

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

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 5(b)(2) of the Securities Act of 1933 (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, unless accompanied or preceded by a prospectus that meets certain requirements.<sup>1</sup> On August 5, 2020, the Commission proposed rule and form amendments that would modernize the disclosure framework for open-end management investment companies (“open-end funds” or “funds”).<sup>2</sup> As part of this proposal, the Commission proposed new rule 498B under the Securities Act to provide an alternative way for open-end funds to keep shareholders informed, instead of delivering prospectus updates to shareholders each year to satisfy section 5(b)(2).

Proposed rule 498B would allow an open-end fund to satisfy any obligations under section 5(b)(2) of the Securities Act to have a statutory prospectus precede or accompany the carrying or delivery of a security to the fund’s existing shareholders under specific conditions. Those conditions would be: (1) the existing shareholders have been previously sent or given a prospectus in order to satisfy any obligation under section 5(b)(2) of the Securities Act, such as

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<sup>1</sup> 15 U.S.C. 77e(b)(2).

<sup>2</sup> *See* Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 33963 (Aug. 5, 2020) (“Proposing Release”).

in connection with their initial investment in the fund; (2) certain specified disclosure materials (including, among other things, current summary and statutory prospectuses) appear online; and (3) existing shareholders receive notices of certain material changes to the fund when those changes occur. The proposed rule also includes delivery upon request and website presentation requirements, including that a fund must: (1) deliver, in a manner consistent with the requester's delivery preference, a copy of any of the fund documents that the rule would require to be made available online, at no charge to the requester, subject to certain additional conditions; and (2) ensure that those fund documents required to appear online are presented in a format convenient for both reading online and printing on paper, and can be permanently retained in such a format by persons accessing those materials, free of charge.

## **2. Purpose and Use of the Information Collection**

Certain provisions of proposed rule 498B contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, et seq.], and the Commission is submitting the collection of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The information collection requirements for proposed rule 498B are designed to keep open-end fund shareholders informed about their fund investment and updates to their fund that occur year over year and to enable them to make informed decisions about whether to buy, sell, or hold fund shares.

## **3. Consideration Given to Information Technology**

Open-end funds relying on proposed rule 498B would be required to make certain information (including summary and statutory prospectuses) available online to facilitate shareholders' ready access to these sources of information in a convenient, centralized location. These funds would also have to deliver this information to investors upon request, free of charge,

either electronically or in paper (depending on the investor's preferences). Notices of material changes similarly would be delivered electronically or in paper, in accordance with the investor's preference.

#### **4. Duplication**

Proposed rule 498B is modeled in part on rule 498 under the Securities Act and contains certain similar provisions, including website posting and delivery-upon-request requirements with regard to largely the same documents.<sup>3</sup> However, compliance obligations under rules 498B and 498 apply under different circumstances (satisfying prospectus delivery requirements with respect to existing shareholders, and satisfying prospectus delivery requirements by using a summary prospectus, respectively). Furthermore, proposed rule 498B is designed to avoid duplication and instead create efficiencies for funds that currently rely on rule 498, because the Commission believes these funds would already be familiar with the website posting and delivery-upon-request conditions and would have compliance processes in place related to these conditions.

#### **5. Effect on Small Entities**

The information collection requirements of rule 498B do not distinguish between small entities and other funds. A fund's reliance on proposed rule 498B would be voluntary, so the rule's effect on small entities is uncertain. Because the Commission generally anticipates that the proposed rule would provide costs savings to funds, including small funds, we assume that the vast majority of funds (and of small funds) would rely on rule 498B to satisfy their prospectus

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<sup>3</sup> See proposed rule 498B and current rule 498 [17 CFR 230.498].

delivery obligations.<sup>4</sup> However, if a small fund does not believe that proposed rule 498B would be beneficial to the fund, it could choose not to rely on the rule.

#### **6. Consequences of Not Conducting Collection**

Proposed rule 498B sets forth conditions that an open-end fund would need to meet to satisfy its obligations under section 5(b)(2) of the Securities Act if it chooses to rely on the rule. The conditions are designed to ensure that existing shareholders remain informed about their fund investments. Absent the information collection requirements in the proposed rule, open-end fund shareholders may lose access to information they currently use to monitor their fund investments and make informed investment decisions, which could result in less informed investment decisions.

#### **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 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. In addition, the Commission has requested public comment on proposed rule 498B, including the collection of information requirements in the proposed rule. Before adopting rule 498B, the Commission will receive and evaluate public comments on the proposed rule and its associated collection of information requirements.

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<sup>4</sup> See Proposing Release, *supra* footnote 2, at section III.C.2.d (discussing the anticipated cost savings associated with rule 498B).

**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 would be required under this collection of information. The information collection would not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of 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 and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. The likely respondents to proposed rule 498B's information collection requirements are registered open-end funds. Reliance on rule 498B is voluntary; however, compliance with the rule's conditions is mandatory for funds relying on the rule. The information provided under proposed rule 498B would not be kept confidential.

Because an open-end fund's reliance on proposed rule 498B would be voluntary, the percentage of funds that would choose to rely on the rule is uncertain. We generally anticipate that the proposed rule would provide costs savings to open-end funds, and so we assume that the vast majority of these funds would rely on rule 498B to satisfy their prospectus delivery obligations.<sup>5</sup> For purposes of this estimate, we assume that open-end funds that currently rely on

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<sup>5</sup> *See id.*

rule 498 generally would rely on proposed rule 498B. We believe this assumption is appropriate because open-end funds that rely on rule 498 are funds that have already chosen to rely on a rule that provides an alternative means of satisfying prospectus delivery obligations, and because certain of the conditions of proposed rule 498B overlap with similar conditions to rely on rule 498. Therefore, we assume that these funds would experience some efficiencies in coming into compliance with proposed rule 498B. Based on these assumptions, we estimate that 90% of open-end funds would choose to rely on rule 498B.<sup>6</sup>

The table below summarizes the proposed estimates for internal burdens associated with this new requirement under rule 498B:

**TABLE 1: Summary of Burden Hour and Burden Hour Cost Estimates for Each Proposed Rule 498B Information Collection**

IC Title	Internal annual burden hours	Wage rate <sup>1</sup>	Internal time costs
Preparation of notice of material changes	8 hours <sup>2</sup>	\$336 (blended rate for compliance attorney and senior programmer)	\$2,688
Preparation of summary prospectus <sup>3</sup>	20 hours <sup>4</sup>	\$336 (blended rate for compliance attorney and senior programmer)	\$6,720
Website availability requirements <sup>5</sup>	8 hours <sup>6</sup>	\$239 (webmaster)	\$1,912
Delivery upon request	0 hours		
<b>Total burden per registrant</b>	36 hours		\$11,320
<b>Number of registrants</b>	× 11,169 open-end funds <sup>7</sup>		× 11,169 open-end funds
<b>TOTAL ESTIMATED BURDENS</b>			
<b>Total annual burden</b>	402,084 hours		\$126,433,080

<sup>6</sup> We estimate that 93% of open-end funds use summary prospectuses. This estimate is based on data on the number of mutual funds and ETFs that filed a summary prospectus in 2018 in the Commission’s Electronic Data, Gathering, Analysis, and Retrieval system (“EDGAR”) (10,808) and the Investment Company Institute’s estimated number of mutual funds and ETFs as of December 31, 2018 (11,656). See Investment Company Institute, 2019 Investment Company Fact Book, at 50, available at [https://www.ici.org/pdf/2019\\_factbook.pdf](https://www.ici.org/pdf/2019_factbook.pdf). Funds that use summary prospectuses under rule 498 already meet several of the conditions of proposed rule 498B, which we believe would lead most of these funds to rely on proposed rule 498B due to the lower compliance costs of relying on the new rule. As a result, and to simplify our calculations, we estimate that 90% of open-end funds would rely on proposed rule 498B.

Notes:

1. These estimates assume that the same types of professionals would be involved in preparing these notices that we believe otherwise would be involved in preparing a fund's other regulatory filings. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
2. This estimate assumes that, after an initial 12 hours that a fund would spend complying with the requirement to prepare the required notices of material changes, which we annualize over a 3-year period, the fund would incur 4 additional burden hour associated with this requirement per year. The estimate of 8 hours is based on the following calculation: ((12 initial hours / 3) + 4 additional ongoing burden hours) = 8 hours.
3. For purposes of the PRA, we assume that all funds that choose to rely on rule 498B will incur the costs of preparing a summary prospectus. We recognize, however, that this may be an overestimation to the extent that these funds already prepare a summary prospectus because they rely on rule 498.
4. This estimate assumes that, after an initial 30 hours that a fund would spend preparing its summary prospectus, which we annualized over a 3-year period, the fund would incur an additional 10 burden hours associated with ongoing preparation of a summary prospectus per year. The estimate of 20 hours is based on the following calculation: ((30 initial hours / 3) + 10 hours of additional ongoing burden hours) = 20 hours.
5. For purposes of the PRA, we assume that all funds that choose to rely on rule 498B will incur the costs of complying with the website availability requirements. We recognize, however, that this may be an overestimation because the set of documents that funds relying on 498B must post online would be identical to the set of documents that are publicly accessible online for funds currently relying on rule 498. Therefore, for funds currently relying on 498, there would be no added burden to comply with this requirement.
6. This estimate assumes that, after an initial 12 hours that a fund would spend complying with the website availability requirements, which we annualize over a 3-year period, the fund would incur 4 additional burden hours associated with ongoing compliance with these website availability requirements per year. The estimate of 8 is based on the following calculation: ((12 initial hours / 3) + 4 hour of additional ongoing burden hours) = 8 hours.
7. We assume that 90% of 12,410 funds registered on Form N-1A will rely on rule 498B.  $90\% \times 12,410 = 11,169$ .

### 13. Cost to Respondents

Cost burden is the cost of goods and services purchased to prepare and disseminate documents using rule 498B. We estimate that it would cost \$500 per fund to print and deliver prospectuses and other materials under proposed rule 498B upon request, free of charge. This cost burden does not include the hour burdens discussed in Item 12.

**TABLE 2: Summary of External Cost Estimates for Each Proposed Rule 498B Information Collection**

IC Title	Annual external cost
Preparation of notice of material changes	\$0
Preparation of summary prospectus	\$0
Website availability requirements	\$0
Delivery upon request	\$500
<b>Total burden per registrant</b>	\$500
<b>Number of registrants</b>	× 11,169 open-end funds
<b>TOTAL ESTIMATED BURDENS</b>	
<b>Total annual burden</b>	\$5,584,500

### 14. Cost to the Federal Government

Proposed rule 498B does not impose a cost on the federal government.

**15. Change in Burden**

We are asking that a new collection of information for proposed rule 498B be created.

The hour burden for the proposed rule will be 402,084 hours, and the cost burden will be \$5,584,500.

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

The results of any information collection will not be published.

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

Not applicable.

**18. Exceptions to Certification 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.