

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Rule 482**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Like most issuers of securities, when an investment company<sup>1</sup> (“fund”) offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933 (15 U.S.C. 77a et seq.) (the “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 adopted advertising safe harbor rules. The most important of these is rule 482 (17 CFR 230.482) under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information. Rule 482 advertisements are deemed to be “prospectuses” under Section 10(b) of the Securities Act (15 U.S.C. 77j(b)).

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 standardized performance information, information about any sales loads or other

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<sup>1</sup> “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.

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.

## **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").<sup>2</sup> 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-

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<sup>2</sup> See note to rule 482(h) under the Securities Act, which states that "these advertisements, unless filed with [FINRA], are required to be filed in accordance with the requirements of §230.497." See also 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.

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 Data Gathering, Analysis and Retrieval System ("EDGAR") automates the filing, processing and dissemination of 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.<sup>3</sup> 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

Efforts to Identify Duplication

The Commission periodically evaluates rule- and form-based reporting and recordkeeping requirements for duplication, and reevaluates them whenever it proposes or adopts changes in its rules or forms. 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 (5 U.S.C. 601 et seq.), to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. The current disclosure requirements for fund

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<sup>3</sup> *Id.*

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 will include the cost of reviewing an advertisement to confirm that it meets the requirements of rule 482.

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 allows 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.

#### **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 will 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 investment company 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 requirements in rule 482 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.

**9. Payment or Gift**

No payment or gift to respondents was provided.

**10. Confidentiality**

No assurance of confidentiality was provided.

**11. Sensitive Questions**

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The agency has determined that this information collection does not constitute a system of record for purposes of the Privacy Act (the 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 January 29, 2016, is provided as a supplemental document and is available at <https://www.sec.gov/privacy>.

**12. Burden of Information Collection**

The burden hour estimate for complying with rule 482 is based 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 following estimates of average burden hours are made solely for purposes of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 et seq.) and are not derived from a comprehensive or representative survey or study of the cost of Commission rules and forms. Compliance with the requirements of rule 482 is mandatory, and responses to the information collections are not kept confidential.

In its most recent PRA submission for rule 482, the Commission estimated the annual burden to comply with rule 482's information collection requirements to be 278,161 hours, with no annual external cost burden.<sup>4</sup>

The Commission now estimates that 41,265<sup>5</sup> responses to rule 482 are filed annually by 2,877 investment companies offering approximately 12,476 portfolios, or approximately 3.3 responses per portfolio annually.<sup>6</sup> The burden associated with rule 482 is presently estimated to be 5.16 hours per response. The annual hourly burden is therefore approximately 212,927 hours.<sup>7</sup>

Based on a Commission estimate of 212,927 internal hours and an estimated wage rate of approximately \$348 per hour,<sup>8</sup> the total internal cost to the industry of the hour burden for complying with the requirements of rule 482 is \$74,098,735, as reflected in the table below.

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<sup>4</sup> This estimate is based on the most-recently approved PRA renewal in 2017.

<sup>5</sup> This estimated number of responses to rule 482 is composed of 41,003 responses filed with FINRA and 262 responses filed with the Commission in 2019.

<sup>6</sup>  $41,265 \text{ responses} \div 12,476 \text{ portfolios} = 3.3 \text{ responses per portfolio.}$

<sup>7</sup>  $41,265 \text{ responses} \times 5.16 \text{ hours per response} = 212,927 \text{ hours.}$

<sup>8</sup> This estimate, which is based on a blended hourly wage rate of \$348 for a compliance attorney (\$365) and senior programmer (\$331), reflects a change in certain professional positions and a more recent estimate for the respective wage rates than used for the current PRA estimates. Estimated wages rate are derived from the hourly wage rates published in SIFMA's Office Salaries in the Securities Industry 2013, modified to account for firm size, employee benefits, overhead, and adjusted for inflation.

**RULE 482 PRA ESTIMATES**

	Internal Hour Burden		Estimated Wage Rate	Annual Internal Time Costs	Annual External Cost Burden
<b>CURRENTLY-APPROVED ESTIMATES</b>					
Number of responses	53,907	×	\$275.75 (blended rate for compliance attorney, paralegal, and senior compliance examiner)	\$14,864,855	\$0
Hours per response	× 5.16			× 5.16	
<b>Total annual burden</b>	<b>278,161 hours</b>			<b>\$76,702,896</b>	<b>\$0</b>
<b>REVISED ESTIMATES</b>					
Number of responses	41,265	×	\$348 (blended rate for compliance attorney and senior programmer)	\$14,360,220	\$0
Hours per response	× 5.16			× 5.16	
<b>Total annual burden</b>	<b>212,927 hours</b>			<b>\$74,098,735</b>	<b>\$0</b>

**13. Cost 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 external cost burden does not include the internal cost of the hour burden discussed in Item 12 above. Estimates are based on the Commission’s experience with advertisements and sales literature.

As reflected in the table above, the Commission continues to attribute no external cost burden to rule 482.

**14. Cost to the Federal Government**

Advertising regulation affects costs incurred by the federal government. Annually, approximately 41,003 responses are filed annually pursuant to rule 482; however these responses are generally filed with and reviewed by FINRA and are generally not reviewed by the Commission.

**15. Change in Burden**

Currently, the approved annual hour burden for rule 482 is 278,161 hours. The new estimate of the total annual hour burden is 212,927 hours. This reflects a decrease of 65,234 hours due to a decrease in the number of annual responses filed pursuant to rule 482. There is no annual external cost burden attributed to rule 482.

Annual No. of Responses			Annual Time Burden (Hrs.)			Annual Cost Burden (\$)		
Previously approved	Requested	Change	Previously approved	Requested	Change	Previously approved	Requested	Change
53,907	41,265	12,642	278,161	212,927	65,234	\$0	\$0	\$0

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

The results of any information collected will not be published.

**17. Approval to Omit OMB Expiration Date**

Not applicable.

**18. Exception to Certification Statement for Paperwork Reduction Act Submission**

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.