

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

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.

funds or insurance company separate accounts offering variable annuity contracts are required to 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 October 26, 2022, the Commission adopted rule and form amendments that modernize the requirements for annual and semi-annual shareholder reports provided by open-end management investment companies.² The Commission also adopted amendments to the advertising rules for registered investment companies and business development companies to promote more transparent and balanced statements about investment costs. The advertising rule amendments 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

² Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022), 87 FR 72758 (Nov. 25, 2022) (the “Adopting Release”).

total annual expenses without any fee waiver or expense reimbursement arrangement. Under the amendments to rule 482, investment company fee and expense presentations in advertisements must 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

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.

with balanced information in fund advertisements in order to allow investors to make better-informed decisions.

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

⁴ *Id.*

requirements affecting small businesses. The current disclosure requirements for fund advertisements do not distinguish between small entities and other entities. To the extent smaller 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.

The table below summarizes our estimates associated with the amendments to rule 482 that the Adopting Release addresses:

TABLE 1: RULE 482 PRA ESTIMATES

	Internal initial hour burdens	Internal annual burden ¹	Wage Rate ²	Internal Time Costs
FINAL ESTIMATES FOR RULE 482				
New general requirements re: fee and expense figure disclosure		6 hours ³		\$2,286
	9 hours	x	\$381 (blended rate for compliance attorney and senior programmer)	x 36,492 responses
Number of responses to rule 482 that include fee/expense figure disclosure		36,492 ⁴ responses		
Total burden of new requirements for fee and expense disclosure		218,952 hours		\$83,420,712
New requirements for disclosure of fee waivers/expense reimbursement arrangements	6 hours	4 hours ⁵		\$1,524
		x	\$381 (blended rate for compliance attorney and senior programmer)	x36,492 responses
Number of responses to rule 482 that disclose fee waivers/expense reimbursement arrangements		36,492 responses		
Total burden of annual requirements for disclosure of fee waivers/expense reimbursement arrangements		145,968 hours		\$55,613,808
Total annual burden		364,920 hours		\$139,034,520
TOTAL FINAL ESTIMATED BURDENS INCLUDING AMENDMENTS				
Current burden estimates		212,927 hours		\$74,098,735
Revised burden estimate		577,847 hours		\$213,133,255

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. These PRA estimates assume that the same types of professionals would be involved in preparing advertisements (reflecting the proposed and final amendments to rule 482) 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.

3. This estimate assumed 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 initial hours / 3) + 3 hours of additional ongoing burden hours) = 6 hours.

4. The Commission estimates that there was a total of 41,953 responses to rule 482 that either were filed with FINRA or with the Commission in 2021. Of those, the Commission estimates that 1,124 were responses from closed-end funds and BDCs, and that 2,816 were responses from variable insurance contracts. The number of responses filed with the SEC is based on the average number of responses filed with the Commission from 2019-2021. The Commission assumes that, moving forward, closed-end funds and BDCs will choose to use free writing prospectuses under rule 433, and also that variable insurance contracts will not be subject to the amendments to rule 482. Therefore, we exclude closed-end funds, BDCs, and variable insurance contracts from the total responses to rule 482 for purposes of this estimate. For purposes of estimating the burden of the final rules amendments, we estimate that 38,013 responses to rule 482 are filed annually. We estimate that approximately 96% of these rule 482 responses provide fee and expense figures in qualifying advertisements and would, therefore, be required to comply with the final rule 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 amendments to rule 482).

5. This estimate assumed 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 initial hours / 3) + 2 hours of additional ongoing burden hours) = 4 hours.

The table above summarizes our PRA initial and ongoing annual burden estimates associated with rule 482, as amended. In the aggregate, we estimate the total annual burden to comply with amended rule 482 to be 577,847 hours, at an average time cost of \$213,133,255.

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. For purposes of estimating the burden of the final rule amendments, we estimate that 38,013 responses to rule 482 are filed annually; however, these responses generally are filed with and reviewed by FINRA and generally not reviewed by the Commission.

15. Change in Burden

As summarized in Table 1 above, the estimated annual hourly burden associated with rule 482 has increased from 212,927 hours to 577,847 hours (an increase of 364,920 hours). This reflects an increase of hours due to an increase in the estimated number of hours needed to comply with amended rule 482. There is no annual external cost burden attributed to rule 482.

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.