

above, however, suits based on misleading advertising are relatively rare and we continue to estimate that the associated costs will be minimal.⁸⁰

We further note that the amendments, as adopted, extend the compliance period to two full calendar quarters after adoption, lowering conversion costs by allowing more time for planning and enabling funds to come into compliance in the regular course of quarterly advertising cycles. This extension reinforces our estimate that such expenses will be minimal.

The Commission estimates the one-time switchover costs for each investment company attributable to the amendments will be approximately 2.18 hours, or \$81.23 (2.18 hours x \$37.26 wage rate), in internal costs, and \$2,417 in external costs.⁸¹ In total this represents a one-time cost of approximately 10,955 (2.18 hours x 5,025 investment companies) internal burden hours (translating into approximately \$408,183 (10,955 hours x \$37.26 wage rate) in internal costs) and \$12,145,425 (\$2,417 cost per investment company x 5,025 investment companies) in external costs.⁸²

C. Conclusion

The Commission expects that the advertising rule amendments will encourage more informed and efficient investing, while easing the regulatory burden on fund advertising, and that these likely benefits would justify the associated costs.

IV. Consideration of Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, Section 2(b) of the Securities Act, and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to

consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.⁸³

In the Proposing Release, we requested comment on whether the proposed amendments would promote efficiency, competition, and capital formation. The Commission received one letter specifically addressing the effect of the proposed amendments on competition. This commenter objected to the rescission of rule 134 for funds on the grounds, among others, that investment companies would be treated less favorably than other issuers engaged in ongoing offerings of their securities that would continue to be able to rely on rule 134.

The amendments the Commission is adopting today seek to improve fund advertising by enhancing disclosure requirements and by simplifying and clarifying the rules, including elimination of the requirement that rule 482 advertisements contain only information the "substance of which" is included in the statutory prospectus. These changes may improve efficiency. The rule simplifications may lower the regulatory burden on funds engaged in advertising, freeing resources for more productive uses. For example, funds would no longer have to update their prospectuses or SAIs in order to change the types of performance information in advertisements. The enhanced disclosure requirements may provide greater and timelier access by investors to updated performance figures, which would promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The amendments may also improve competition, as enhanced disclosure may prompt funds to seek to provide better-informed investors with improved products and services. Finally, the effects of the amendments on capital formation are unclear. Although we believe that the amendments would benefit investors, the magnitude of the effect of the amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that most funds may already comply with at least some of the new disclosure requirements.

V. Paperwork Reduction Act

A. Introduction

As explained in the Proposing Release, certain provisions of the amendments contain "collection of information" requirements within the

meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. The titles for the existing collections of information are: (i) "Form N-1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies"; (ii) "Form N-2—Registration Statement of Closed-End Management Investment Companies"; (iii) "Form N-3—Registration Statement of Separate Accounts Organized as Management Investment Companies"; (iv) "Form N-4—Registration Statement of Separate Accounts Organized as Unit Investment Trusts"; (v) "Form N-6 Under the Investment Company Act and the Securities Act of 1933, Registration Statement of Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies"; and (vi) "Rule 34b-1 of the Investment Company Act of 1940, Sales Literature Deemed To Be Misleading." A new collection of information has been created entitled "Rule 482 under the Securities Act of 1933, Advertising by an Investment Company."⁸⁴

Form N-1A (OMB Control No. 3235-0307), Form N-2 (OMB Control No. 3235-0026), Form N-3 (OMB Control No. 3235-0316), Form N-4 (OMB Control No. 3235-0318), and Form N-6 (OMB Control No. 3235-0503) were adopted pursuant to section 5 of the Securities Act [15 U.S.C. 77e] and section 8(a) of the Investment Company Act [15 U.S.C. 80a-8(a)]. Rule 482 of Regulation C (OMB Control No. 3235-0565) was adopted pursuant to section 10(b) of the Securities Act [15 U.S.C.

⁸⁴ Although the amendments do not amend Form N-2, that form is included in this Paperwork Reduction Act ("PRA") summary because the PRA burden for rule 482 has previously been included in the various investment company registration statement forms affected by rule 482, including Form N-2. As discussed below, the Commission has transferred the PRA burden associated with rule 482 from all of these registration statement forms to a new rule 482 category.

⁸⁵ The amendments modify rule 482, which is part of Regulation C under the Securities Act of 1933. Regulation C describes the disclosure that must appear in registration statements under the Securities Act and Investment Company Act. The PRA burden associated with rule 482 was previously included in the various investment company registration statement forms, not in Regulation C. However, because the amendments eliminate the rationale for allocating the PRA burden for rule 482 to the registration forms, the Commission has transferred the burden associated with rule 482 to a new category. The total PRA burden for each of the registration forms is different from that included in the PRA submissions that preceded this analysis because of the transfer of burden associated with rule 482, as well as the intervening changes in the number of filings. However, the newly adopted amendments to the forms do not have any effect on the burden hours for the forms.

⁸⁰ See *supra* note 74.

⁸¹ These figures are based on averages derived from information gathered from several members of the fund industry by the Commission staff and from the staff's experience with the various advertising rules. Internal costs include, for example, the cost of reviewing all fund advertisements for compliance with the revised rules. External costs include, for example, the costs of typesetting and printing for new fund advertisements.

The costs estimate 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 estimate of the costs associated with the amendments. See *supra* note 76.

⁸² See discussion in notes 75 and 76, *supra*, regarding number of investment companies, wage rates, and previous estimates of costs and benefits.

⁸³ 15 U.S.C. 77b(b), 78c(f), and 80a-2(c).