

SUPPORTING STATEMENT
Proposed Rule 482

A. JUSTIFICATION

1. Necessity for the Information Collection

Like most issuers of securities, when an investment company¹ (“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 adopted under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information (17 CFR 230.482). Rule 482 advertisements are deemed to be “prospectuses” under Section 10(b) of the Securities Act.²

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, and highlighting the availability of the fund’s prospectus. In addition, rule 482 advertisements that include performance data of open-end funds or insurance company separate accounts offering variable annuity contracts are required to include certain

¹ “Investment company” refers to both investment companies registered under the Investment Company Act of 1940 (“Investment Company Act”) and business development companies.

² 15 U.S.C. 77j(b).

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, and requirements regarding the timeliness of performance data. In addition, rule 482(b) describes the information that is required to be included in an advertisement, including a cautionary statement under rule 482(b)(4) disclosing the particular risks associated with investing in a money market fund.

On June 5, 2013, the Commission issued a release proposing two alternatives as part of a money market reform proposal. Under the first alternative, prime institutional money market funds would be required to float their net asset value. Under the second alternative, money market funds whose weekly liquid assets fell below 15% of total assets would be required to impose a 2% liquidity fee unless the fund's board of directors determines that such a fee would not be in the best interest of the fund, and permit the funds to suspend redemptions temporarily (*i.e.*, "gate" the fund).³ Under either alternative, the proposed amendments would change the investment expectations and experience of money market fund investors, rendering the current rule 482(b)(4) risk disclosures in advertisements for money market funds out of date. The proposed

³ See Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 30551 (June 5, 2013).

amendments to rule 482(b)(4) would revise the disclosure requirements to better reflect the operation of money market funds under the proposed alternatives and require that the risk disclosures be made prominently on a fund's website.

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").⁴ 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. The Commission is concerned that in 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 money. As a result, the Commission believes it is beneficial for funds to provide investors with balanced information in fund advertisement in order to allow investors to make better-informed decisions.

3. Consideration Given to 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 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.

⁴ 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 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.⁵ 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. 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. The requirements of rule 482 are not generally duplicated elsewhere.

5. Effect on 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

⁵ 17 CFR 270.24b-3.

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.

With respect to the proposed amendments, pursuant to 5 U.S.C. section 605(b), the Commission certified that the proposed amendments to rule 482 would not, if adopted, have a significant economic impact on a substantial number of small entities.

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)

This collection is not inconsistent with 5 CFR 1320.5(d)(2).

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 Division staff 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 that may confront the industry.

The Commission requested public comment on the collection of information required by rule 482, before it submitted this request for revision and approval to the Office of Management and Budget. We will consider all comments received on the proposed amendments.

9. Payment or Gift

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Time 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")⁶ and are not derived from a

⁶ 44 U.S.C. 3501 et seq.

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.

In our most recent Paperwork Reduction Act submission for rule 482, Commission staff estimated the annual compliance burden to comply with the collection of information requirement of rule 482 is 301,179 hours. The proposed amendments would affect the staff's estimates of the hour burden as described below.

Under the floating NAV proposal, each money market fund, other than a government or retail fund, would be required to replace its existing disclosure statement with a bulleted statement disclosing the particular risks associated with investing in a floating NAV money market fund on any advertisement or sales material that it disseminates (including on the fund website). Specifically, floating NAV money market funds would generally be required to include the following bulleted disclosure statement on their advertisements and sales materials:

- You could lose money by investing in the Fund.
- You should not invest in the Fund if you require your investment to maintain a stable value.
- The value of shares of the Fund will increase and decrease as a result of changes in the value of the securities in which the Fund invests. The value of

the securities in which the Fund invests may in turn be affected by many factors, including interest rate changes and defaults or changes in the credit quality of a security's issuer.

- An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.
- The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Each government and retail money market fund would be required to replace its existing disclosure statement with the following bulleted disclosure on any advertisement or sales material it disseminates (including on the fund website):

- You could lose money by investing in the Fund.
- The Fund seeks to preserve the value of your investment at \$1.00 per share, but cannot guarantee such stability.
- An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.
- The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Under the liquidity fees and gates alternative proposal, money market funds (other than government funds⁷) would be required to include a bulleted statement, disclosing the particular risks associated with investing in a fund that may impose liquidity fees or

⁷ Government money market funds that are exempt from the proposed liquidity fees and gates alternative would not be required to disclose the third and fourth bullet points listed below.

redemption restrictions, on any advertisement or sales material that it disseminates (including on the fund website):

- You could lose money by investing in the Fund.
- The Fund seeks to preserve the value of your investment at \$1.00 per share, but cannot guarantee such stability.
- The Fund may impose a fee upon sale of your shares when the Fund is under considerable stress.
- The Fund may temporarily suspend your ability to sell shares of the Fund when the Fund is under considerable stress.
- An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.
- The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Regardless of the alternative proposal adopted⁸, for each money market fund, staff estimates that internal marketing staff and in-house counsel would spend, on a one-time basis,⁹ an average of 4 hours to update and review the wording of the rule 482(b)(4) risk

⁸ As discussed above, the extent of the proposed amendments to the wording of the rule 482(b)(4) risk disclosures in money market funds' advertisements are generally the same under either the proposed FNAV alternative or the liquidity fees and gates alternative. Therefore, we estimate that the incremental change in burden hours would be the same under either alternative.

⁹ Under either proposed alternative, the compliance period for updating rule 482(b)(4) risk disclosures would be 2 years. The staff understands that money market funds commonly update and issue new advertising materials on a relatively periodic and frequent basis. Accordingly, given the extended compliance period proposed, the staff expects that funds should be able to amend the wording of their rule 482(b)(4) risk disclosures as part of one of their general updates of their advertising materials. Similarly, the staff believes that funds could update the corresponding risk disclosures on their websites when performing other periodic website maintenance. The staff therefore accounts only for the incremental change in burden that amending the rule 482(b)(4) risk disclosures would cause in the context of a larger update to a fund's advertising materials or website.

disclosures for each fund's printed advertising and sales materials, resulting in one-time time costs of \$1,162.¹⁰ In addition, for each money market fund, staff estimates that internal information technology staff and in-house counsel would spend, on a one-time basis, an average of 1.25 hours to post and review the wording of the rule 482(b)(4) risk disclosures on a fund's website, resulting in one-time time costs of approximately \$302.¹¹ In the aggregate, staff estimates that each money market fund would spend a total of 5.25 hours and incur total time costs of approximately \$1,464 on a one-time basis to comply with the amendments to rule 482(b)(4).

Using an estimate of 586 money market funds that would be required to comply with the amendments to rule 482(b)(4),¹² staff estimates that in the aggregate, these proposed amendments would result in a total one-time incremental compliance burden of approximately 3,077 burden hours¹³ at a total one-time incremental time cost of approximately \$857,904.¹⁴ Amortizing the incremental hour burden over three years results in an average annual aggregate hour burden of approximately 1,026 hours.

¹⁰ This estimate is based on the following calculation: 3 hours spent by a marketing manager to update the wording of the risk disclosures for each fund's marketing materials + 1 hour spent by an attorney reviewing the amended rule 482(b)(4) risk disclosures. Accordingly, the estimated costs are based on the following: \$261/hour for a marketing manager x 3 hours = \$783, plus \$379/hour for an attorney x 1 hour = \$379, for a combined total of \$1,162.

¹¹ This estimate is based on the following calculation: 1 hour spent by a webmaster to update a fund's website's risk disclosures, plus 15 minutes spent by an attorney reviewing the amended risk disclosures. The estimated costs are based on the following calculations: \$207/hour for a webmaster x 1 hour = \$207, plus \$378/hour for an attorney x 0.25 hours = approximately \$95, for a combined total of approximately \$302.

¹² This estimate is based on a staff review of reports on Form N-MFP filed with the Commission for the month ended February 28, 2013. For purposes of this PRA, the staff assumes that the universe of money market funds affected by the amendments to rule 482(b)(4) would be the same as the current universe for Form N-MFP.

¹³ This estimate is based on the following calculation: 5.25 burden hours per fund x 586 funds = approximately 3,077 total burden hours.

¹⁴ This estimate is based on the following calculation: approximately \$1,464 total costs per fund x 586 funds = approximately \$857,904 total costs.

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 external cost burden to rule 482.

14. 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 cost of reviewing and processing disclosure documents, including new registration statements, post-effective amendments, proxy statements, and shareholder reports of investment companies, amounted to approximately \$19.8 million in fiscal year 2012, 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

Currently, the approved annual hour burden for rule 482 is 301,179 hours. The new estimate of the total annual hour burden for the first year is 302,205 hours.¹⁵ The increase in the total annual hour burden is 1,026 hours. This increase is due to the staff's estimates of the time costs that would result from our proposed amendments. There is no annual external cost burden attributed to rule 482.

¹⁵ This estimate is based on the following calculation: (301,179 current approved burden hours + 1,026 annual incremental burden hours = 302,205 hours).

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

We request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the EDGAR application's scheduled version release dates. The OMB control number will be displayed.

18. Exception to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.