

company × 5,025 investment companies) burden hours.⁷⁵ These burden hours represent a monetary savings of approximately \$366,974 (9,849 hours × \$37.26 wage rate) per year.⁷⁶

B. Costs

The Commission estimates that the costs of the amendments, in the aggregate, will be minimal and limited in duration. The Commission estimates that funds will incur one-time costs in modifying their current rule 482 advertisements to meet the new disclosure and presentation requirements, although many funds already provide the disclosure that would be required. For example, funds may have to modify their layouts and typesetting in order to convert existing advertisements to meet the requirements of the rule, or alternatively, replace existing advertisements more quickly than they otherwise would.

⁷⁵ The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimate of the decrease in burden hours is based on information gathered from the fund industry by the Commission staff and from the staff's experience with the various advertising regulations.

⁷⁶ These figures are based on a Commission estimate of 5025 investment companies and an estimated hourly wage rate of \$37.26. The estimated wage rate figure is based on published hourly wage rates for in-house attorneys (\$33.66), paralegals (\$19.93), and compliance examiners (\$23.16) and the estimate, based on the Commission staff's discussions with certain fund complexes, that attorneys would account for 50% of hours spent on advertising regulation and that paralegals and compliance examiners would account for the remaining 50% in equal ratio, yielding a weighted wage rate of \$27.60 $((\$33.66 \times .50) + (\$19.93 \times .25) + (\$23.16 \times .25) = \$27.60)$. Securities Industry Association, *Report on Office Salaries in the Securities Industry 2000* (Sept. 2002); Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2000* (Sept. 2002). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of \$37.26 $(\$27.60 \times 1.35 = \$37.26)$.

The benefits estimated in this analysis differ from those provided in the Proposing Release because of intervening changes in the number of investment companies and the wage rates. Although the Commission modified the proposed amendments, these modifications did not affect our estimates of the benefits associated with the amendments. Some commenters indicated that the cost of making updated month-end information available by toll-free or collect telephone number, as the proposal would have required, would be significant. Nonetheless, the modification to the proposed requirement to permit funds to make month-end performance data available through a toll-free or collect telephone number or Web site did not affect our estimates of costs or benefits. The staff indicated in the Proposing Release that it expected the costs of making updated month-end information available by toll-free or collect telephone number would be negligible, because many, if not most, funds already provide month-end or more current performance information through those means. See Proposing Release, *supra* note 7, 67 FR at 36726.

The requirement for funds to provide access to performance figures that are current as of the last month end may also impose costs, some of which will be ongoing, both to generate such figures on a monthly basis and to provide the information by a toll-free or collect telephone number or on a Web site. This could include costs for computer time, accounting personnel, information technology staff, and additional computer and telephone equipment. The cost/benefit analysis in the Proposing Release estimated that the costs of making updated performance information available would be negligible because many, if not most, funds already provide this or more current performance information through these means and, therefore, the marginal cost for most funds for making updated performance information available is expected to be negligible.

Several commenters, however, argued that the costs associated with the proposed requirement that updated performance information be provided by toll-free or collect telephone number would be significant.⁷⁷ Such costs, commenters stated, could include those of setting up and maintaining an automated telephone system to provide the updated performance data. While two commenters did provide some specific estimates of their own anticipated costs of compliance with this proposed requirement, none of the commenters gave cost figures applicable to the industry as a whole.⁷⁸ Moreover, none of the commenters estimated the number of funds that would incur such costs. The cost/benefit analysis in the Proposing Release reached its conclusion, in part, because information gathered by the staff indicated that many, if not most, funds already had toll-free telephone systems and used

them to distribute performance data that was at least as current as the month-end. The information provided by the commenters does not persuade us that our conclusion regarding aggregate costs was incorrect.

In any event, we have modified the proposal to address these commenters' concerns. The amendments, as adopted, will not require month-end performance data to be made available by toll-free or collect telephone. Rather, funds may make the information available by toll-free or collect telephone number or on the fund's Web site. In addition, we have modified the proposal to provide that where the fund advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use, the fund is not also required to make such data available by telephone or through its website. We expect that both of these revisions to the proposed amendments will further reduce any cost burden associated with disclosing month-end performance data.

The elimination of the "substance of which" requirement and the rescission of rule 134 as applicable to funds may require some funds to incur costs to convert many of their rule 134 advertisements to rule 482 advertisements. These costs, however, should be minimal and non-recurring, since the rule 482 requirements would permit advertisements that are not significantly different from those currently permitted under current rule 134.

One commenter expressed concern regarding the proposed language of the new notes to rule 482(a) and rule 34b-1 stating that compliance with the rules does not relieve the fund, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading. The commenter was concerned that the new notes may expand liability for independent directors in connection with fund advertisements, resulting in a significant cost burden. However, as we indicate above,⁷⁹ the new notes are to make clear that liability for advertisements is based on the federal securities laws and that the advertising rule amendments are not intended to change the existing liability standards.

With regard to the rescission of rule 134 as it applies to funds, a number of commenters expressed concern over costs associated with the higher standard of liability under rule 482, but did not provide any specific figures or other quantitative analysis. As we note

⁷⁷ On the other hand, one commenter did not object to the telephone-only requirement, indicating that making updated monthly performance data available in the manner contemplated by the proposal would be affordable for all funds, regardless of size.

⁷⁸ One commenter estimated that the cost of installing an automated voice response telephone system for an insurance company to provide performance information about funds underlying variable contracts would be \$500,000. Another commenter cited that \$500,000 estimate and added that the estimate is for hardware and software requirements only and does not include personnel expenses and further stated that expenses for companies that do not presently have automated telephone systems would likely be several times higher. It appears that the commenter that calculated the \$500,000 estimate intended that this figure represent the cost the commenter itself would incur and not a projection that every insurance company or every fund would incur a \$500,000 expense. Another commenter, a fund supermarket, estimated the cost of updating its website to provide toll-free numbers for the many funds offered would amount to \$70,000.

⁷⁹ See Section II.B., "Applicability of Antifraud Provisions to Fund Advertising," *supra*.