

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

On June 5, 2018, the Commission issued a release adopting new rule 30e-3 under the Investment Company Act and certain amendments to other rules and forms.¹⁰ New rule 30e-3 will provide certain funds and unit investment trusts with an optional method to satisfy shareholder report transmission requirements by making such reports and certain other materials publicly accessible on a website, as long as they satisfy certain other conditions of the rule regarding (a) availability of the report and other materials; (b) notice to investors of the website availability of the report; and (c) delivery of paper copies of materials upon request. In connection with our adoption of rule 30e-3, the Commission is amending certain rules and forms including rule 498. Rule 498 is amended to require certain legend requirements on the summary prospectuses if relying on rule 30e-3. Responses to the disclosure requirements are not kept confidential.

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.

⁸ 17 CFR 270.498(e)(1).

⁹ 17 CFR 270.498(b).

¹⁰ See Securities Act Release No. 10506 (June 5, 2018) [83 FR 29158 (June 22, 2018)] ("Adopting Release").

Pursuant to rule 497(k),¹¹ 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.¹² 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. 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

¹¹ 17 CFR 230.497(k).

¹² 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)].

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.¹³ 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 CFR 1320.5(d)(2)

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

8. Consultation Outside the Agency

The Commission requested public comment on the collection requirements for conditioning reliance on rule 30e-3 with requirements to require legends on prospectuses and semi-annual and annual reports before it submitted this request for revision and approval to the Office of Management and Budget. The Commission received no comments in response to its request. The Commission and staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

9. Payment or Gift

No payment or gift to respondents was provided.

10. Assurance of Confidentiality

No assurance of confidentiality was provided.

¹³ See 15 U.S.C. 77j(a)(3).

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII) that may include the name, title, and length of service of the person or persons who are primarily responsible for the day-to-day management of the fund's portfolio. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on 1/29/2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

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 1995¹⁴ 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 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.

In our most recent Paperwork Reduction Act submission for rule 498, Commission staff estimated the annual compliance burden to comply with the collection of information of rule 498 to be 15,798 burden hours with an external cost burden estimate of \$167,458,800.¹⁵

¹⁴ 44 U.S.C. 3501 *et seq.*

¹⁵ This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2017.

Pursuant to the amendments in connection with the rule 30e-3 adoption, we estimate that these funds will incur 1 burden hour for the first summary prospectus, statutory prospectus, or shareholder report reflecting these requirements and 0.5 hours for each additional summary prospectus, statutory prospectus, or annual and semi-annual report reflecting these requirements. These related disclosure requirements will only apply during the extended transition period. In light of the short period during which these additional requirements will be effective and the modest impact they are likely to have on external service providers such as website hosting services, outside counsel and auditors, and printing and mailing services, we do not expect them to result in additional expenses passed on to funds by their service providers in the form of additional external cost burden. Thus, we do not estimate there will be any external costs to comply with these disclosure requirements.

We estimate that there are 11,181 funds that could file registration statements or amendments to registration statements on Form N-1A.¹⁶ Of this group, we estimate that 10,063 funds will rely on rule 30e-3, and, of those, 9,057 are funds relying on the summary prospectus rule.¹⁷ Consequently, we estimate that the amortized aggregate annual hour burden associated with the amendments to rule 498 is 4,529 hours.¹⁸

We estimate that with the additional hour burdens associated with the amendments the total annual internal burden to comply would be 20,327 burden hours for rule 498.¹⁹ Based on the Commission's estimate of 20,327 hours and an estimated wage rate of about \$284 per hour,²⁰ the total annual cost to registrants of

¹⁶ 11,181 funds = 9,360 mutual funds + 1,821 ETFs (1,829 ETFs less 8 UIT ETFs).

¹⁷ 10,063 funds \times 0.9 = 9,057 funds. We estimate that for funds that would rely on rule 30e-3 and rely upon rule 498, that the incremental burden hours associated with relying on rule 30e-3 in preparing and filing on Form N-1A would also include any burden change associated with rule 498.

¹⁸ 9,057 funds \times 1 hour in the first year = 9,057 hours. 9,057 funds \times 0.5 hours in the second year = 4,529 hours. 9,057 funds \times 0 hours in the third year = 0 hours. (9,057 + 4,529 + 0 hours) \div 3 years = 4,529 hours per year on an amortized basis.

¹⁹ This estimate is based on the following calculation: 15,798 + 4,529 = 20,327 hours.

²⁰ The Commission's estimate concerning the wage rate is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for intermediate accountants and attorneys, modified to account for an 1,800-hour work year; multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead; and adjusted to account for the effects of inflation, yielding effective hourly rates of \$166 and \$401, respectively. *See* Securities Industry and Financial Markets Association, Report on

the hour burden for complying with the amendments to rule 498 is about \$5.8 million.²¹

Table 1: Summary of Revised Annual Responses, Burden Hours, and Burden Hour Costs for Rule 498

<u>No. of Responses</u>	<u>Burden Hours</u>	<u>Burden Hour Costs</u>
9,057	20,327	\$5,772,868

13. Costs to Respondents

In our most recent Paperwork Reduction Act submission for rule 498, Commission staff estimated the annual cost burden to comply with the collection of information requirement of rule 498 is \$167,458,800.²² The staff estimates that the amendments to rule 498 do not impose any material cost burdens on funds, apart from the cost of the burden hours discussed above.

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 \$22.2 million in fiscal year 2017, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. Changes in Burden

The total annual hour burden of 20,327 hours represents an increase of 4,529 hours over the previous burden hour estimate of 15,798 hours. In addition, the annual external cost burden of \$167,458,800 has not changed. The changes in

Management & Professional Earnings in the Securities Industry 2013. We estimate that intermediate accountants and attorneys will divide their time equally, yielding an estimated hourly wage rate of \$284. $(\$166 \text{ per hour for intermediate accountants} + \$401 \text{ per hour for attorneys}) \div 2 = \284 per hour .

²¹ 20,327 hours per year \times \$284 per hour = \$5,772,868 per year.

²² This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2017.

burden hours are due to the staff's estimates of the time costs that would result from our amendments to rule 498 in connection with the adoption of rule 30e-3.

16. Information Collection Planned for Statistical Purposes

The results of any information collection will not be published.

17. Approval to Omit OMB Expiration Date

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

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.