

statements will be filed on Form N-6 and 500 post-effective amendments will be filed on Form N-6, 200 as annual updates and 300 as additional post-effective amendments.<sup>92</sup> Thus, the burden hours attributable to rule 482 transferred from Form N-6 to the new rule 482 collection of information amounted to 9,065 ((35 hours × 59 filings) + (35 hours × 200 filings)). The total hour burden that remains allocated to Form N-6 for all purposes unassociated with rule 482 is 61,135 ((765 hours × 59 filings) + (65 hours × 200 filings) + (10 hours × 300 filings)) hours.

Except for the transfer of PRA burden from Form N-6 to the new collection of information for rule 482, the Commission estimates no effect on the remaining PRA burden for Form N-6 resulting from the amendments. The change in PRA burden resulting from the amendments is accounted for under the new rule 482 PRA collection of information.

### C. Change in Burden Attributable to Amendments

The information required by the amendments to the advertising rules is primarily for the use and benefit of investors. The Commission is concerned that investors receive information in advertisements that is accurate, balanced, timely, not misleading, and otherwise appropriate and helpful in making investment decisions. The additional information that is required to be disclosed to investors pursuant to the collection of information provisions of the rules affected by the amendments, addresses these concerns regarding investor protection.

#### 1. Rule 34b-1

Rule 34b-1, as amended, contains collection of information requirements. The rule applies to supplemental sales literature, *i.e.*, sales literature that is preceded or accompanied by the statutory prospectus, and requires the inclusion of standardized performance data in sales literature that includes performance data. Compliance with rule 34b-1 is mandatory for every registered investment company that issues supplemental sales literature. Responses

to the disclosure requirements will not be kept confidential.

We estimated that approximately 37,000 responses are filed annually pursuant to rule 34b-1, and the burden per response is 2.9 hours. The amendments change rule 34b-1 to add language to clarify the Commission's present interpretation of its rules, namely, that compliance with rule 34b-1 does not relieve the fund, underwriter, or dealer of any obligations with respect to the sales literature under the antifraud provisions of the federal securities laws. This added language merely confirms the present state of the law and imposes no additional burden hours. In addition, the amendments to rule 34b-1 make the newly adopted changes in the narrative disclosure and presentation requirements under rule 482 applicable to supplemental sales literature, but these narrative disclosure and presentation requirements also will impose no additional burden for purposes of rule 34b-1.<sup>93</sup>

#### 2. Rule 482

Rule 482, as amended, contains collection of information requirements in that it permits a fund to advertise information subject to certain disclosure requirements. Compliance with rule 482 is mandatory for every fund that issues rule 482 advertisements. Responses to the disclosure requirements will not be kept confidential.

The Commission currently estimates that 41,484 responses are filed annually by 5,025 funds pursuant to rule 482. The burden associated with rule 482 was previously included in the collections of information for the investment company registration statement forms, but at the time of the Proposing Release the Commission transferred this PRA burden to a new rule 482 collection of information. The Commission then adjusted this amount to account for the estimated savings of 6,890 burden hours associated with the proposed amendments to arrive at a

total annual burden for rule 482 of 218,125.<sup>94</sup>

The Commission's per-investment-company burden estimates calculated at the time of the Proposing Release remain unchanged.<sup>95</sup> However, the Commission is adjusting the total annual burden hours associated with rule 482 to reflect a decrease in the number of investment companies from 5,587 to the current number of 5,025. The Commission estimates an increase of 3,653 (0.727 hours per fund × 5,025 funds) annual burden hours will be required to comply with the amendments as adopted, as a result of one-time switchover cost of 10,959 burden hours amortized over a three-year period. The Commission also estimates a decrease of 9,849 annual burden hours (1.96 hours per fund × 5,025 funds) resulting from the amendments as adopted due to the simplification and clarification of rule 482, including the removal of the "substance of which" requirement. The net result would be an annual decrease of approximately 6,196 (3,653 hours increase - 9,849 hours decrease) hours.<sup>96</sup> The current estimate of the total annual burden for rule 482, as amended, is 218,819.<sup>97</sup>

### VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's

<sup>94</sup> The Commission calculated this adjustment at the proposing stage by estimating a burden hour annual increase per investment company of 0.727 hours and a burden hour annual decrease per investment company of 1.96, and then multiplying these figures by the then current number of investment companies (5,587) to arrive at an estimated net decrease of approximately 6,890 total annual burden hours (0.727 × 5,587 - 1.96 × 5,587 = -6,889). The Commission then subtracted this estimated annual net decrease from the rule 482 burden hours that had been transferred from the registration forms, yielding the total annual rule 482 burden of 218,125 (225,015 hours transferred - 6,890 decrease = 218,125), which was used in the Proposing Release.

<sup>95</sup> The estimates of changes in the burden hours per investment company attributable to rule 482 are based on a survey of information conducted by the Commission staff of members of the mutual fund and variable insurance products industry at the time of the Proposing Release. The Commission estimates no change in these per-investment-company burden rates due to changes to the amendments between the proposing stage and this adoption.

<sup>96</sup> This estimated net decrease of 6,196 hours compares to an estimated net decrease of 6,890 in the Proposing Release. The difference of 694 hours is a result of the change in the number of investment companies since the time of the Proposing Release.

<sup>97</sup> 218,125 total hours (Proposing Release estimate) + 694 hours (lower net decrease) as explained in note *supra*.

<sup>92</sup> Based on its analysis of data from the EDGAR filing system from 2000-2001, the Commission estimated that there are approximately 200 variable life insurance policies, with respect to which at least one post-effective amendment must be filed per year. In addition, the Commission estimated, also based on EDGAR filing data, that 300 additional post-effective amendments are filed for these variable life insurance policies each year, generally to make non-material changes to their registration statements.

<sup>93</sup> The secondary effect on the burden attributable to rule 34b-1 due to the amendments to rule 482 is estimated to be negligible. Both before and after the amendments, rule 34b-1 requires any performance data included in supplemental sales literature to be accompanied by performance data computed using the standardized formulas for advertising performance under rule 482. We estimate that the changes in types of disclosure and presentation that would be required by the amendments to rule 482 would not affect the amount of review necessary for funds to ensure compliance with rule 34b-1. Therefore, all changes in burden associated with the amendments are accounted for under the category associated with the principal rule generating the burden, *i.e.*, the new rule 482 collection of information.