SUPPORTING STATEMENT
For the Paperwork Reduction Act Submission for
"Rule 482"

A. JUSTIFICATION

1. Information Collection Nessessity

Like most issuers of securities, when an investment company ("fund")[1] offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933 ("Securities Act").[2] 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.[3] Rule 482 advertisements are deemed to be "prospectuses" under Section 10(b) of the Securities Act.[4]

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 and, if applicable, its summary

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1 "Investment company" refers to both investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a-1 *et seq.*) and business development companies.

2 15 U.S.C. 77a *et seq.*

3 17 CFR 230.482.

4 15 U.S.C. 77j(b).

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 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 website 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.

2. Purpose and Use of the Information Collection

Rule 482 advertisements must be filed with the Commission or, in the alternative, with the Financial Industry Regulatory Authority ("FINRA").[5] 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

[5] *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.

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 advertisements in order to allow investors to make better-informed decisions.

3. Consideration Given to Information Technology

The Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR") automates the filing, processing, and dissemination of full disclosure filings. 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.[6] Rule 482 advertisements that are required to be filed with the Commission are to be filed electronically on EDGAR.[7] The public may access filings on EDGAR through the Commission's website (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.

5. Effect on Small Entities

The current disclosure requirements for fund advertisements do not distinguish between small entities and other entities. To the extent smaller funds advertise, their

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6 17 CFR 270.24b-3.

7 17 CFR 232.101(a)(1)(i) and (iv).

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. 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.

6. Consequences of Not Conducting 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

The Commission and the staff of the Division of Investment Management 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 requested public comment on the collection of information requirements of rule 482 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to this request.

9. Payment or Gift

No payment or gifts are provided.

10. Confidentiality

No assurance of confidentiality is provided.

11. Sensitive Questions

No questions of a sensitive nature are required under rule 482. No Personally Identifiable Information (PII) is collected.

12. Burden of Information Collection

The following estimates of average burden hours are made solely for purposes of the Paperwork Reduction Act of 1995[8] and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with the disclosure requirements of rule 482 is necessary to obtain the benefits of the safe

[8] 44 U.S.C. 3501 *et seq.*

harbor offered by the rule. Responses to the disclosure requirements will not be kept confidential.

The time burden 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.

Rule 482 is part of Regulation C under the Securities Act.[9] 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 59,245[10] responses to rule 482 are filed annually by 3,430 investment companies offering approximately 16,428 portfolios, or approximately 3.6 responses per portfolio annually.[11] The burden associated with rule 482 is presently estimated to be 5.16 hours per response. The annual hourly burden is therefore approximately 305,704 hours.[12]

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9 17 CFR 230.400-498.

10 This estimated number of responses to rule 482 is composed of 58,976 responses filed with FINRA and 269 responses filed with the Commission in 2012.

11 59,245 responses ÷ 16,428 portfolios = 3.6 responses per portfolio.

12 59,245 responses x 5.16 hours per response = 305,704 hours.

Based on a Commission estimate of 305,704 hours and an estimated wage rate of approximately $250.25 per hour,[13] the total cost to the industry of the hour burden for complying with the requirements of rule 482 is approximately $76,502,426.[14]

13. Costs to Respondents

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. Costs to Federal Government

Advertising regulation affects costs incurred by the federal government. 59,245 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 registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of funds amounted to approximately

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[13] The Commission's estimated relevant wage rate is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure rate figure is based on published hourly wage rates for compliance attorneys, paralegals, and senior compliance examiners, 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 $310, $175, and $206, respectively. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2012. 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 $250.25. ($310 x .50) + ($175 x .25) + ($206 x .25) = $250.25.

[14] 305,704 hours x $250.25 per hour = $76,502,426.

$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. Changes in Burden

The estimated hourly burden associated with rule 482 has increased from 301,179 hours to 305,704 hours (an increase of 4,525 hours). The increase is due to an increase in the estimated number of annual responses pursuant to rule 482.

16. Information Collection Planned for Statistical Purposes

The results of any information collected will not be published.

17. Approval to Omit OMB Expiration Date

The Commission is not seeking approval to omit the OMB expiration date.

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.