

### *D. Reporting, Recordkeeping, and Other Compliance Requirements*

The amendments will modify the disclosure requirements applicable to rule 482 advertisements. Advertisements will have to contain an amended legend, an explanation about where information about investment objectives, risks, and charges and expenses can be found, and, if performance figures are used, information about where updated performance information can be found, unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use. In addition, the required disclosure will generally have to be given as much prominence in the advertisement as the major portion of the advertisement. The amendments will also rescind the requirements of rule 134 as they apply to funds, but we expect that this will not result in any appreciable change in the disclosure that funds make in their advertisements because present rule 134 advertisements will generally become rule 482 advertisements.

The Commission has considered the potential effect that the amendments will have on the preparation of advertisements. Without regard to the size of the entity, we estimate that the amendments will result in a net decrease of 1.23 hours, or \$45.83 (1.23 hours x \$37.26 wage rate), per investment company per year in internal costs and a net increase of \$805.67 per investment company per year in external costs.<sup>105</sup>

The Commission estimates some one-time switchover costs and burdens that will be imposed on all funds, but which may have a relatively greater impact on smaller firms. These costs include the costs of altering existing advertisements, including those now covered by rule 134, to comply with the new provisions of rule 482; generating performance figures on a monthly basis; and making available the updated monthly performance data through a toll-free or

collect telephone number or a Web site when required. The costs of making updated performance data available could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe, based on consultation with a number of fund complexes, that many funds that presently advertise already provide performance information on a basis at least as current as monthly through these means and, therefore, expect the marginal cost increases for most funds to be minimal.

The Commission anticipates that the amendments will also provide ongoing reductions in the compliance burden for all funds by clarifying the language of rule 482, eliminating the "substance of which" requirement, and simplifying fund advertising requirements through rescission of rule 134 for fund advertising. These changes will effect savings primarily by reducing the time and money funds now spend on legal review and amending their prospectuses and SAIs to comply with the "substance of which" requirement in current rule 482.

### *E. Agency Action To Minimize Effect on Small Entities*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The disclosure amendments will provide shareholders and the public with more balanced information about a fund's performance. Different disclosure requirements for small entities, such as reducing the level of disclosure that small entities would have to provide shareholders in advertising, may create the risk that

shareholders would not receive balanced information about a fund's performance or would receive confusing, false, or misleading information. In addition, applying different standards for advertising by small and large funds might impede investors' ability to adequately compare funds. We believe it is important for the enhanced advertising disclosure required by the amendments to be provided to investors by all funds, not just funds that are not considered small entities.

The Commission also notes that current advertising requirements, and its disclosure rules in general, do not distinguish between small entities and other funds. In addition, we believe that it would be inappropriate to impose a different timetable on small entities for complying with the requirements.<sup>106</sup> Further clarification, consolidation, or simplification of the proposals for funds that are small entities may be inconsistent with investor protection. We do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

We note, however, that we have modified our proposal in several ways that will reduce burdens on funds, including small funds, and will address the concerns raised by the commenters referenced above. As adopted, the amendments will not require funds to provide updated month-end performance data by toll-free or collect telephone. Rather, funds will be permitted to choose whether to make the month-end information available by telephone or on the fund's Web site. In general, commenters indicated that making the information available over a fund Web site would be less burdensome than using a telephone system. In addition, we have modified the proposal to provide that if the 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 required to make such data available by telephone or on its Web site. We expect that both of these revisions to the proposed amendments will reduce the cost burden for all funds, including small entities.

### **VII. Statutory Authority**

The Commission is adopting amendments to rule 134 pursuant to

<sup>105</sup> These figures are based on the Commission staff's discussions with several fund complexes. With regard to internal costs, they represent the net of the amortized one-time switchover cost of .727 hours per fund per year and the decrease in burden associated with rule 482, for purposes of the Paperwork Reduction Act, of 1.96 hours per fund per year. With regard to external costs, the \$805.67 figure represents one-time switchover costs amortized over three years.

The estimate provided here differs from that provided in the Initial Regulatory Flexibility Analysis in the Proposing Release because of a change in the number of small entities and the wage rate used. See *supra* note #76. Although the Commission modified the proposed amendments, these modifications did not affect our estimate of the burden on small entities.

<sup>106</sup> The Commission has expanded the proposed compliance period from 90 days from the effective date to the end of the second full calendar quarter after adoption. This revision should lessen any burden for small entities, as well as other funds.