

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

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

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<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 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).

<sup>3</sup> 15 U.S.C. 77j.

<sup>4</sup> 15 U.S.C. 80a-1 *et seq.*

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

prospectus on a website.<sup>6</sup> Upon an investor’s request, funds are also required to send the statutory prospectus to the investor.<sup>7</sup> 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 Summary Prospectus legend.<sup>8</sup> 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.<sup>9</sup>

On June 5, 2018, the Commission issued a release adopting rule 30e-3 under the Investment Company Act and certain amendments to other rules and forms.<sup>10</sup> 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 amended certain rules and forms including rule 498.

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<sup>6</sup> 17 CFR § 230.498.

<sup>7</sup> 17 CFR § 230.498(f)(1).

<sup>8</sup> 17 CFR 270.498(e)(1).

<sup>9</sup> 17 CFR 270.498(b).

<sup>10</sup> *See* Securities Act Release No. 10506 (June 5, 2018) [83 FR 29158 (June 22, 2018)] (“Adopting Release”).

Rule 498 was amended to require certain legend requirements on the summary prospectuses if relying on rule 30e-3.

On August 5, 2020, the Commission proposed rule and form amendments that would modernize the disclosure framework for funds.<sup>11</sup> As part of this proposal, the Commission proposed to amend the scope of rule 30e-3 to exclude funds. Because the proposed amendments would decrease the number of funds that would be able to rely on rule 30e-3, the PRA analysis for rule 498 is being updated to account for that change. The rule 498 PRA analysis is not being updated in any other respect. Responses to the rule 498 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.

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<sup>11</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”).

### **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),<sup>12</sup> 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.<sup>13</sup> 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.

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<sup>12</sup> 17 CFR 230.497(k).

<sup>13</sup> 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)].

## **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.<sup>14</sup> The effect of these provisions is that open-end funds are required

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<sup>14</sup> See 15 U.S.C. 77j(a)(3).

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 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. In addition, the Commission has requested public comment on the proposed amendments to rule 498, including the collection of information requirements resulting from the proposed amendments. Before adopting these amendments, the Commission will receive and evaluate public comments on the proposed rule and its associated collection of information requirements.

**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 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 1995<sup>15</sup> and are not derived from a

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<sup>15</sup> 44 U.S.C. 3501 *et seq.*

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 hour burden 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 that that complying with the information collection requirements of rule 498 would impose an average total annual hour burden of about 20,327 burden hours, at a time cost of \$5.8 million.<sup>16</sup> Of those costs, Commission staff estimated that the amortized aggregate annual hour burden associated with the rule 30e-3 amendments to rule 498 was 4,529 hours, at a time cost of \$1,286,236. The table below summarizes our proposed revisions to the estimated burden hours, and burden-hour costs based on the proposed amendment to the scope of rule 30e-3.

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<sup>16</sup> This estimate is based on the last time the rule's information collection was submitted in 2019.



**TABLE 17: RULE 498 PRA ESTIMATES**

	Previously estimated annual internal hour burden <sup>1</sup>	Updated estimated annual internal hour burden	Previously estimated annual internal burden time cost	Updated estimated annual internal time burden cost
<b>Total annual burden</b>	20,327 hours	15,798 hours	\$5.8 million	\$4,513,764

Notes:

1. The estimated burdens and costs in this table are based on an estimate of 11,367 funds relying on rule 30e-3, of which 10,063 are open end investment companies registered on Form N-1A.

**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.<sup>17</sup> Commission staff estimated that the external costs of rule 498 did not change as a result of the proposed rule 30e-3 amendments to rule 498. 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 \$21.2 million in fiscal year 2019, based on the Commission’s computation of the value of staff time devoted to this activity and related overhead.

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<sup>17</sup> This estimate is based on the last time the rule’s information collection was submitted in 2019.

**15. Changes in Burden**

The total estimated annual hour burden of 15,798 hours represents a decrease of 4,529 hours over the previous burden hour estimate of 20,327 hours. In addition, the annual external cost burden of \$167,458,800 has not changed. The changes in burden hours for rule 498 are due to the staff's estimates of the decrease in the number of funds that would be able to rely on 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**

Not applicable.

**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.