

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 company¹ (“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

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.

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, 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.

On August 5, 2020 the Commission issued a release proposing amendments that would modernize the disclosure framework for open-end management investment companies.² The Commission proposed amendments to the advertising rules for registered investment companies and business development companies to promote more transparent and balanced statements about investment costs. We are proposing to amend rule 482 to require that investment company advertisements providing fee and expense figures include: (1) the maximum amount of any sales load, or any other nonrecurring fee; and (2) the total annual expenses without any fee waiver or expense reimbursement arrangement. Under the proposed amendments to rule 482, investment

² 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).

company fee and expense presentations in advertisements would have to include timely and prominent information about a fund's maximum sales load (or any other nonrecurring fee) and gross total annual expenses, based on the methods of computation that the company's Investment Company Act or Securities Act registration statement form prescribes for a prospectus.

Compliance with the requirements of rule 482 is mandatory and the responses to the information collections would not be kept confidential.

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").³ 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. 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-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 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.

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.⁴ 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 website (<http://www.sec.gov>) or at EDGAR terminals located at the Commission's public reference rooms.

4. 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 advertisements do not distinguish between small entities and other entities. To the extent smaller

⁴ *Id.*

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 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.

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 that 41,265⁵ 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.⁶ 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.⁷

Based on updated assumptions, we now estimate that 36,994 responses to rule 482 are filed annually.⁸ We estimate that approximately 96% of the rule 482 responses provide fee and expense figures in qualifying advertisements and would, therefore, be required to comply with the proposed amendments regarding such information (for example, ensuring that the fee and expense figures are presented in accordance with the prominence and timeliness requirements in the proposed amendments to rule 482). Similarly, we estimate that 96% of the responses to rule 482 provide advertisements that include information regarding a fund’s total annual expenses and would, therefore, have to comply with the proposed amendments regarding such information.

⁵ 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.

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

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

⁸ In 2019, there were 41,003 responses to rule 482 filed with FINRA and 262 responses filed with the Commission in 2019. Of those, 4,271 were responses from closed-end funds and BDCs. We assume that, moving forward, closed-end funds and BDCs will choose to use free writing prospectuses under rule 433. Therefore, we excluded closed-end funds or BDCs from our estimate of the total responses to rule 482.

Based on a Commission estimate of 355,140 internal hours and an estimated wage rate of approximately \$336 per hour associated with the proposed amendments to rule 482,⁹ the total incremental internal cost to the industry of the hour burden for complying with the requirements of proposed rule 482 would be \$119,327,040, as reflected in the table below.

RULE 482 PRA ESTIMATES

	Internal Hour Burden	Estimated Wage Rate	Annual Internal Time Costs	Annual External Cost Burden
CURRENTLY APPROVED ESTIMATES				
Number of responses	41,265		41,265	41,265
Hours per response	× 5.16	× \$348 (blended rate for compliance attorney and senior programmer)	× \$1,795.68	\$0
Total annual burden	212,927 hours		\$74,098,735	\$0
PROPOSED INCREMENTAL ESTIMATES				
Number of responses	35,514		35,514	35,514
Burden per response	× 10 hours ¹⁰	× \$336 (blended rate for compliance attorney and senior programmer)	\$3,360	\$0
Total annual burden	355,140 hours		\$119,327,040	\$0
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden	212,927¹¹ hours		\$74,098,735	\$0

⁹ These PRA 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 advertisements. 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.

¹⁰ This estimate of 10 burden hours per response incorporates an estimate of 6 burden hours per response associated with the proposed new general requirements for fee and expenses disclosure, and an estimate of 4 burden hours associated with the proposed new requirements for disclosure of fee waivers/expense reimbursement arrangements."

¹¹ The estimate of 212,927 hours is the current burden estimate that was included in the 2020 PRA renewal. The PRA discussion in the Commission's proposed amendments was based on the estimates submitted in the 2017 PRA renewal, which estimated that the annual burden to comply with rule 482's information requirements would be 278,161 hours. For the purposes of this PRA submission we use the most recent estimates from the 2020 PRA renewal.

Incremental burden	355,140 hours	\$119,327,735	\$0
Total burden	568,067 hours	\$193,426,470	\$0

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 212,927 hours. The new proposed estimate of the total annual hour burden is 568,067hours. This reflects an increase of 355,140hours due to a increase in the estimated number of hours needed to file a response pursuant to rule 482. There is no annual external cost burden attributed to rule 482.

TABLE 1: CHANGE IN BURDEN ESTIMATES

	Annual Number of Responses			Annual Time Burden (hours)			Cost Burden (dollars)		
	Previously Approved	Proposed Estimate	Change	Previously Approved	Proposed Estimate	Change	Previously Approved	Proposed Estimate	Change
Rule 498	41,265	36,994	-4,271	212,927	568,067	+355,140	\$74,098,735	\$193,426,470	+\$119,327,735

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.