

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)).¹ 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

¹ 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).

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)).

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>). Summary Prospectuses are permitted to be sent to investors by electronic means so long as the fund meets certain requirements.² 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 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.

² 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)].

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 March 22, 2023, 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, we estimated the annual internal compliance burden to comply with rule 498's collection of information to be 15,804 burden hours.³

Based on an analysis of fund filings, we now estimate that 12,219 funds could file registration statements or amendments to registration statements on Form N-1A.⁴ Of this group, we estimate that 92%, or 11,241 funds, will rely on the summary prospectus rule.⁵

We continue 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 estimate that the annual hourly burden per fund to comply with the website posting requirement is approximately 1 hour,

³ This estimate is based on the most recent rule 498 PRA submission, which OMB approved in May 2021.

⁴ 12,219 funds = 9,392 mutual funds + 2,827 ETFs (2,832 ETFs - 5 UIT ETFs). Each fund is a separate series of an open-end management investment company registered on Form N-1A.

⁵ 12,219 funds × 92% = 11,241 funds. *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Release No. 34731 (Oct. 26, 2022) ("Tailored Shareholder Reports Adopting Release") (estimating that 92% of funds deliver a summary prospectus in reliance on rule 498).

requiring a total of 1.5 hours per fund per year.⁶ The total annual hour burden associated with these requirements of the rule is approximately 16,862 hours.⁷ Based on an estimated wage rate of about \$342 per hour,⁸ the total cost to registrants of the internal hour burden for complying with rule 498 is about \$5,766,804 annually.⁹

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 \$190,754,280.¹⁰

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

⁶ 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.

⁷ 1.5 hours per fund x 11,241 funds = 16,862 hours.

⁸ 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 \$342 (\$200 per hour for intermediate accountants + \$484 per hour for attorneys = \$684 ÷ 2 = \$342 per hour).

⁹ 16,862 hours per year × \$342 per hour = \$5,766,804 per year.

¹⁰ *See supra* footnote 3.

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 \$21,400 per fund, for a total annual cost burden of approximately \$240,557,400.¹¹

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 \$29 million in fiscal year 2022, 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 16,862 hours represents an increase of 1,058 hours over the previous estimate of 15,804 hours. The increase in burden hours is due to an increase in the estimated number of funds that use a Summary Prospectus.

In addition, the new annual total external cost of \$240,557,400 represents an increase of \$49,803,120 over the previous estimate of \$190,754,280. This increase is

¹¹ \$21,400 per fund x 11,241 funds = \$240,557,400.

We adjusted the previously approved external cost estimate of \$18,105 per fund, *see supra* footnote 3, up to \$21,400 to account for the effects of inflation.

due to an increase in the estimated number of funds that use a Summary Prospectus, 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>
10,536	11,241	+705	15,804	16,862	+1,058	\$190,754,280	\$240,557,400	+49,803,120

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.