

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 498

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 5(b)(2) of the Securities Act of 1933 (“Securities Act”)¹ 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.² Section 10(a) of the Securities Act describes the type of information required to be included in a statutory prospectus.³ Sections 10(b) of the Securities Act and 24(g) of the Investment Company Act of 1940 (“Investment Company Act”)⁴ permit the Commission to allow the use of a prospectus that omits or summarizes information required by Section 10(a).⁵

Rule 498 under the Securities Act 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.⁶ Upon an investor’s request, funds are also required to send the statutory prospectus to the investor.⁷ 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 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

¹ 15 U.S.C. 77a *et seq.*

² 15 U.S.C. 77e(b)(2). 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).

³ 15 U.S.C. 77j.

⁴ 15 U.S.C. 80a-1 *et seq.*

⁵ 15 U.S.C. 77j(b); 15 U.S.C. 80a-24(g).

⁶ 17 CFR § 230.498.

⁷ 17 CFR § 230.498(f)(1).

Summary Prospectus legend.⁸ 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.⁹

2. Purpose and Use 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. 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.

Pursuant to rule 497(k),¹⁰ all Summary Prospectuses permitted under rule 498 are required to be filed with the Commission electronically on EDGAR. 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. Summary Prospectuses are permitted to be sent to investors by electronic means so long as the fund meets certain requirements.¹¹ 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.

⁸ 17 CFR 270.498(e)(1).

⁹ 17 CFR 270.498(b).

¹⁰ 17 CFR 230.497(k).

¹¹ *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)].

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 information collection requirements of rule 498 do not distinguish between funds that are small entities and other funds. To the extent that smaller funds rely on rule 498, their burden to comply with its requirements may be greater than for larger funds due to economies of scale.

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 Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize reporting or recordkeeping requirements affecting small businesses.

6. Consequences of Not Conducting Collection

Section 5(b)(2) of the Securities Act 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. 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.¹² 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.

¹² See 15 U.S.C. 77j(a)(3).

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

The 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 the paperwork burdens confronting the industry. The Commission requested public comment on the collection of information requirements of 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.

9. Payment or Gift

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. The information collection does not include personally identifiable information.

12. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995¹³ 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 burden hour estimate for complying with the information collection requirements of rule 498 is based on consultations with industry representatives and

¹³ 44 U.S.C. 3501 *et seq.*

on the Commission's experience. The number of burden hours may vary depending on, among other things, the number of a fund's portfolios and whether compilation of the information required 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.

Based on an analysis of fund filings, the Commission estimates that approximately 9,082 portfolios are using a Summary Prospectus. 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 1 hour, requiring a total of 1.5 hours per portfolio per year.¹⁴ Thus the total annual hour burden associated with these requirements of the rule is approximately 13,623.¹⁵ Of the 13,623 hours spent annually to comply with the requirements of rule 18f-3, the Commission estimates that:

- Half (6,811.5) are spent by in-house attorneys to compile the information required on the cover page or the beginning of the Summary Prospectus and to review compliance with the website posting requirement, at an estimated hourly wage of \$380,¹⁶ for a total of approximately \$2,588,370 per year;¹⁷ and

¹⁴ 0.5 hours per portfolio + 1 hour per portfolio = 1.5 hours per portfolio. 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.

¹⁵ 1.5 hours per portfolio x 9,082 portfolios = 13,623 hours.

¹⁶ The Commission's estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figures are also based on published rates for in-house attorneys and senior programmers, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of \$380 and \$303, respectively. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

¹⁷ 6,811.5 hours x \$380 per hour = \$2,588,370.

- Half (6,811.5 hours) are spent by the senior programmers to comply with the website posting requirement, at an estimated hourly wage of \$303, for a total of approximately \$2,063,885 per year.¹⁸

Based on these estimated wage rates, the total cost to the fund industry of this hour burden is approximately \$4,652,255.¹⁹

13. Costs to Respondents

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, the services of independent auditors and outside counsel, and website hosting services. The cost burden does not include the hour burden discussed in Item 12 above. Estimates are based on the Commission's experience and consultations with industry representatives. The Commission estimates that the annual cost burden is approximately \$15,900 per portfolio, for a total annual cost burden of approximately \$144,403,800.²⁰

14. Costs to Federal Government

The annual cost of reviewing and processing registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of funds 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. Changes in Burden

The estimated hourly burden associated with rule 498 has increased from 9,375 hours to 13,623 hours (an increase of 4,248 hours). The increase is due to an increase in the estimated number of portfolios using a Summary Prospectus.

The estimated cost burden associated with rule 498 has increased from \$99,375,000 to \$144,403,800 (an increase of \$45,028,800). The increase is due to an increase in the estimated number of portfolios using a Summary Prospectus.

¹⁸ 6,811.5 hours × \$303 per hour = \$2,063,884.5.

¹⁹ \$2,588,370 + \$2,063,885 = \$4,652,255.

²⁰ \$15,900 per portfolio × 9,082 portfolios = \$144,403,800.

16. Information Collection Planned for Statistical Purposes

The results of any information collection will not be published.

17. Approval to Omit OMB Expiration Date

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

18. Exceptions to Certification for Paperwork Reduction Act Submissions

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.