

**SUPPORTING STATEMENT  
FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION  
SUBMISSION FOR SECURITIES ACT RULE 433**

**A. JUSTIFICATION**

**1. Circumstances Making the Collection of Information Necessary**

The Commission adopted Rule 433 on July 19, 2005, in Release 33-8591 (“Securities Offering Reform”). The rule was designed to reduce current restrictions on communications that issuers can make to investors during a registered offering of securities. Specifically, it governs the use and filing of a free writing prospectus. Rule 433 applies to any free writing prospectus with respect to the securities of an issuer (except as set forth in Rule 164), that are the subject of a registration statement that has been filed under the Securities Act of 1933. The free writing prospectus can include information that is not included in the registration statement. A free writing prospectus that satisfies the conditions of Rule 433 will be a prospectus under Section 10(b) of the Securities Act and will, for purposes of considering it a prospectus, be deemed to be public, without regard to its method of use or distribution, because it is related to the public offering of securities that are the subject of a filed registration statement. Rule 433 sets forth conditions that issuers must meet to use a free-writing prospectus.

On August 5, 2020 the Commission issued a release proposing amendments that would modernize the disclosure framework for open-end management investment companies.<sup>1</sup> Among other rule proposals in this release, 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. As part of these proposed amendments, the Commission proposed to amend Rule 482 under the Securities Act 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 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. As part of the proposed amendments, the Commission also proposed to amend Rule 433 to require a registered closed-end fund or business development company (“BDC”) free writing prospectus to comply with the proposed content, presentation, and timeliness requirements of proposed Rule 482, as applicable, if the free writing prospectus includes fee and expense information. As a result, regardless of whether a

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<sup>1</sup> 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) (the “2020 Retail Fund Investor Experience” release).

registered closed-end fund or BDC advertisement uses Rule 482 or Rule 433, the advertisement would be subject to the same requirements regarding fee and expense information.

Compliance with the requirements of Rule 433 is mandatory and the responses to the information collections would not be kept confidential.

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

The primary purpose of the rule is to relax restrictions on communications that issuers can make to investors during a registered offering of securities.

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

Rule 433 communications are filed electronically on the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system, except under limited conditions set forth in Rule 433(d).

## **4. Duplication of Information**

There are no other filing requirements that duplicate this information.

## **5. Reducing the Burden on Small Entities**

All issuers, including small business issuers, have discretion as to whether or not they want to disseminate written communications in the form of a free-writing prospectus. Furthermore, Rule 433 was adopted in connection with other revisions, all of which were intended to decrease costs and burdens for all issuers, including small business issuers, and enhance communications between issuers and investors.<sup>2</sup>

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 proposed amendments to Rule 433 do not distinguish between small entities and other entities. We believe 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**

Rule 433 requires filing of written communications only when issuers choose to disseminate them in a free-writing prospectus. Less frequent collection could compromise investor protection.

**7. Special Circumstances**

There are no special circumstances.

**8. Consultations with Persons Outside the Agency**

No comments were received on this request during the 60-day comment period prior to OMB's review of this submission.

**9. Payment or Gift to Respondents**

No payment or gift has been provided to any respondents.

**10. Confidentiality**

A free writing prospectus meeting the conditions of Rule 433(d)(1) must be filed with the Commission and is publicly available.

**11. Sensitive Questions**

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does 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. and 13. ESTIMATES OF HOUR AND COST BURDENS**

We estimate that 791 closed-end funds and BDCs file approximately 4,271 free writing prospectuses annually. We estimate that approximately 96% of the 4,271 responses (approximately 4,100 responses) provide fee and expense figures in free writing prospectuses and would, therefore, be required to comply with the proposed amendments to Rule 433 regarding such information. Similarly, we estimate that 96% of these responses would include information regarding a fund's total annual expenses and would, therefore, have to comply with the proposed amendments regarding such information.

The table below summarizes the proposed estimates for internal burdens associated with the proposed new requirements under Rule 433:

## Table 1 of Estimates in Changes to Current Reporting Burden Resulting from Proposed Amendments to Rule 433:

	Internal initial burden hours <sup>1</sup>	Internal annual hour burden
New general requirements re: fee and expense figure disclosure		6 hours <sup>2</sup>
	9 hours	
Number of responses to rule 433 that include fee/expense figure disclosure		x 4,100 responses
Total burden of new requirements for fee and expense disclosure		24,600 hours
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours <sup>3</sup>
Number of responses to rule 433 that disclose fee waivers/expense reimbursement arrangements		x 4,100 responses
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements		16,400 hours
Total annual burden		41,000 hours
Current burden estimates		6,391 hours
Revised burden estimate		47,391 hours

### TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS

Current burden estimates	6,391 hours	\$7,668,800 Cost Burden
Revised burden estimate	47,391 hours	\$21,444,800 Cost Burden

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. This estimate assumes that, after the initial 9 hours that an entity would spend on the proposed fee and expense disclosure, which we annualize over a 3-year period, the entity would incur 3 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 6 hours is based on the following calculation:  $((9 \text{ initial hours} / 3) + 3 \text{ hours of additional ongoing burden hours}) = 6 \text{ hours}$ .
3. This estimate assumes that, after the initial 6 hours that an entity would spend on the proposed fee waiver and expense reimbursement requirements, which we annualized over a 3-year period, the entity would incur 2 additional burden hours associated with ongoing compliance with these requirements per year. The estimate of 4 hours is based on the following calculation  $((6 \text{ initial hours} / 3) + 2 \text{ hour of additional ongoing burden hours}) = 4 \text{ hours}$ .

Cost burden is the cost of services purchased to comply with Rule 433, 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 \$7,668,800 external cost burden to Rule 433.

In the 2020 Retail Fund Investor Experience Release, we estimated that there would be no changes to the external cost burden estimate as a result of the proposed amendments to Rule 433. However, we did estimate that compliance with Rule 433, as proposed to be amended, would entail \$13,776,000 in internal costs estimated associated with the proposed increased hour burden.

**TABLE 2. CURRENT AND REVISED BURDENS UNDER THE AMENDMENTS TO SECURITIES ACT RULES, SECURITIES ACT REGISTRATION STATEMENTS AND EXCHANGE ACT FORMS**

	Current Burden		Revised Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Costs (D)	Burden Hours Increase (E)	Costs Increase (F)
Rule 433	6,391	\$7,668,800	47,391	\$21,444,800	41,000	\$13,776,000

#### 14. Costs to Federal Government

The annual cost of reviewing and processing disclosure documents, including registration statements, post-effective amendments, proxy statements, annual reports and other filings of operating companies amounted to approximately \$103,479,690 in fiscal year 2019, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

## 15. Reason for Change in Burden

We are proposing to amend rule 433 to require a registered closed-end fund or BDC free writing prospectus to comply with the proposed content, presentation, and timeliness requirements of proposed rule 482, as applicable, if the free writing prospectus includes fee and expense information. As a result, regardless of whether a registered closed-end fund or BDC advertisement uses rule 482 or rule 433, the advertisement would be subject to the same requirements regarding fee and expense information. Compliance with the requirements of rule 433 is mandatory and the responses to the information collections would not be kept confidential. For purposes of the PRA, we estimate that the amendments related to Rule 433 will result in a net increase of 41,000 burden hours and a net increase in the cost burden of \$13,776,000 for the services of outside professionals.

**Table 3** **RULE 433 PRA ESTIMATES**

The table below summarizes the proposed estimates for internal burdens associated with this new requirement under rule 433:

Internal initial burden hours <sup>1</sup>	Internal annual hour burden	Wage rate <sup>2</sup>	Internal time costs	External costs
New general requirements re: fee and expense figure disclosure Number of responses to rule 433 that include fee/expense figure disclosure	9 hours	6 hours <sup>3</sup> x 4,100 responses	\$336 (blended rate for compliance attorney and senior programmer)	\$2,016 x 4,100 responses
<b>Total burden of new requirements for fee and expense disclosure</b>	<b>24,600 hours</b>		<b>\$8,265,600</b>	
New requirements for disclosure of fee waivers/expense reimbursement arrangements Number of responses to rule 433 that disclose fee waivers/expense reimbursement arrangements	6 hours x 4,100 responses	4 hours <sup>4</sup> -	\$336 (blended rate for compliance attorney and senior programmer)	\$1,344 x 4,100 responses
<b>Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements</b>		<b>16,400 hour</b>	<b>\$5,510,400</b>	
<b>Total annual burden</b>		<b>41,000 hours</b>	<b>\$13,776,000</b>	

## 16. Information Collection Planned for Statistical Purposes

The information collection is not planned for statistical purposes.

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

The Commission is not seeking approval to omit the expiration date.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

There are no exceptions to certification for the Paperwork Reduction Act submissions.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The collection of information will not employ statistical methods.