

**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”) (15 U.S.C. 77a *et seq.*) 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 (15 U.S.C. 77e(b)(2)).<sup>1</sup> Section 10(a) of the Securities Act describes the type of information required to be included in a statutory prospectus (15 U.S.C. 77j). Sections 10(b) of the Securities Act and 24(g) of the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-1 *et seq.*) permit the Commission to allow the use of a prospectus that omits or summarizes information required by Section 10(a) (15 U.S.C. 77j(b); 15 U.S.C. 80a-24(g)).

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 (17 CFR § 230.498). Upon an investor’s request, funds are also required to send the statutory prospectus to the investor (17 CFR § 230.498(f)(1)). 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 (17 CFR 270.498(e)(1)). 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 (17 CFR 270.498(b)).

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<sup>1</sup> 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).

## **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.

Pursuant to rule 497(k) (17 CFR 230.497(k)), 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>2</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. The requirements of rule 498 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

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<sup>2</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)].

or reporting requirements affecting small businesses. 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 believes, however, that imposing different requirements on smaller fund companies would not be consistent with investor protection. Different disclosure requirements for funds that are small entities may create the risk that investors in these funds would be less able to evaluate funds and less able to compare different funds, thereby lessening the ability of investors to make informed choices among funds. The Commission believes it is important for the disclosure that is required of funds seeking to rely on rule 498 to be provided to investors in all funds, not just funds that are not considered small entities.

## **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 (See 15 U.S.C. 77j(a)(3)). 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 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. The Commission requested public comment on the collection requirements for rule 498 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 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 January 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 ("PRA") (44 U.S.C. 3501 *et seq.*) 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 with the contents of disclosure documents. The number of burden hours may vary depending on, among other things, the number of funds, 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 its most recently-approved PRA submission for rule 498, the Commission estimated the annual internal compliance burden to comply with rule 498's collection of information to be 20,327 burden hours.<sup>3</sup>

Based on an analysis of fund filings, the Commission now estimates that 11,329 funds could file registration statements or amendments to registration statements on Form N-1A.<sup>4</sup> Of this group, we estimate that 93%, or 10,536 funds, will rely on the summary prospectus rule.<sup>5</sup>

The Commission continues to estimate that the annual hourly burden per fund associated with the compilation of the information required on the cover page or the beginning of the Summary Prospectus is 0.5 hours, and estimates that the annual hourly burden per fund to comply with the website posting requirement is approximately 1 hour, requiring a total of 1.5 hours per fund per year.<sup>6</sup> The total annual hour burden associated with these requirements of the rule is approximately

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<sup>3</sup> This estimate is based on the most recent rule 498 PRA submission, which OMB approved in April 2019.

<sup>4</sup> 11,329 funds = 9,223 mutual funds + 2,106 ETFs (2,111 ETFs - 5 UIT ETFs). Each fund is a separate series of an open-end management investment company registered on Form N-1A.

<sup>5</sup> 11,329 funds × 93% = 10,536 funds. *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 Release No. 33963 (Aug. 5, 2020) ("Tailored Shareholder Reports Proposing Release") (estimating that 93% of funds deliver a summary prospectus in reliance on rule 498).

<sup>6</sup> 0.5 hours per fund + 1 hour per fund = 1.5 hours per fund. The Commission believes that funds that have opted to use the Summary Prospectus have already incurred the estimated one-time hour burden to initially comply with rule 498, and therefore the estimated burden hours to initially comply with rule 498 and the associated costs are not included in these estimates.

15,804 hours.<sup>7</sup> Based on an estimated wage rate of about \$296 per hour,<sup>8</sup> the total cost to registrants of the internal hour burden for complying with rule 498 is about \$4,677,984 annually.<sup>9</sup>

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<sup>7</sup> 1.5 hours per fund x 10,536 funds = 15,804 hours.

The most recently-approved PRA for rule 498, *see infra* footnote 3, estimated an increase of 4,529 burden hours over the previously-approved PRA due to new temporary burdens associated with amendments to rule 498 that require temporary summary prospectus disclosures that correspond with amendments to rule 30e-3. *See* Optional Internet Availability of Investment Company Shareholder Reports, Investment Company Release No. 33115 (Jun. 5, 2018).

Under the amendments, funds that intend to rely on rule 30e-3 prior to January 1, 2022 to satisfy their obligations to transmit shareholder reports by making such reports and other materials accessible at a website address specified in a notice to investors must include prominent disclosures on the cover page or beginning of their summary prospectuses (as well as the front cover page of their statutory prospectuses, and on the front cover page or beginning of their annual and semiannual reports) of the upcoming change in transmission format from January 1, 2019 to December 31, 2021.

Because the transition period for these temporary disclosure requirements will shortly expire, the Commission believes that most, if not all, of the funds that not only opt to use a summary prospectus but also rely on rule 30e-3 have already incurred the estimated one-time hour burden to initially comply with rule 30e-3 as it relates to summary prospectuses, as well as most other associated costs. Accordingly, burden hours associated with rule 30e-3 are not included in these PRA estimates.

<sup>8</sup> 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. *See* Securities Industry and Financial Markets Association, Report on 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 \$296. ( $\$173 \text{ per hour for intermediate accountants} + \$419 \text{ per hour for attorneys} = \$592) \div 2 = \$296 \text{ per hour}$ .

<sup>9</sup> 15,804 hours per year  $\times$  \$296 per hour = \$4,677,984 per year.

### **13. Costs to Respondents**

In its most recently-approved PRA submission for rule 498, the Commission estimated that the annual external cost burden to comply with rule 498 was \$167,458,800.<sup>10</sup>

Cost burden is the cost of goods and services purchased to prepare and update rule 498 summary prospectuses, such as printing and mailing costs, the services of independent auditors and outside counsel, and website hosting services. 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 and consultations with industry representatives.

The Commission now estimates that the annual cost burden to comply with rule 498 is approximately \$18,105 per fund, for a total annual cost burden of approximately \$190,754,280.<sup>11</sup>

### **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 2019, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

### **15. Changes in Burden**

As reflected in the table below, the new annual total internal burden of 15,804 hours represents a decrease of 4,523 hours over the previous estimate of 20,327 hours. The decrease in burden hours reflects the Commission's belief that funds have largely incurred the temporary rule 498 burdens associated with rule 30e-3.<sup>12</sup>

In addition, the new annual total external cost of \$190,754,280 represents an increase of \$23,295,480 over the previous estimate of \$167,458,800. This increase is due to a change in the estimated number of funds that use a Summary Prospectus,

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<sup>10</sup> See *supra* footnote 3.

<sup>11</sup> \$18,105 per fund x 10,536 funds = \$190,754,280.

We adjusted the previously-approved external cost estimate of \$15,900 per fund, *see supra* footnote 3, up to \$18,105 to account for the effects of inflation.

<sup>12</sup> See *supra* footnote 7.

coupled with an upward adjustment to the estimated external cost per fund to reflect the effects of inflation.

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

Annual No. of Responses			Internal Annual Time Burden (Hrs.)			External Cost Burden (\$)		
<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>
9,057	10,536	+1,479	20,327	15,804	-4,523	\$167,458,800	\$190,754,280	+\$23,295,480

**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.