

**SUPPORTING STATEMENT  
for the Paperwork Reduction Act  
Information Collection  
“Rule 498”**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 5(b)(2) of the Securities Act of 1933 (“Securities Act”)<sup>1</sup> makes it unlawful for any person, directly or indirectly, to carry or cause to be carried through the mails or in interstate commerce securities for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus meeting the requirements of Section 10 of the Securities Act.<sup>2</sup> Section 10(a) of the Securities Act describes the type of information required to be included in a statutory prospectus.<sup>3</sup> Sections 10(b) of the Securities Act and 24(g) of the Investment Company Act of 1940<sup>4</sup> permit the Commission to allow the use of a prospectus that omits or summarizes information required by Section 10(a).

Rule 498 under the Securities Act<sup>5</sup> permits open-end management investment companies (“funds”) to satisfy their prospectus delivery obligations under the Securities Act by sending or giving key information directly to investors in the form of a summary prospectus (“Summary Prospectus”) and providing the statutory prospectus on a website. Upon an investor’s request, funds are also required to send the statutory prospectus to the investor. In addition, under rule 498, a fund that relies on the rule to meet its statutory prospectus delivery obligations must make available, free of charge, the fund’s current

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<sup>1</sup> 15 U.S.C. 77e(b)(2).

<sup>2</sup> 15 U.S.C. 77j. A “prospectus,” as defined by the Securities Act, is any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security, with certain exceptions. 15 U.S.C. 77b(a)(10).

<sup>3</sup> 15 U.S.C. 77j.

<sup>4</sup> 15 U.S.C. 80a-24(g).

<sup>5</sup> 17 C.F.R. § 230.498.

Summary Prospectus, statutory prospectus, statement of additional information (“SAI”), and most recent annual and semi-annual reports to shareholders at the website address specified in the required Summary Prospectus legend. A Summary Prospectus that complies with rule 498 is deemed to be a prospectus that is authorized under Section 10(b) of the Securities Act and Section 24(g) of the Investment Company Act.

## **2. Purpose of the Information Collection**

The purpose of rule 498 is to enable a fund to provide investors with a Summary Prospectus containing key information necessary to evaluate an investment in the fund. Unlike many other federal information collections, which are primarily for the use and benefit of the collecting agency, this information collection is primarily for the use and benefit of investors. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

## **3. Role of Improved Information Technology**

The Commission’s electronic filing system (Electronic Data Gathering, Analysis and Retrieval or “EDGAR”) automates the filing, processing and dissemination of full disclosure filings. The system permits persons 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. Pursuant to rule 497(k),<sup>6</sup> all Summary Prospectuses permitted under rule 498 are to be filed with the Commission electronically on EDGAR. The public may access filings on EDGAR through the Commission’s [EDGAR Search web page](#) or at EDGAR terminals located at the Commission’s public reference rooms. Summary Prospectuses are permitted to be

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<sup>6</sup> 17 C.F.R. § 230.497(k).

sent to investors by electronic means so long as the fund meets certain requirements.<sup>7</sup> The Commission currently has no information concerning the percentage of such documents that are sent electronically.

In addition, under rule 498, a person that relies on the rule to meet its statutory prospectus delivery obligations must make available, free of charge, the fund's current Summary Prospectus, statutory prospectus, SAI, and most recent reports to shareholders at the website address specified in the Summary Prospectus legend.

#### **4. Efforts 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.

#### **5. Effect on Small Entities**

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act,<sup>8</sup> to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. The current disclosure requirements for Summary Prospectuses that comply with rule 498 do not distinguish between funds that are small entities and other funds. Although the burden on smaller funds to prepare and file Summary Prospectuses may be greater than for larger funds, the Commission believes that imposing different requirements on small entities would not be consistent with investor protection.

#### **6. Consequences of Less Frequent Collection**

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<sup>7</sup> See Securities Act Release No. 7233 (Oct. 6, 1995) [[60 FR 53458 \(Oct. 13, 1995\)](#)]; Securities Act Release No. 7856 (Apr. 28, 2000) [[65 FR 25843 \(May 4, 2000\)](#)].

<sup>8</sup> 5 U.S.C. 601 *et seq.*

Section 5(b)(2) of the Securities Act<sup>9</sup> makes it unlawful for any person, directly or indirectly, to carry or cause to be carried through the mails or in interstate commerce securities for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus meeting the requirements of Section 10 of the Securities Act.<sup>10</sup> Section 10(a)(3) of the Securities Act generally requires that when a prospectus is used more than nine months after the effective date of the registration statement, the information in the prospectus must be as of a date not more than sixteen months prior to such use.<sup>11</sup> The effect of these provisions is that mutual funds are required to update their statutory prospectuses at least annually to reflect current cost, performance, and other financial information. This legal requirement prevents the Commission from specifying less frequent distribution of the Summary Prospectus to investors when offering securities for sale.

The requirement that funds using a Summary Prospectus must respond to an investor's request for additional information within three business days ensures that investors who wish to review additional information before making an investment decision will be able to do so.

**7. Inconsistencies with Guidelines in 5 C.F.R. 1320.5(d)(2)**

This collection of information is not inconsistent with 5 C.F.R. 1320.5(d)(2)

**8. Consultation Outside the Agency**

The Commission requested public comment on the collection of information requirements in rule 498 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

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<sup>9</sup> See supra note Error: Reference source not found.

<sup>10</sup> See supra note Error: Reference source not found.

<sup>11</sup> See 15 U.S.C. 77j(a)(3).

**9. Payment of Gift to Respondents**

No payment or gift to respondents was provided.

**10. Assurance of Confidentiality**

No assurance of confidentiality was provided.

**11. Sensitive Questions**

No questions of a sensitive nature are involved.

**12. Estimate of Hour Burden**

The estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995<sup>12</sup> and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Rule 498 contains collection of information requirements. Under rule 498, use of the Summary Prospectus is voluntary, but the rule's requirements regarding provision of the statutory prospectus upon investor request are mandatory for funds that elect to send or give a Summary Prospectus in reliance upon rule 498. The information provided under rule 498 will not be kept confidential.

The Commission estimates that the annual hourly burden per portfolio associated with the compilation of the information required on the cover page or the beginning of the Summary Prospectus is 0.5 hours, and estimates that the annual hourly burden per portfolio to comply with the website posting requirement is approximately one hour. Therefore, the Commission estimates that the aggregate annual internal hour burden per portfolio associated with compliance with rule 498 is 1.5 hours.<sup>13</sup>

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<sup>12</sup> 44 U.S.C. 3501 et seq.

<sup>13</sup> The Commission believes that funds that have opted to use the summary prospectus have already incurred the estimated one-time hour burden to initially comply with rule 498, and therefore the estimated burden hours to initially comply with rule 498 and the associated costs are not included in these estimates.

The current approved annual internal hour burden for filing and updating Summary Prospectuses and posting the required disclosure documents on a website pursuant to rule 498 is 63,014 hours.<sup>14</sup> Based on staff review of Summary Prospectuses filed with the Commission, the Commission now estimates that approximately 6,250 portfolios are using a Summary Prospectus. Therefore, the Commission estimates that the total annual burden for filing and updating Summary Prospectuses and posting the required disclosure documents to a website pursuant to rule 498 will therefore be approximately 9,375 hours,<sup>15</sup> representing a decrease of 53,639 hours.

Based on the estimated wage rate, the total cost to the fund industry of the hour burden for complying with rule 498 is approximately \$2.9 million.<sup>16</sup>

### **13. Estimate of Total Annualized Cost Burden**

Cost burden is the cost of goods and services purchased to prepare and update Summary Prospectuses pursuant to rule 498, such as for printing and mailing costs and the services of independent auditors and outside counsel. The cost burden does not include the hour burden discussed in Section A.12 above. Estimates are based on the Commission's experience with the filing of registration forms.

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<sup>14</sup> Because use of the Summary Prospectus is voluntary, previously, in estimating the average annual burden hours, the Commission assumed that 80% of the estimated 8,752 portfolios in existence at the time would use a Summary Prospectus. The current approved annual burden represents the average hourly burden over a three-year period, and includes an estimated one-time hour burden of 23 hours for initial compliance with the rule.

<sup>15</sup> 1.5 hours per portfolio x 6,250 portfolios = 9,375 hours.

<sup>16</sup> This cost is estimated by multiplying the total annual hour burden (9,375 hours) by the rounded estimated hourly wage rate of \$312. The estimated wage figure is based on published rates for compliance attorneys and senior programmers, modified 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 \$320 and \$304, respectively. See Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2010. The estimated wage rate is further based on the estimate that compliance attorneys and senior programmers would divide time equally, resulting in a rounded weighted wage rate of \$312 (((\$320 x .050) + (\$304 x 0.50)).

The current approved total annual cost burden is \$106,200,000 or approximately \$15,200 per portfolio.<sup>17</sup> Adjusting the total annual cost burden per portfolio for the effects of inflation,<sup>18</sup> the Commission now estimates the total annual cost burden per portfolio to be \$15,900, for a total annual cost burden of approximately \$99,375,000.<sup>19</sup> This represents a decrease in the total annual cost burden of approximately \$6,825,000.

#### **14. Estimate of Cost to the Federal Government**

The annual cost of reviewing and processing new registration statements and post-effective amendments of investment companies amounted to approximately \$21.3 million in fiscal year 2010, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

#### **15. Explanation of Changes in Burden**

As noted in Section A.12 above, the new annual internal hour burden estimates represents a decrease of 53,639 hours per year. This net decrease is due to (1) the decrease in the estimated number of portfolios using a Summary Prospectus, and (2) the fact that the estimate no longer reflects the hours associated with the initial compliance requirements.

Furthermore, as noted in Section A.13 above, the new annual external cost estimate represents a decrease of approximately \$6,825,000 per year. This net decrease is due to (1) a decrease in the estimated number of portfolios using a Summary Prospectus, and (2) an increase in the estimated external cost burden per portfolio to account for the effects of inflation since 2008.

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<sup>17</sup>  $\$106,200,000 \div (8,752 \text{ portfolios} \times 0.80) = \$15,168.$

<sup>18</sup> To account for the effects of inflation since 2008, a rate of 4.84% was applied, which was calculated using the Consumer Price Index.

<sup>19</sup>  $\$15,900 \text{ per portfolio} \times 6,250 \text{ portfolios} = \$99,375,000.$

**16. Information Collection Planned for Statistical Purposes**

The results of any information collected will not be published.

**17. Approval to Not Display Expiration Date**

We request authorization to omit the expiration date on the electronic version of the information collection for design and IT project scheduling reasons. The OMB control number will be displayed.

**18. Exceptions to Certification Statement**

The Commission is not seeking an exception to the certification statement.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The collection of information will not employ statistical methods.