial Industry Regulatory Authority, Inc. ("FINRA") and 275 responses filed with the Commission in 2009.

³ $58,368 \text{ responses} \div 16,225 \text{ funds} = 3.6 \text{ responses per fund.}$

⁴ $357 \text{ funds} \times 3.6 \text{ responses per fund} = 1,285 \text{ responses.}$

⁵ Based on Commission staff analysis of data as of March 31, 2010, obtained from Morningstar Direct, 47 target date funds contain a date in the name that is on or before the year 2010. This amounts to approximately 13% of the 357 target date funds ($357 \text{ target date funds} \div 47 \text{ target date funds} = 13\%$), which we have rounded up for purposes of our estimates to 15%.

of the most recent calendar quarter ended would be 139 hours.⁶ In each subsequent year, we estimate that the ongoing burden associated this requirement would be 193 hours.⁷

Second, we further estimate that there will be ongoing costs associated with the requirement that, in advertisements that relate to a single target date fund, the table, chart, or graph must clearly depict the actual percentage allocations among types of investments from the inception of the fund through the most recent calendar quarter ended prior to the submission of the materials for publication and the future intended percentage allocations of the fund. We estimate that internal marketing personnel and compliance attorneys of a target date fund subject to the proposed amendments would spend an average of two hours per response on an ongoing basis for single-fund advertisements to comply with the proposed table, chart, or graph requirement.

We estimate that the 357 target date funds would file 1,285 responses to rule 482 annually.⁸ Of these responses, we estimate that 25% would be single fund advertisements and 75% would be multiple fund advertisements.⁹ In the first year, we estimate that the ongoing burden associated with the proposed table, chart, or graph requirement for single target date fund responses would be 464 hours.¹⁰ In each subsequent year, we estimate

⁶ Because we have assumed in the first year that one response will not impose any burden beyond the initial one time burden of 15 hours, target date funds submitting an advertisement for publication on or after the date that is included in the fund's name would bear an ongoing burden of 1 hour with respect to the remaining 2.6 responses (357 target date funds x 0.15 x 1 hour per response x 2.6 responses = 139 hours).

⁷ In subsequent years, the ongoing cost burden for target date funds submitting an advertisement for publication on or after the date that is included in the fund's name would equal 193 hours (357 target date funds x 0.15 x 1 hour per response x 3.6 responses = 193 hours).

⁸ 357 funds x 3.6 responses per fund = 1,285 responses.

⁹ These estimates are based on the Commission staff's review of a sample of target date fund materials filed with FINRA.

¹⁰ Because we have assumed in the first year that one response will not impose any burden beyond the initial one time burden of 15 hours, each of the 357 target date funds would bear an ongoing burden of 2 hours for single target date fund advertisements with respect

that the ongoing burden associated with the proposed table, chart, or graph requirement for single target date fund advertisements would be 643 hours.¹¹

Based on the foregoing estimates, the hour burden associated with the proposed amendments to rule 482 over three years would be approximately 7,630 hours.¹² Because the PRA estimates represent the average burden over a three-year period, we estimate the average annual hour burden for target date funds to comply with the proposed amendments to rule 482 to be approximately 2,543 hours.¹³ The PRA burden associated with rule 482 is presently estimated to be 5.16 hours per response, for a total annual hour burden of 301,179 hours.¹⁴ Therefore, we estimate that if the proposed amendments to rule 482 are adopted, the total annual hour burden for all funds to comply with the requirements of rule 482 would be 303,722 hours,¹⁵ or approximately 5.20 hours per response.¹⁶

to 25% of the remaining 2.6 responses (357 target date funds x 0.25 x 2 hours per response x 2.6 responses = 464 hours).

¹¹ In subsequent years, the ongoing cost burden for single target date fund advertisements would equal 643 hours (357 target date funds x 0.25 x 2 hours per response x 3.6 responses = 643 hours).

¹² We estimate that the total incremental hour burden associated with the proposed amendments to rule 482 over three years would be 7,630 hours (5,355 hours for initial compliance + 603 hours in year 1 (139 hours + 464 hours) + 836 hours in year 2 (193 hours + 643 hours) + 836 hours in year 3 (193 hours + 643 hours) = 7,630 hours).

¹³ 7,630 hours ÷ 3 years = 2,543 hours per year.

¹⁴ 58,368 responses x 5.16 hours per response = 301,179 hours.

¹⁵ 301,179 hours + 2,543 hours = 303,722 hours.

¹⁶ 303,722 hours ÷ 58,368 responses = 5.20357 hours per response.

Based on a Commission estimate of 303,722 hours and an estimated wage rate of approximately \$238.25 per hour,¹⁷ the total cost to the industry of the hour burden for complying with the requirements of rule 482 is approximately \$72,361,767.¹⁸

13. Estimate of Total Annual Cost Burden

Cost burden is the cost of services purchased to comply with rule 482, such as for the services of computer programmers, outside counsel, financial printers, and advertising agencies. The cost burden does not include the cost of the hour burden discussed in Item 12 above. Estimates are based on the Commission's experience with advertisements and sales literature. The Commission currently attributes no cost burden to rule 482. With respect to the amendments, we anticipate that target date funds would incur initial one time external costs, such as the costs of modifying and reformatting layouts and typesetting, and no ongoing external costs.¹⁹ We estimate that these initial

¹⁷ The estimated wage rate figure is based on published hourly wage rates for compliance attorneys, paralegals and senior compliance examiners, from SIFMA's Management & Professional Earnings in the Securities Industry 2009, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, yielding effective hourly rates of \$291, \$161, and \$210, respectively. The estimated wage rate is further based on the estimate that attorneys would handle 50% of hours spent on advertising regulation and that paralegals and compliance examiners would handle the remaining 50% in equal parts, yielding a weighted wage rate of \$238.25 ($(\$291 \times .50) + (\$161 \times .25) + (\$210 \times .25) = \238.25).

¹⁸ $303,722 \text{ hours} \times \$238.25 \text{ per hour} = \$72,361,767$.

¹⁹ We believe that it is usual and customary for investment companies to periodically update and replace marketing materials. The Commission proposed a 90-day transition period for the proposed amendments to rules 482 and 34b-1 to minimize the burden on target date funds.

external costs would be approximately \$2,900 per target date fund,²⁰ or \$1,035,300 in the aggregate.²¹

14. Estimate of Cost to the Federal Government

Advertising regulation affects costs incurred by the federal government. 58,368 responses are filed annually pursuant to rule 482; however these responses are generally filed with FINRA and are generally not reviewed by the Commission. The annual operational cost of reviewing and processing new registration statements, post-effective amendments, proxy statements, and shareholder reports of all investment companies amounted to approximately \$20.4 million in fiscal year 2009, based on the Commission's computation of the value of staff time devoted to these activities and related overhead.

15. Explanation of Changes in Burden

Previously, we had estimated an annual total hour burden of 459,637 hours for rule 482. This number was based on a yearly estimate of 89,077 responses filed by 4,106 investment companies offering approximately 37,265 portfolios with an estimated burden of 5.16 hours per response. We estimate a net decrease of 155,915 burden hours per year for rule 482 from the previous PRA submission.²² This change is due to a decrease in the estimated number of annual responses from 89,077 to 58,368 (resulting in a decrease of 158,458 burden hours based on the previous estimate of 5.16 hours per response),²³ offset

²⁰ This estimate is based on the estimate of \$2,417 for external costs that we made in 2003 when we last amended rules 482 and 34b-1. See Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760, 57771 (Oct. 6, 2003)]. We have adjusted our estimate to account for an increase of 19.4% in the consumer price index between 2003 and 2009, based on Commission staff analysis of data obtained from the Bureau of Labor Statistics.

²¹ 357 target date funds x \$2,900 per target date fund = \$1,035,300.

²² 303,722 burden hours estimated in current PRA submission - 459,637 burden hours estimated in previous PRA submission = -155,915 burden hours.

²³ (58,368 responses x 5.16 hours per response) - (89,077 responses x 5.16 hours per response) = -158,458 burden hours.

slightly by the impact of the increase in the hour burden per response from approximately 5.16 hours per response to approximately 5.20 hours per response as a result of the proposed amendments (resulting in an increase of 2,543 burden hours).²⁴ The decrease of 158,458 burden hours plus the increase of 2,543 burden hours results in a net decrease of 155,915 burden hours.²⁵

Previously, we attributed no cost burden to rule 482. The change in the estimated cost burden is due our estimate that target date funds would incur initial one time external costs, such as the costs of modifying and reformatting layouts and typesetting, of \$1,035,300 in the aggregate, and no ongoing external costs.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exception to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

²⁴ (58,368 responses x 5.20357 hours per response) – (58,368 x 5.16 hours per response) = 2,543 burden hours.

²⁵ -158,458 burden hours + 2,543 burden hours = -155,915 burden hours.