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17 CFR Parts 230 and 270

Investment Company Advertising: Target Date Retirement Fund Names and Marketing; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 270

[Release Nos. 33–9126; 34–62300; IC–29301; File No. S7–12–10]

RIN 3235–AK50

Investment Company Advertising: Target Date Retirement Fund Names and Marketing

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to rule 482 under the Securities Act of 1933 and rule 34b–1 under the Investment Company Act of 1940 that, if adopted, would require a target date retirement fund that includes the target date in its name to disclose the fund's asset allocation at the target date immediately adjacent to the first use of the fund's name in marketing materials. The Commission is also proposing amendments to rule 482 and rule 34b–1 that, if adopted, would require marketing materials for target date retirement funds to include a table, chart, or graph depicting the fund's asset allocation over time, together with a statement that would highlight the fund's final asset allocation. In addition, the Commission is proposing to amend rule 482 and rule 34b–1 to require a statement in marketing materials to the effect that a target date retirement fund should not be selected based solely on age or retirement date, is not a guaranteed investment, and the stated asset allocations may be subject to change. Finally, the Commission is proposing amendments to rule 156 under the Securities Act that, if adopted, would provide additional guidance regarding statements in marketing materials for target date retirement funds and other investment companies that could be misleading. The amendments are intended to provide enhanced information to investors concerning target date retirement funds and reduce the potential for investors to be confused or misled regarding these and other investment companies.

DATES: Comments should be received on or before August 23, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–12–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Devin F. Sullivan, Senior Counsel; Michael C. Pawluk, Branch Chief; or Mark T. Uyeda, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, at (202) 551–6784, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing amendments to rules 156 [1] and 482 [2] under the Securities Act of 1933 ("Securities Act") [3] and rule 34b–1 [4] under the Investment Company Act of 1940 ("Investment Company Act").[5]

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I. Background

A. Growth of Target Date Retirement Funds

Over the past two decades, there has been a sizable shift in how Americans provide for their retirement needs. Previously, many Americans were able to rely on a combination of Social Security and company-sponsored defined benefit pension plans.[6] Today, however, defined benefit pension plans are less common and individuals are increasingly dependent on participant-directed vehicles, such as 401(k) plans,[7] that make them responsible for accumulating sufficient assets for their retirement.[8]

As a result, Americans are increasingly responsible for constructing and managing their own retirement portfolios. Effective management of a retirement portfolio can be a challenging task, requiring significant knowledge and commitment of time.[9]

[1] 17 CFR 230.156.

[2] 17 CFR 230.482.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 270.34b–1.

[5] 15 U.S.C. 80a–1 *et seq.*

[6] *See, e.g.,* United States Government Accountability Office, *Retirement Savings: Automatic Enrollment Shows Promise for Some Workers, but Proposals to Broaden Retirement Savings for Other Workers Could Face Challenges,* at 3 (Oct. 2009) (stating that "[t]raditionally, employers that sponsored retirement plans generally established 'defined benefit' plans").

[7] A 401(k) plan is a defined contribution plan that meets the requirements for qualification under Section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

[8] Department of Labor data indicate that the number of active participants in defined benefit plans fell from about 27 million in 1975 to approximately 20 million in 2006, whereas the number of active participants in defined contribution plans increased from about 11 million in 1975 to 66 million in 2006. *See* Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans, 75 FR 5253, 5253–54 (Feb. 2, 2010) (joint request for information from the Department of the Treasury and the Department of Labor).

[9] *See, e.g.,* Testimony of Barbara D. Bovbjerg, Director, Education, Workforce, and Income

Target date retirement funds (hereinafter "target date funds") are designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically among asset classes over time without the need for each investor to rebalance his or her own portfolio repeatedly.[10] A target date fund is typically intended for investors whose retirement date is at or about the fund's stated target date. Target date funds generally invest in a diverse mix of asset classes, including stocks, bonds, and cash and cash equivalents (such as money market instruments). As the target date approaches and often continuing for a significant period thereafter, a target date fund shifts its asset allocation in a manner that is intended to become more conservative—usually by decreasing the percentage allocated to stocks.[11]

Managers of target date funds have stated that, in constructing these funds, they attempt to address a variety of risks faced by individuals investing for retirement, including investment risk, inflation risk, and longevity risk.[12] Balancing these risks involves tradeoffs, such as taking on greater investment risk in an effort to increase returns and reduce the chances of outliving one's retirement savings.[13] Further, target date fund managers have taken different approaches to balancing these risks, and thus target date funds for the same retirement year have had different asset allocations.[14]

The schedule by which a target date fund's asset allocation is adjusted is commonly referred to as the fund's "glide path." The glide path typically reflects a gradual reduction in equity exposure before reaching a "landing point" at which the asset allocation becomes static. For some target date funds, the landing point occurs at or near the target date, but for other funds, the landing point is reached a significant number of years—as many as 30—after the target date.[15] While there are some target date funds with landing points at or near the target date, a significant majority have landing points after the target date.[16]

Since the inception of target date funds in the mid-1990s, assets held by these funds have grown considerably. Today, assets of target date funds registered with the Commission total approximately $270 billion.[17] Target date funds received approximately $43 billion in net new cash flow during 2009, $42 billion during 2008, and $56 billion during 2007, compared to $22 billion in 2005 and $4 billion in 2002.[18]

Recently, target date funds have become more prevalent in 401(k) plans as a result of the designation of these funds as a qualified default investment alternative ("QDIA") by the Department of Labor pursuant to the Pension Protection Act of 2006.[19] The QDIA designation provides liability protection for an employer who sponsors a defined contribution plan and places contributions of those plan participants who have not made an investment choice into a target date fund or other QDIA.[20] According to one study, 70% of U.S. employers surveyed now use target date funds as their default investment.[21]

B. Recent Concerns About Target Date Funds

Market losses incurred in 2008, coupled with the increasing significance of target date funds in 401(k) plans,[22] have given rise to a number of concerns about target date funds. In particular, concerns have been raised regarding how target date funds are named and marketed.

Target date funds that were close to reaching their target date suffered significant losses in 2008, and there was a wide variation in returns among target date funds with the same target date.[23] Investment losses for funds with a target date of 2010 averaged nearly 24% in 2008, ranging between approximately 9% and 41% [24] (compared to losses for the Standard & Poor's 500 Index ("S&P 500"), the Nasdaq Composite Index ("Nasdaq Composite"), and the Wilshire 5000 Total Market Index ("Wilshire 5000") of approximately 37%, 41%, and 37%, respectively).[25] By contrast, in 2009, returns for 2010 target date funds ranged between approximately 7% and 31%, with an average return of approximately 22% [26] (compared to returns for the S&P 500, Nasdaq Composite, and Wilshire 5000 of approximately 26%, 44%, and 28%,

Security, United States Government Accountability Office, before the U.S. Senate Special Committee on Aging, *401(k) Plans: Several Factors Can Diminish Retirement Savings, but Automatic Enrollment Shows Promise for Increasing Participation and Savings,* at 5–6 (Oct. 28, 2009), available at *http://www.gao.gov/new.items/d10153t.pdf* (attributing the failure of some employees to participate in defined contribution plans to "a tendency to procrastinate and follow the path that does not require an active decision").

[10] *See, e.g.,* Youngkyun Park, *Investment Behavior of Target-Date Fund Users Having Other Funds in 401(k) Plan Accounts,* 30 Employee Benefit Research Institute Issue Brief, at 2 (Dec. 2009).

[11] *See, e.g.,* Josh Charlson *et al., Morningstar Target-Date Series Research Paper: 2009 Industry Survey,* at 6 (Sept. 9, 2009) ("2009 Morningstar Paper"); Investment Company Institute, *2010 Investment Company Fact Book,* at 116 (2010) ("2010 Fact Book").

[12] *See, e.g.,* Transcript of Public Hearing on Target Date Funds and Other Similar Investment Options before the U.S. Securities and Exchange Commission and the U.S. Department of Labor, at 62 (June 18, 2009), available at *http://www.sec.gov/spotlight/targetdatefunds/targetdatefunds061809.pdf* ("Joint Hearing Transcript") (testimony of John Ameriks, Principal, Vanguard Group).

[13] *See id.* at 23–24 (testimony of Richard Whitney, Director of Asset Allocation, T. Rowe Price).

[14] *See* 2009 Morningstar Paper, *supra* note 11, at 6 (attributing variations in asset allocations to philosophical differences among fund companies' asset allocators and their approaches to balancing risks).

[15] Based on Commission staff analysis of registration statements filed with the Commission.

[16] Of the nine largest target date fund families representing approximately 93% of assets under management in target date funds, the period of time between the target date and the landing point is 0 years for one fund family, 7 years for one fund family, 7–10 years for one fund family, 10 years for one fund family, 10–15 years for two fund families, 20 years for one fund family, 25 years for one fund family, and 30 years for one fund family. The largest families were determined based on Commission staff analysis of data as of March 31, 2010, obtained from Morningstar Direct.

[17] Based on Commission staff analysis of data as of March 31, 2010, obtained from Morningstar Direct.

[18] *See* 2010 Fact Book, *supra* note 11, at 173 (Table 50).

[19] *See* Default Investment Alternatives Under Participant Directed Individual Account Plans, 72 FR 60452, 60452–53 (Oct. 24, 2007) ("QDIA Adopting Release"). Under the Pension Protection Act, the Department of Labor was directed to adopt regulations that "provide guidance on the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation or long-term capital appreciation, or a blend of both." Pension Protection Act of 2006, Public Law 109–280.

[20] *See* QDIA Adopting Release, *supra* note 19, 72 FR at 60452–53. As an alternative to a target date fund as a QDIA, Department of Labor regulations permit a plan sponsor to select a "balanced fund" that is consistent with a target level of risk appropriate for participants of the plan as a whole or a "managed account" that operates similarly to a target date fund. 29 CFR 2550.404c–5(e)(4)(ii)–(iii).

[21] Margaret Collins, *Target-Date Retirement Funds May Miss Mark for Unsavvy Savers,* Bloomberg (Oct. 15, 2009) (citing a Mercer, Inc. study of more than 1,500 companies).

[22] *See* Investment Company Institute, *The U.S. Retirement Market, Third Quarter 2009,* at 31 (Feb. 2010) (approximately 67% of assets held by target date funds as of September 30, 2009, were attributable to defined contribution plans).

[23] *See, e.g.,* Gail MarksJarvis, *Missing Their Marks; Target Date Funds Took Too Many Risks for 401(k) Investors Nearing Retirement,* Chicago Tribune (Mar. 22, 2009); Mark Jewell, *Not All Target-Date Funds Are Created Equal,* Associated Press (Jan. 15, 2009).

[24] Based on Commission staff analysis of data obtained from Morningstar Direct. *See also* Pamela Yip, *Losing Sight of Retirement Goals; Target-Date Mutual Funds Aren't Always on the Mark,* Dallas Morning News (May 11, 2009) (reviewing 2008 performance of target date funds); Robert Powell, *Questions Arise on Target-Date Funds after Dismal 2008,* MarketWatch (Feb. 4, 2009) (same).

[25] See S&P 500 monthly and annual returns, available at *http://www.standardandpoors.com/indices/market-attributes/en/us*; Nasdaq Composite Index performance data, available at *http://www.nasdaq.com/aspx/dynamic_charting.aspx?symbol=IXIC&selected=IXIC*; and Wilshire Index Calculator, available at *http://www.wilshire.com/Indexes/calculator/.*

[26] Based on Commission staff analysis of data obtained from Morningstar Direct.

respectively).[27] Although the 2009 returns were positive, the differences between 2008 and 2009 returns demonstrate significant volatility. In addition, 2009 returns, like 2008 returns, reflect significant variability among funds with the same target date.

While the variations in returns among target date funds with the same target date can be explained by a number of factors, one key factor is the use of different asset allocation models by different funds, with the result that target date funds sharing the same target date have significantly different degrees of exposure to more volatile asset classes, such as stocks.[28] Equity exposure has ranged from approximately 25% to 65% at the target date and from approximately 20% to 65% at the landing point.[29] We note that opinions differ on what an optimal glide path should be.[30] An optimal glide path for one investor may not be optimal for another investor with the same retirement date, with the optimal glide path depending, among other things, on an investor's appetite for certain types of risk, other investments, retirement and labor income, expected longevity, and savings rate.

In June 2009, the Commission and the Department of Labor held a joint hearing on target date funds.[31] Representatives of a wide range of constituencies participated at the hearing, including investor advocates, employers who sponsor 401(k) plans, members of the financial services industry, and academics. Some participants at the hearing spoke of the benefits of target date funds (for example, as a means to permit investors to diversify their holdings and prepare for retirement), but a number raised concerns, particularly regarding investor understanding of the risks associated with, and the differences among, target date funds. Some of these concerns revolved around the naming conventions of target date funds and the manner in which target date funds are marketed.

One concern raised at the hearing was the potential for a target date fund's name to contribute to investor misunderstanding about the fund. Target date fund names generally include a year, such as 2010. The year is intended as the approximate year of an investor's retirement, and an investor may use the date contained in the name to identify a fund that appears to meet his or her retirement needs.[32] This naming convention, however, may contribute to investor misunderstanding of target date funds.[33] Investors may not understand, from the name, the significance of the target date in the fund's management or the nature of the glide path up to and after that date. For example, investors may expect that at the target date, most, if not all, of their fund's assets will be invested conservatively to provide a pool of assets for retirement needs.[34] They also may mistakenly assume that funds that all have the same date in their name are managed according to a uniform asset allocation strategy.[35]

Another concern raised at the hearing was the degree to which the marketing materials provided to 401(k) plan participants and other investors in target date funds may have contributed to a lack of understanding by investors of those funds and their associated investment strategies and risks. A number of hearing participants expressed concern regarding target date fund marketing. For example, one participant stated that "there are significant problems with how [target date funds] are presently marketed," and that "what is lacking is clear and understandable information on the investment strategy and potential risks associated with that strategy."[36] Another participant cited a survey that her organization had conducted, which involved showing a composite description of target date funds derived from actual marketing materials to survey subjects, the majority of whom perceived that those materials made "a promise that [did] not, in fact, exist."[37] According to that participant, some of the survey respondents who reviewed the marketing materials thought that target date funds made various promises, such as "funds at the time of retirement," a "secure investment with minimal risks," similarity to "a guaranteed investment" during a market downturn, or "a comfortable retirement."[38]

Our staff has reviewed a sample of target date fund marketing materials and found that the materials often characterized target date funds as offering investors a simple solution for their retirement needs. The materials typically presented a list of funds with different target dates and invited investors to choose the fund that most closely matches their anticipated retirement date. Even though the marketing materials for target date funds often included some information about associated risks, they often accompanied this disclosure with slogan-type messages or other catchphrases encouraging investors to conclude that they can simply choose a fund without any need to consider their individual circumstances or monitor the fund over time.

The simplicity of the messages presented in these marketing materials at times belies the fact that asset allocation strategies among target date fund managers differ and that investments that are appropriate for an investor depend not only on his or her retirement date, but on other factors, including appetite for certain types of

[27] *See supra* note 25.

[28] *See* 2009 Morningstar Paper, *supra* note 11, at 6–9.

[29] Based on Commission staff analysis of registration statements filed with the Commission.

[30] *See, e.g.,* statement of Joseph C. Nagengast, Target Date Analytics LLC, at 2 (May 22, 2009), available at *http://www.sec.gov/comments/4-582/4582-3.pdf* (stating that "the glide path must be designed to provide for a predominance of asset preservation as the target date nears and arrives"); Josh Cohen, Russell Investments, *Twelve Observations on Target Date Funds,* at 2 (Apr. 2008), available at *http://www.dol.gov/ebsa/pdf/cmt-06080910.pdf* (arguing against high equity allocations at the target date). *But see* Anup K. Basu and Michael E. Drew, *Portfolio Size Effect in Retirement Accounts: What Does It Imply for Lifecycle Asset Allocation Funds,* 35 J. Portfolio Mgmt. 61, 70 (Spring 2009) (suggesting that "the growing size of the plan participant's contributions in later years calls for aggressive asset allocation—quite the opposite of the strategy currently followed by lifecycle asset allocation funds"); Joint Hearing Transcript, *supra* note 12, at 103 (testimony of Seth Masters, Chief Investment Officer for Blend Strategies and Defined Contributions, AllianceBernstein) (stating that the objective of target date funds should not be to minimize risk and volatility nearing retirement, but rather to minimize the risk that participants will run out of money in retirement).

[31] *See* Joint Hearing Transcript, *supra* note 12.

[32] *See, e.g.,* statement of Karrie McMillan, General Counsel, Investment Company Institute, at Target Date Fund Joint Hearing (June 18, 2009) ("McMillan statement"), available at *http://www.dol.gov/ebsa/pdf/ICI061809.pdf,* at 6–7 (stating that the expected retirement date that is used in target date fund names is a point in time to which investors easily can relate).

[33] *See, e.g.,* Joint Hearing Transcript, *supra* note 12, at 65 (testimony of Marilyn Capelli-Dimitroff, Chair, Certified Financial Planner Board of Standards, Inc.) (stating that target date funds may be "fundamentally misleading" to investors because they can be managed in ways that are inconsistent with reasonable expectations created by the names).

[34] *See id.* at 87 (testimony of David Certner, Legislative Counselor and Legislative Policy Director, AARP) (hypothesizing that investors who were looking at 2010 target date funds were "thinking something much more conservative than maybe the theoretical notions of what the payouts are going to be over a longer lifetime period").

[35] *See id.* at 272 (testimony of Ed Moore, President, Edelman Financial Services) (asserting that the practice of funds referring to themselves by year is misleading because each fund is permitted to create its own asset allocation in the absence of industry standards regarding portfolio management and construction).

[36] *Id.* at 153 (testimony of Mark Wayne, National Association of Independent Retirement Plan Advisors).

[37] *Id.* at 178 (testimony of Jodi DiCenzo, Behavioral Research Associates). A copy of the survey results is available at *http://www.sec.gov/comments/4-582/4582-1a.pdf.*

[38] *Id.*

risk, other investments, retirement and labor income, expected longevity, and savings rate. The investor is, in effect, relying on the fund manager's asset allocation model, which may or may not be appropriate for the particular investor. The model's assumptions could be inappropriate for an investor either from the outset or as a result of a change in economic or other circumstances, such as job loss, unexpected expenditures that lead to decreased contributions, or serious illness affecting life expectancy.

As a first step to address potential investor misunderstanding of target date funds, the Commission recently posted on its investor education Web site a brochure explaining target date funds and matters that an investor should consider before investing in a target date fund.[39] Today, we are proposing to take another step to address the concerns that have been raised. We are proposing amendments to rule 482 under the Securities Act and rule 34b–1 under the Investment Company Act that, if adopted, would require a target date fund that includes the target date in its name to disclose the fund's asset allocation at the target date immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in marketing materials. We are also proposing amendments to rule 482 and rule 34b–1 that, if adopted, would require enhanced disclosure in marketing materials for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund. Finally, we are proposing amendments to rule 156 under the Securities Act that, if adopted, would provide additional guidance regarding statements in marketing materials for target date funds and other investment companies that could be misleading. The amendments that we are proposing in this release are intended to address the concerns that have been raised regarding the potential for investor misunderstanding to arise from target date fund names and marketing materials.

II. Discussion

A. Content Requirements for Target Date Fund Marketing Materials

We are proposing to amend our rules governing investment company marketing materials to address concerns regarding target date fund names and information presented in target date fund marketing materials. To address concerns that a target date fund's name may contribute to investor misunderstanding about the fund, we are proposing to require marketing materials for a target date fund that includes the target date in its name to disclose, together with the first use of the fund's name, the asset allocation of the fund at the target date.

We are also proposing to require enhanced disclosures to address concerns regarding the degree to which the marketing materials provided to 401(k) plan participants and other investors in target date funds may have contributed to a lack of understanding by investors of those funds and their associated strategies and risks. First, we are proposing amendments that would require target date fund marketing materials that are in print or delivered through an electronic medium to include a table, chart, or graph depicting the fund's glide path, together with a statement that, among other things, would highlight the fund's asset allocation at the landing point. Radio and television advertisements would be required to disclose the fund's asset allocation at the landing point. Second, we are proposing amendments that would require a statement that a target date fund should not be selected based solely on age or retirement date, that a target date fund is not a guaranteed investment, and that a target date fund's stated asset allocations may be subject to change. These enhanced disclosure requirements would apply to all target date funds, including those that do not include a date in their names, except that the landing point disclosures for radio and television advertisements would apply only to target date funds that include a date in their names.

1. Background and Scope of Proposed Amendments

Rule 482 under the Securities Act permits investment companies to advertise information prior to delivery of a statutory prospectus.[40] Rule 482 advertisements are "prospectuses" under Section 10(b) of the Securities Act.[41] As a result, a rule 482 advertisement need not be preceded or accompanied by a statutory prospectus.[42] Rule 34b–1 under the Investment Company Act prescribes the requirements for supplemental sales literature (*i.e.,* sales literature that is preceded or accompanied by the statutory prospectus).[43] We are proposing to amend rules 482 and 34b–1 to require enhanced disclosures to be made in target date fund marketing materials, whether or not those materials are preceded or accompanied by a fund's statutory prospectus.[44]

We are proposing that the amendments apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds.[45] Under the proposal, whether advertisements or supplemental sales literature place a more than insubstantial focus on one or more target date funds would depend on the particular facts and circumstances. Our intention in proposing the "more than insubstantial focus" test is to cover a broad range of materials. Materials that relate exclusively to one or more target date funds would be covered. Some materials that cover a broad range of funds, such as a bound volume of fact sheets that include target date funds or a Web site that includes Web pages for target date funds, also would be covered because they include information about

[39] *See Investor Bulletin: Retirement Funds* (May 6, 2010), available at *http://www.sec.gov/investor/alerts/tdf.htm* and *http://investor.gov/investor-bulletin-target-date-retirement-funds/?preview=true&preview_id=1154&preview_nonce=908a042f2f/*. This brochure is also posted on the Department of Labor's Web site and is available at *http://www.dol.gov/ebsa/pdf/TDFInvestorBulletin.pdf*.

[40] "Statutory prospectus" refers to the prospectus required by Section 10(a) of the Securities Act [15 U.S.C. 77j(a)]. In 2009, the Commission adopted rule amendments that, for mutual fund securities, permit certain statutory prospectus delivery obligations under the Securities Act to be satisfied by sending or giving key information in the form of a summary prospectus. *See* Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] (amending rule 498 under the Securities Act).

[41] 15 U.S.C. 77j(b).

[42] Under the Securities Act, the term "prospectus" generally is defined broadly to include any communication that offers a security for sale. *See* Section 2(a)(10) of the Securities Act [15 U.S.C. 77b(a)(10)]. Section 5(b)(1) of the Securities Act [15 U.S.C. 77e(b)(1)] makes it unlawful to use interstate commerce to transmit any prospectus relating to a security with respect to which a registration statement has been filed unless the prospectus meets the requirements of Section 10 of the Securities Act [15 U.S.C. 77j]. Because a rule 482 advertisement is a prospectus under Section 10(b), a rule 482 advertisement need not be preceded or accompanied by a statutory prospectus to satisfy the requirements of Section 5(b)(1).

[43] 17 CFR 270.34b–1. Under Section 2(a)(10)(a) of the Securities Act [15 U.S.C. 77b(a)(10)(a)], a communication sent or given after the effective date of the registration statement is not deemed a "prospectus" if it is proved that prior to or at the same time with such communication a statutory prospectus was sent or given to the person to whom the communication was made.

[44] The proposed amendments would apply to any investment company registered under Section 8 of the Investment Company Act [15 U.S.C. 80a–8] or separate series of a registered investment company that meets the proposed definition of target date fund.

[45] Proposed rules 482(b)(5)(ii), (iii), (iv), and (v); proposed rule 34b–1(c).

target date funds that is more than insubstantial. We do not, however, intend to cover materials that may not be primarily focused on marketing target date funds to investors (*e.g.,* a complete list of each fund within a fund complex, together with its performance), but that are nonetheless considered advertisements or supplemental sales literature under rules 482 and 34b–1.

For purposes of the proposed amendments, a "target date fund" would be defined as an investment company that has an investment objective or strategy of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures that changes over time based on an investor's age, target retirement date, or life expectancy.[46] This definition is intended to encompass target date funds that are marketed as retirement savings vehicles and that have given rise to the concerns described in this release.

The proposed definition is intended to ensure that the proposed amendments would apply to all funds that hold themselves out to investors as target date funds, including those that qualify under the Department of Labor's QDIA regulations. The proposed definition is similar to the description of a target date fund provided in the Department of Labor's QDIA regulations.[47] However, we are not proposing to apply certain eligibility criteria of a QDIA, namely, that a target date fund apply generally accepted investment theories, be diversified so as to minimize the risk of large losses, and change its asset allocations and associated risk levels over time with the objective of becoming more conservative with increasing age. Because we believe that investors in any fund that holds itself out as a target date fund would benefit from the disclosures that we are proposing, regardless of whether the fund is eligible for QDIA status, the proposed definition is not limited only to those funds that meet the more restricted criteria required for QDIA status and the resulting liability protection for plan sponsors. In addition, unlike the Department of Labor's description, the proposed definition refers to a fund's investment objective or strategy, rather than how the fund is "designed." While we believe that these two concepts generally are equivalent, we are proposing that the definition refer to the fund's "investment objective or strategy" because funds are required to disclose their investment objectives and strategies in their statutory prospectuses.[48]

We request comment on the scope of the proposed amendments and, in particular, on the following issues:

- Does the proposed definition of "target date fund" cover the types of funds that should be subject to the proposal, or should we modify the definition in any way? The proposed definition requires that a target date fund have both equity and fixed income exposures. Is this condition too restrictive? For example, could a fund market itself as a target date fund, yet not include equity exposure and/or fixed income exposure, and therefore not be subject to the proposed amendments? Would the proposed definition cover types of funds other than target date funds that are designed to meet retirement goals? If so, is this appropriate or should the definition be modified? Should our proposal cover any fund with a date in its name?
- We are proposing that the amendments apply to marketing materials that place a more than insubstantial focus on one or more target date funds. Is this limitation appropriate, or should any or all of the proposed amendments apply to all marketing materials that include any reference to a target date fund? Should specific types of materials be exempted from the rule? If so, how should this exemption be defined? Is the "more than insubstantial focus" standard sufficiently clear in this context or should it be modified? Is there an alternative standard that would satisfy the Commission's objectives and be easier to apply? Should the Commission provide further guidance on facts and circumstances that would cause marketing materials to be considered to place a more than insubstantial focus on one or more target date funds? If so, what should this guidance be?

2. Use of Target Dates in Fund Names

We are proposing to require a target date fund that includes the target date in its name to disclose, together with the first use of the fund's name, the asset allocation of the fund at the target date.[49] This proposed requirement would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. This proposal is intended to convey information about the allocation of the fund's assets at the target date and reduce the potential for names that include a target date to contribute to investor misunderstanding of target date funds. For example, if a target date fund remains significantly invested in equity securities at the target date, the proposed disclosure would help to reduce or eliminate incorrect investor expectations that the fund's assets will be invested in a more conservative manner at that time.

The proposal would amend rule 482 under the Securities Act and rule 34b–1 under the Investment Company Act to require that an advertisement or supplemental sales literature that places a more than insubstantial focus on one or more target date funds, and that uses the name of a target date fund that includes a date (including a year), must disclose the percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) as follows: (1) An advertisement, or supplemental sales literature, that is submitted for publication or use prior to the date that is included in the name would be required to disclose the target date fund's intended asset allocation at the date that is included in the name and must clearly indicate that the percentage allocations are as of the date in the name; and (2) an advertisement, or supplemental sales literature, that is submitted for publication or use on or after the date that is included in the name would be required to disclose the target date fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the advertisement for publication or use and must clearly indicate that the percentage allocations are as of that date.[50]

As described in the preceding paragraph, for target date fund advertisements and supplemental sales literature that are submitted for publication or use on or after the target date, we are proposing to require disclosure of the target date fund's current asset allocation, rather than the fund's intended target date asset allocation. We believe that after the

[46] Proposed rule 482(b)(5)(i)(A); proposed rule 34b–1(c).

[47] *See* 29 CFR 2550.404c–5(e)(4)(i) (defining as a permissible QDIA "an investment fund product or model portfolio that applies generally accepted investment theories, is diversified so as to minimize the risk of large losses and that is designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures based on the participant's age, target retirement date (such as normal retirement age under the plan) or life expectancy. Such products and portfolios change their asset allocations and associated risk levels over time with the objective of becoming more conservative (*i.e.,* decreasing risk of losses) with increasing age.").

[48] *See* Items 2, 4, and 9 of Form N–1A.

[49] Based on Commission staff analysis of data obtained from Morningstar Direct, the Commission staff believes that all funds operating as target date funds currently contain a date in their names.

[50] Proposed rule 482(b)(5)(iii); proposed rule 34b–1(c).

target date has been reached, the fund's asset allocation at the target date is of limited relevance to investors and may be confusing or misleading if disclosed prominently with the name. However, we believe that disclosure of the current asset allocation is important to prevent investors from wrongly concluding that the fund is invested more conservatively than is the case. The rule, as proposed, would require disclosure of the actual current asset allocation when the target date that is included in the name, which may be a year, has been reached. As a result, the rule would require the current allocation to be used beginning on January 1 of the target date year even if the fund reaches its target date allocation later in the year. We believe that this is appropriate because investors who have reached their retirement year may retire at any point in that year, so that the current allocation may be more relevant than the intended allocation later in the year.

Under the proposal, the required disclosure regarding the asset allocation must appear immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name. Furthermore, the disclosure would be required to be presented in a manner reasonably calculated to draw investor attention to the information.[51]

Our proposal would amend rules 482 and 34b–1 to address the use of target date fund names that include the target date. We emphasize that investors should not rely on a fund's name as the sole source of information about the fund's investments and risks. A fund's name, like any other single item of information about the fund, cannot provide comprehensive information about the fund. In the case of target date funds, the fund's name provides no information about the asset allocation or portfolio composition. However, target date fund names are designed to be significant to investors when selecting a fund.[52] For that reason, the Commission is proposing amendments to rules 482 and 34b–1 that are intended to address the potential of target date fund names to confuse or mislead investors regarding the allocation of a fund's assets at its target date.

Under the proposal, a fund's intended asset allocation at the target date (or, for periods on and after the target date, a fund's actual asset allocation as of the most recent calendar quarter) would, in essence, serve to alert investors to the existence of investment risk associated with the fund at and after the target date. In proposing the amendments, we do not intend to suggest that the asset allocation, by itself, is a complete guide to the investment strategies or risks of a fund at and after the target date. Rather, the asset allocation may help counterbalance any misimpression that a fund is necessarily conservatively managed at the target date or thereafter or that all funds with the same target date are similarly managed. There could be other ways of pursuing this goal that could result in more concise disclosure and perhaps simpler categorizations and computations by funds. These could include requiring marketing materials to disclose some, but not all, of a target date fund's asset allocation, such as the equity allocation,[53] the cash and cash equivalent allocation,[54] or the non-cash allocation.[55] We have proposed requiring disclosure of the entire asset allocation because we believe that this disclosure may convey better information about investment risk than alternatives that disclose only part of the asset allocation, but we request comment on the alternatives.

The proposal does not prescribe either the asset classes to be used in disclosing a target date fund's asset allocation or the methodology for calculating the percentage allocations. Instead, each target date fund will determine which asset classes to present and the methodology for calculating the percentage allocations. The purpose of the proposal is to address the potential of target date fund names to confuse or mislead investors by conveying some information about the fund's asset allocation at and after the target date. While we recognize that it is useful for investors to be able to compare target date funds and request comment on what additional requirements would best facilitate this, our goal in this proposal is not to prescribe a single metric that can be used by investors to compare target date funds and select among them. For this reason, and because asset allocation models are subject to continuing refinement and development (such as the introduction of exposure to additional asset classes in order to increase diversification), at this time we are not proposing to prescribe either the specific asset classes to be used in disclosing the asset allocation or the specific methodology for calculating the percentage allocations. However, we request comment on whether such requirements would be useful to investors. We note that current target date fund prospectuses typically use asset classes such as "equity," "fixed income," and "cash and cash equivalents."[56] If the rule is adopted as proposed, we would expect that many target date funds would use these asset classes in making the required disclosure.

Although we are not proposing required categories or calculation methodologies, we emphasize that, as with any disclosure contained in advertisements and supplemental sales literature, the disclosure of the asset allocation would be subject to the antifraud provisions of the federal securities laws.[57] Compliance with the specific requirements of rule 482 and rule 34b–1 does not relieve an investment company of any liability under the antifraud provisions of the federal securities laws.[58] Moreover, rule 482 advertisements are also subject to Section 12(a)(2) of the Securities Act, which imposes liability for materially false or misleading statements in a

[51] *Id.* The requirement that the target date asset allocation be presented in a manner reasonably calculated to draw investor attention to the information is the same presentation requirement that applies to certain legends required in advertisements and supplemental sales literature delivered through an electronic medium. *See* rule 482(b)(5); rule 34b–1. We do not believe that the presentation requirements set forth in current rule 482(b)(5) for certain legends required in print advertisements and supplemental sales literature (*e.g.,* type size and style) would be appropriate for the proposed target date asset allocation disclosure. For example, if the name of the target date fund in an advertisement is presented in a very large type size, but the major portion of the advertisement is presented in significantly smaller type size, rule 482(b)(5) would permit the use of the smaller type size, which may not be sufficient to attract investor attention.

[52] *See, e.g.,* McMillan statement, *supra* note 32, at 6–7 (stating that the expected retirement date that is used in target date fund names is a point in time to which investors easily can relate).

[53] Although the equity allocation may not be a precise proxy for investment risk, it has been observed that past performance for 2010 target date funds has generally, but not universally, followed the equity allocations. *See* Josh Charlson *et al., Morningstar Target-Date Series Research Paper: 2010 Industry Survey,* at 9 (Mar. 15, 2010).

[54] By including only the cash and cash equivalent allocation, investors would be alerted to the percentage allocation of the investments with the least investment risk.

[55] Inclusion of the non-cash allocation would alert investors to the percentage allocation of investments that have more investment risk than cash and cash equivalents.

[56] Based on Commission staff analysis of registration statements filed with the Commission.

[57] *See, e.g.,* Section 17(a) of the Securities Act [15 U.S.C. 77q]; Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78j(b)]; Section 34(b) of the Investment Company Act [15 U.S.C. 80a–33].

[58] *See* Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760, 57762 (Oct. 6, 2003)] (emphasizing that advertisements under rule 482 and supplemental sales literature under rule 34b–1 are subject to the antifraud provisions of the federal securities laws).

prospectus or oral communication, subject to a reasonable care defense.[59]

The proposal requires disclosure of the asset allocation among "types of investments." While many target date funds invest indirectly in underlying asset classes by investing in other investment companies,[60] we would not consider it sufficient for a target date fund to disclose percentage allocations to investments in types of investment companies. Instead, by "types of investments," we mean the underlying asset classes in which the target date fund invests, whether directly or through other funds. For example, a target date fund that is subject to the proposed rule would be required to disclose its percentage allocation to equity securities, rather than to equity funds. We believe this approach would provide better information because investment companies are not required to be fully invested in one type of investment.[61]

Target date fund prospectuses today typically disclose specific percentage allocations to various asset classes at the target date. While fund prospectuses sometimes note that there may be small variations from those percentages, they do not typically disclose broad ranges of potential percentage allocations.[62] If the proposal were adopted, we would not view it as inconsistent with the rule for a fund to disclose a range of potential percentages that is consistent with its prospectus disclosures. We would not expect the ranges disclosed to be broad ranges of percentage allocations, nor would we expect ranges to replace the specific percentage allocations disclosed in the prospectus. Moreover, it would be inconsistent with the rule and potentially misleading for a fund to include a range, with the intent of investing only at one end of the range. In addition, representations about ranges of potential percentage allocations may be misleading if funds deviate materially from the stated ranges.

We request comment on the proposed required disclosure of a target date fund's target date (or current) asset allocation, and, in particular, on the following issues:

- The proposed requirement to disclose the target date (or current) asset allocation together with the first use of a target date fund's name would apply only if the fund's name includes a date. Should the proposed requirement apply to all target date funds, including those that do not include a date as part of their name?
- For target date fund marketing materials that are submitted for publication or use prior to the target date, we are proposing to require disclosure of the fund's intended asset allocation at the target date. For materials that are submitted for publication or use on or after the target date, we are proposing to require disclosure of the fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the materials. Is this appropriate? Should the proposed requirements apply only to marketing materials that are submitted for publication or use prior to the target date? Should marketing materials that are submitted for publication or use on or after the target date provide disclosure of the fund's asset allocation as of the target date, rather than the fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the materials?
- Should we require disclosure of the current allocation beginning on January 1 of the target date year, or should we instead require disclosure of the intended target date allocation until the particular date within the target date year upon which the target date allocation is reached? Which of these approaches would be more helpful and less confusing to investors? Which of these approaches would be easier for funds to implement? Is there a different approach that we should consider in the fund's target date year?
- The proposal would require disclosure of the target date (or current) asset allocation of the fund to appear immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name. Is this sufficient? For example, should this information be disclosed each time the fund's name appears or is used in marketing materials? Should this information be disclosed where the fund's name is presented most prominently (*e.g.,* where the fund's name is written in the largest font size)? Should this information be disclosed in a location other than immediately adjacent to or immediately following the fund's name?
- Under the proposal, the fund's target date (or current) asset allocation would be required to be presented in a manner reasonably calculated to draw investor attention to the information. Are there other presentation alternatives that may better highlight this information for investors (*e.g.,* requirements as to font size, type style, separate box, etc.)? Are any or all of the presentation requirements that currently apply to certain legends in written advertisements under rule 482(b)(5) more appropriate?
- Should we prescribe the specific format for the target date (or current) asset allocation disclosure in order to foster more effective communication? For example, should we require a table, chart, or graph?
- Should marketing materials for a target date fund that includes a date in its name, as proposed, be required to include the fund's allocation across all types of investments, or should target date fund marketing materials be required to disclose some, but not all, of the fund's asset allocation, such as the equity allocation, the cash and cash equivalent allocation, or the non-cash allocation? Would any of these approaches be more effective than the proposal at conveying investment risk at or after the target date? Alternatively, would any of the approaches confuse or mislead investors by conveying only a partial allocation or cause investors to rely excessively on information about their exposure to a particular asset class? Are any of these approaches and/or the proposal easier for funds to implement, for example, because the necessary asset categorizations or computations would be simpler? Are there allocations for other categories or sub-categories of investments that should be required to be disclosed in target date fund marketing materials?
- How effective is disclosure of the target date (or current) asset allocation in conveying level of investment risk and/or other information to investors and in preventing investors from being confused or misled? Do investors need other information along with allocation percentages in order to understand the significance of those percentages? For example, do they need information about the long-term performance, risks, and volatility of different asset classes? If so, how should this be conveyed (*e.g.,* in marketing materials, prospectuses, educational materials, or through other means)? Should we require this

[59] *See id.* (stating that when "we initially proposed rule 482 in 1977, we indicated that rule 482 advertisements would be subject to [S]ection 12(a)(2) of the Securities Act and the antifraud provisions of the federal securities laws" and noting that "[s]ince then we have reiterated that compliance with the 'four corners' of rule 482 does not alter the fact that funds * * * are subject to the antifraud provisions of the federal securities laws with respect to fund advertisements").

[60] Based on Commission staff analysis of registration statements filed with the Commission.

[61] For example, a fund whose name suggests that it focuses its investments in equity securities must have a policy to invest, under normal circumstances, at least 80% of its net assets, plus the amount of any borrowing for investment purposes, in equity securities. Rule 35d–1(a)(2)(i) under the Investment Company Act [17 CFR 270.35d–1(a)(2)(i)].

[62] Based on Commission staff review of prospectuses filed with the Commission.

information to be provided by target date funds to investors?

• The proposal would require that a target date fund's target date (or current) asset allocation be disclosed together with the first use of the fund's name in marketing materials. Furthermore, the disclosure would be required to be presented in a manner that is reasonably calculated to draw investor attention to the information. What effect might this disclosure have on investor behavior? Is the proposed disclosure of a target date fund's asset allocation likely to be an effective way to reduce investor misunderstanding or confusion with respect to the fund's name? Would the proposed disclosure reduce investor overreliance on the fund's name? Will it improve investor understanding of a fund's investment strategy, portfolio construction, risk factors, and overall suitability as an investment? To what extent, if any, might the prominent disclosure of the asset allocation have the effect of conferring special significance on the information? Would the prominent disclosure of the asset allocation place appropriate significance on the information? Would investors instead place undue emphasis on a fund's target date (or current) asset allocation because of the prominence of the disclosure? How would investors' consideration of the target date (or current) asset allocation disclosure be affected by the proposed required disclosure of the glide path and landing point information described in Part II.A.3 below? Would this additional disclosure serve to prevent undue emphasis by investors on the target date (or current) asset allocation disclosure?

• Would our proposal encourage or discourage investors from seeking further information about a target date fund's glide path or other relevant information? For example, would investors examine the fund's entire glide path, which would also be required to be disclosed prominently in marketing materials under our proposals, as described in Part II.A.3 below? Would investors instead overemphasize the fund's target date or current allocation? Would investors rely more heavily on a target date fund's marketing materials if the target date or current asset allocation was included, and if so, would they be less likely to seek more information about the fund? To what extent might the special emphasis on asset allocation at the target date cause investors to prioritize investment risk at a particular moment in time over longevity risk, inflation risk, or other risks? Is additional disclosure required to focus attention on inflation and longevity risks? Do target date funds' current advertising practices, coupled with the fact that our advertising rules permit the inclusion of information about longevity and inflation risks, suggest that the Commission needs to require disclosure with respect to these risks, or would these risks be adequately addressed in fund marketing materials without the need for additional regulation? Is there any evidence that target date funds have failed, or are likely to fail, to provide adequate information about inflation and longevity risks absent regulation by the Commission?

• Is there additional disclosure, or a disclaimer, that could be provided in connection with the required asset allocation disclosure that could reduce the likelihood that investors might focus too much on asset allocation at the target date? For example, should the disclosure concerning a fund's target date (or current) asset allocation be accompanied by a cross-reference to the disclosure of risks and considerations relating to target date funds discussed in Part II.A.4 below? Would such a cross-reference reduce the possibility that an investor might overemphasize the target date asset allocation disclosure? What are the potential consequences for investors if they were to place too much emphasis on investment risk at the target date without giving appropriate consideration to longevity, inflation, or other risks? Is additional disclosure necessary to aid investors' evaluation of longevity, inflation, or other risks? If so, what disclosure should be required? Would the proposed asset allocation disclosure cause investors to seek professional advice? We would be particularly interested in any empirical data on investor behavior that would address these questions, including empirical data on how fund investors make investment decisions and the role of fund names in those decisions.

• To what extent might target date fund managers take steps in response to the proposed required disclosure of the target date (or current) asset allocation? For example, might target date fund managers change asset allocations at the target date as a result of the proposed required disclosure and its potential impact on investor behavior? Would fund managers provide additional disclosure about how to evaluate the asset allocation in order to address any possibility that investors may overemphasize the target date asset allocation because of the prominence of the disclosure? Would a fund manager's investment strategy, portfolio construction, selection of asset categories disclosed, and marketing change as a result of the proposal's required disclosure of target date (or current) asset allocation? For example, might fund managers compose the fund's fixed-income allocation differently to take on additional investment risk, in order to seek higher returns, while showing a lower equity allocation at or after the target date?

• Should the proposal be modified in any manner to address any impact that it may have on fund investor or manager behavior?

• Should we specify the particular categories of investments for which allocations must be shown and how these categories should be defined? If so, what should they be (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents)? Should these broad asset classes be further subdivided, such as based upon maturity and credit quality for fixed income securities, or capitalization and market type (*e.g.,* domestic, foreign, and emerging market) for equity securities? How should the use of alternative investment strategies (*e.g.,* hedging strategies) be reflected in the particular categories of investments for which allocations must be shown? Should we require funds to expressly disclose the use of leverage arising from borrowings or derivatives in their asset allocations? If so, how? Would specifying the particular categories of investments for which allocations must be shown result in greater comparability among target date funds?

• Should we attempt to enhance comparability among target date funds by prescribing a methodology for calculating a fund's percentage allocations at and after the target date? Are investors likely to attempt to compare target date (or current) asset allocations among target date funds and, if so, will they be able to make appropriate comparisons or will they be confused or misled if funds have used different methodologies? If we were to adopt a methodology, should the asset allocation percentages be calculated against a particular base (*e.g.,* net assets, net assets plus the amount of borrowings for investment purposes, total assets, or total investments)? Depending on the base selected, could situations arise where a fund's aggregate asset allocation exceeds 100%, such as in situations where the fund engages in borrowing or invests in derivatives that involve leverage? Would this confuse or mislead investors? To what extent do target date funds, or their underlying funds, engage in borrowing or invest in derivatives that involve leverage? Under the proposal, would the disclosed target date (or current) asset allocations for funds that do and do not use leverage

be meaningful, or would they have any potential to confuse or mislead investors? Are there methodologies that could accurately convey to investors differences in investment risk between a fund that uses leverage, either through borrowing or investing in derivative instruments, and a fund that does not use leverage?

• If we do not specify the particular categories of investments or prescribe a methodology for calculating a fund's percentage allocations, would target date fund managers select the categories and methodologies in a manner that results in a high degree of correlation between the fund's investment risk implied by its asset allocation and its actual investment risk, or might they select categories and methodologies that result in disclosed allocations that do not accurately reflect investment risk? Would the prominence of the disclosure in marketing materials affect managers' behavior in selecting categories and methodologies? Would the flexibility to choose categories of investments and the methodology for calculating percentage allocations result in presentations that are materially misleading?

• Other than prescribing categories of investments or the methodology for calculating percentage allocations, are there other means to enhance comparability among target date and current asset allocations? To what extent should we seek to enhance comparability among these disclosures?

• Would permitting target date funds to include a range to be allocated to each class limit the effectiveness of the proposed amendments? For example, are there ranges that would be so broad that they would render the information conveyed essentially meaningless? Would permitting any range be problematic, regardless of how broad or narrow? Would permitting ranges result in the potential for abuse? Should there be limitations on the size of the range (*e.g.,* 2%, 5%, or 10%) or should a range not be permitted?

• The proposal focuses on the asset allocation at the target date because the target date is included in the fund's name. Should target date fund marketing materials be required to include the asset allocation as of the landing point in close proximity to the fund name, either in lieu of, or in addition to, the asset allocation as of the target date? Should target date fund marketing materials submitted for publication or use prior to the target date be required to include the asset allocation as of a current date either in lieu of, or in addition to, the asset allocation as of the target date?

• Is it appropriate and feasible to require a target date fund that invests in other funds to disclose its asset allocation at or after the target date in terms of types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents)? Should we instead require a target date fund that invests in other funds to base its asset allocation on the types of funds in which it invests (*e.g.,* equity funds, fixed income funds, money market funds), either because this approach would provide better information to investors or would be simpler and more cost-effective for funds to implement? If so, how should funds be categorized? For example, in order to be characterized as an equity fund for this purpose, should a fund be required to invest 100% of its assets in equity securities or 80% or some other percentage? Would this methodology result in overstatement or understatement of a particular type of investment, and could it lead to an inaccurate depiction of a target date fund's asset allocations?

• To what extent do fund investors understand the significance of asset allocation, including the relationship between asset allocation and investment risk, inflation risk, and longevity risk? Are there alternative means of providing investors with important information regarding target date funds in lieu of, or in addition to, requiring disclosure of the target date (or current) asset allocation? For example, should target date fund marketing materials be required to disclose a risk rating based on a scale or index (*e.g.,* 1 through 5, with 1 being least risky) that could be compared to other target date funds? If so, how would such a scale or index be designed? Should the scale or index reflect only investment risk, or should it also take into account longevity and/or inflation risk?

• In addition to, or in lieu of, the proposed disclosure of the target date asset allocation, should there be additional disclosure immediately adjacent to a target date fund name indicating whether the glide path extends to the target date or through the life expectancy of the investor? If so, what would be the most effective way to concisely disclose such information? What are the ramifications to investor behavior of disclosing the date through which the glide path is managed?

• Should we require target date fund names, or disclosures immediately adjacent to those names, to provide more information to investors regarding a target date fund's landing point and/or asset allocations at the landing point? Should we, for example, require that any date used in the name of a target date fund be the landing point rather than the target date except in cases where the landing point and the target date are the same? What impact would this have? Would it, for example, make it easier for investors to compare target date funds and select an appropriate fund? Should we, instead, require narrative disclosure to accompany a target date fund name that indicates whether or not the fund reaches its most conservative allocation at the target date and, if not, when that point is reached?

• Are there additional, or different, amendments to rules 482 and 34b–1 or any other rules that would effectively address the concerns relating to target date fund names? Section 35(d) of the Investment Company Act prohibits a registered investment company from using a name that the Commission finds by rule to be materially deceptive or misleading.[63] In 2001, the Commission adopted rule 35d–1 under the Investment Company Act to address certain categories of names that are likely to mislead an investor about an investment company's investments and risks.[64] Should we require the target date asset allocation to be included as part of the fund's name, so that it would appear every time the name is used? Should we amend rule 35d–1 to prohibit the use of a date in target date fund names? Should we amend rule 35d–1 to only permit target date funds to use the landing point date in its name, rather than the target date? Should we require the target date asset allocation to appear adjacent to a fund's name in its statutory prospectus, summary prospectus, shareholder reports, or other required filings as well as in marketing materials?

3. Asset Allocation Table, Chart, or Graph and Landing Point Allocation

We are proposing amendments to rules 482 and 34b–1 to require that advertisements and supplemental sales literature that are in print or delivered through an electronic medium, and that place a more than insubstantial focus on one or more target date funds, include a prominent table, chart, or graph that clearly depicts the percentage allocations among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) over the entire life of the fund or funds at identified periodic intervals that are no longer than five

[63] 15 U.S.C. 80a–34(d).

[64] *See* Investment Company Act Release No. 24828 (Jan. 17, 2001) [66 FR 8509 (Feb. 1, 2001)], as corrected by Investment Company Act Release No. 24828A (Mar. 8, 2001) [66 FR 14828 (Mar. 14, 2001)].

years in duration.[65] The table, chart, or graph would also be required to clearly depict the percentage allocations among types of investments at the inception of the fund or funds, the target date, the landing point, and, in the case of an advertisement or supplemental sales literature that relates to a single target date fund, as of the most recent calendar quarter ended prior to the submission of the advertisement or supplemental sales literature for publication.[66] The table, chart, or graph requirement would apply to all target date funds, including those that do not have dates in their names.

The term "target date" is defined in the proposed amendments as any date, including a year, that is used in the name of a target date fund. If no date is used in the name, the "target date" is the date described in the fund's prospectus as the approximate date that an investor is expected to retire or cease purchasing shares of the fund.[67] We are proposing to define the term "landing point" as the first date, including a year, at which the asset allocation of a target date fund reaches its final asset allocation among types of investments.[68]

We are proposing periodic intervals of no longer than five years because the Commission staff has observed a number of presentations of target date fund glide paths in statutory prospectuses and marketing materials that use five-year intervals, and five-year intervals appear to be effective in conveying information about how the asset allocation changes over time. We considered other intervals, including longer intervals (such as ten years) and shorter intervals (such as one year). However, we are concerned that longer intervals may not provide enough information about how and when the asset allocation changes, while shorter intervals may produce a presentation that is cluttered and potentially confusing to investors.

The proposed table, chart, or graph requirement is intended to ensure that investors who receive target date fund marketing materials also receive basic information about the glide path. If marketing materials relate to a single target date fund, the table, chart, or graph must clearly depict the actual percentage allocations among types of investments from the inception of the fund through the most recent calendar quarter ended prior to the submission of the materials for publication and the future intended percentage allocations of the fund. This requirement is intended to ensure that marketing materials that are focused on a single target date fund provide information about the fund's historical and intended future asset allocations. In addition, the table, chart, or graph must identify the periodic intervals and the inception date, target date, landing point, and most recent calendar quarter end using specific dates. In the case of single fund marketing materials, we believe that the use of specific dates, rather than the number of years before or after retirement, may be easier for investors to understand. Examples of presentations that may be appropriate for a single target date fund include the following:

[65] Proposed rule 482(b)(5)(iv); proposed rule 34b–1(c).

[66] *Cf.* rule 482(d)(3)(ii) (requiring any quotation of average annual total return contained in an advertisement to be current to the most recent calendar quarter ended prior to submission of the advertisement for publication).

[67] Proposed rule 482(b)(5)(i)(B).

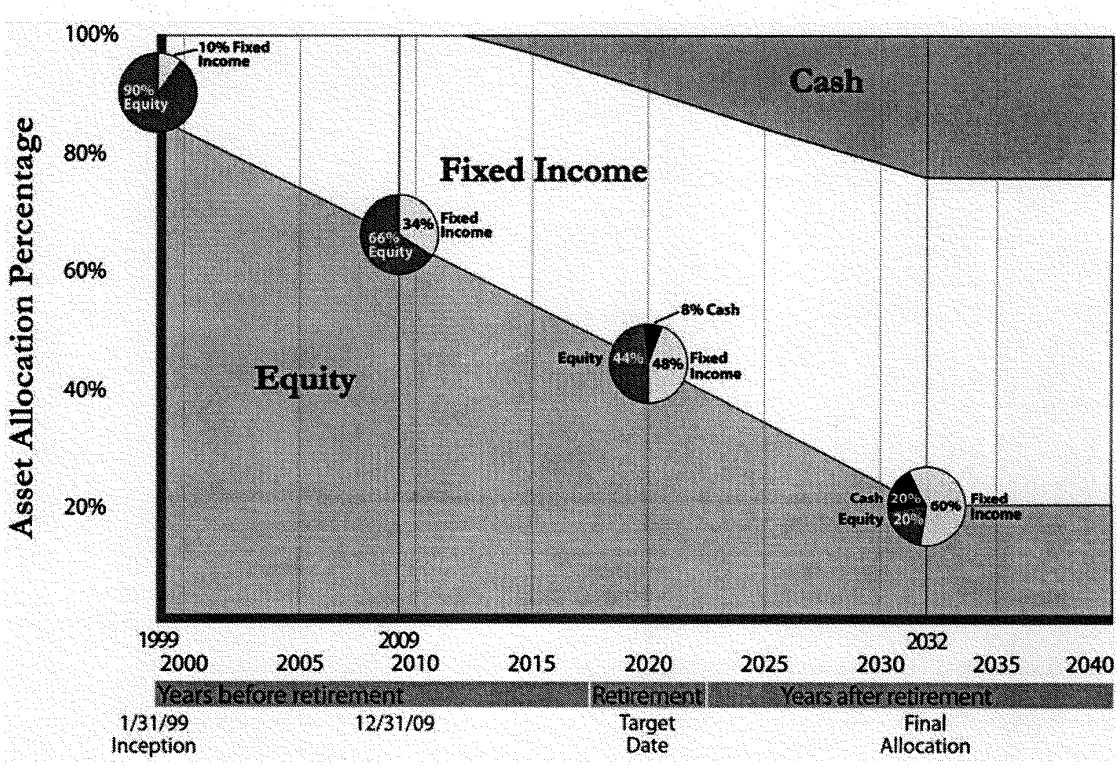
[68] Proposed rule 482(b)(5)(i)(C).

Example 1

Asset Allocation	Inception 1/31/99			12/31/09			Target Date			Final Allocation		
Equity	90%	84%	74%	66%	64%	54%	44%	34%	24%	20%	20%	20%
Fixed Income	10%	16%	26%	34%	36%	43%	48%	53%	58%	60%	60%	60%
Cash	0%	0%	0%	0%	0%	3%	8%	13%	18%	20%	20%	20%
	1999	2000	2005	2009	2010	2015	2020	2025	2030	2032	2035	2040

Years Before Retirement → Retirement — Years After Retirement →

Example 2



If marketing materials relate to multiple target date funds with different target dates that all have the same pattern of asset allocations, the proposal would permit the materials to include either separate presentations for each fund that meet the requirements described in the preceding paragraph or a single table, chart, or graph that clearly depicts the intended percentage allocations of the funds among types of investments and that identifies the periodic intervals and other required points using numbers of years before and after the target date. This would be the case, for example, when a fund family advertises all of its target date funds in a single advertisement, and the target date funds all share a common glide path.[69] We believe that this approach for advertisements focusing on multiple target date funds is appropriate because a generic table, chart, or graph illustrating the glide path for all of the funds may be able to effectively convey the asset allocation for each of the particular funds at various dates along the glide path. Examples of presentations of a generic table, chart, or graph that may be appropriate for a multiple fund advertisement are as follows:

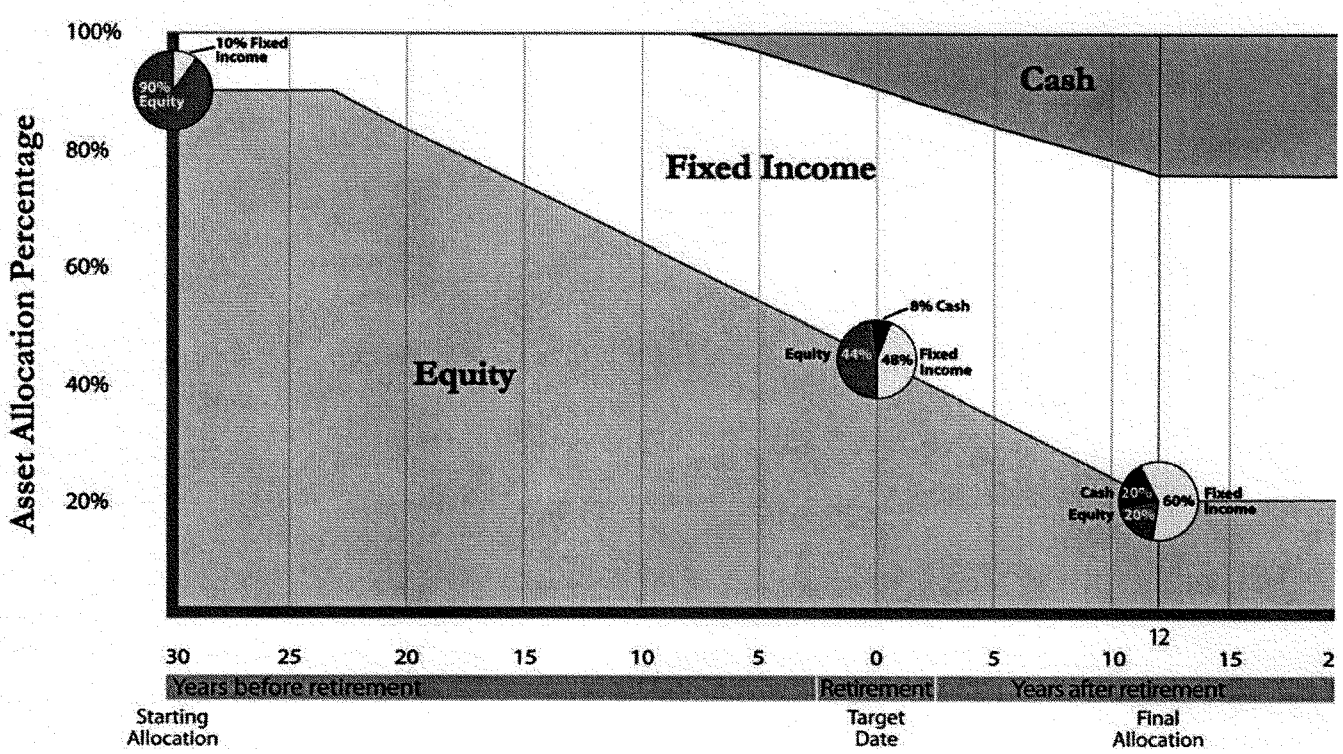
[69] For example, a fund family could have 2010, 2020, and 2030 target date funds. All three would share a common glide path, but the 2020 fund would reach each point on the glide path 10 years after the 2010 fund, and the 2030 fund would reach each point on the glide path 20 years after the 2010 fund.

Example 1

Asset Allocation	Starting Allocation						Target Date			Final Allocation		
Equity	90%	90%	84%	74%	64%	54%	44%	34%	24%	20%	20%	20%
Fixed Income	10%	10%	16%	26%	36%	43%	48%	53%	58%	60%	60%	60%
Cash	0%	0%	0%	0%	0%	3%	8%	13%	18%	20%	20%	20%
	30	25	20	15	10	5	0	5	10	12	15	20

Years Before Retirement → Retirement → Years After Retirement →

Example 2



If the proposal were adopted, a target date fund whose asset allocations may vary within a range (*e.g.,* target date allocations of 40%–50% equity securities, 40%–50% fixed income securities, 0%–10% cash and cash equivalents) should present the range in its table, chart, or graph. In the case of marketing materials that relate to a single target date fund, ranges, if applicable, should be shown for future periods, but could not be shown for past periods, because the fund would be required to show its actual allocations for past periods. As noted above, it would be inconsistent with the rule and potentially misleading for a target date fund to include ranges with the intent of investing only at one end of the ranges.[70]

We believe that it is important for target date funds to highlight certain key information about the glide path—that the asset allocation changes over time; that the asset allocation becomes fixed at the landing point, as well as the final allocation; and any discretion by the fund's adviser to modify the glide path shown. We believe that a target date fund's final asset allocation is important information for investors.[71] Investors need to consider whether a particular target date fund's final allocation, and the date that the final allocation is reached, are consistent with the investor's goals.

For these reasons, we are proposing to require that the proposed table, chart, or graph be immediately preceded by a statement that helps explain the table, chart, or graph to investors in the case of advertisements and supplemental sales literature that (i) relate to a single target date fund and are submitted for publication prior to the landing point; or (ii) relate to multiple target date funds with different target dates that all have the same pattern of asset allocations. The statement would be required to include the following information: (i) The asset allocation changes over time; (ii) the landing point (or in the case of a table, chart, or graph for multiple target date funds, the number of years after the target date at which the landing point will be reached); an explanation that the asset allocation becomes fixed at the landing

[70] *See* note 62 and discussion at accompanying paragraph.

[71] *See, e.g.,* Joint Hearing Transcript, *supra* note 12, at 154 (testimony of Mark Wayne, National Association of Independent Retirement Plan Advisors) (discussing disclosure of the landing point for target date fund glide paths).

point; and the intended percentage allocations among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the landing point; and (iii) whether, and the extent to which, the intended percentage allocations among types of investments may be modified without a shareholder vote. We are not proposing any particular presentation requirements for the statement because we propose to require the statement to immediately precede the table, chart, or graph, which must itself be prominent. For that reason, we believe that more specific presentation requirements, such as font size, are unnecessary.

We are not proposing to require the explanatory statement in advertisements and supplemental sales literature that relate to a single target date fund that are submitted for publication on or after the landing point. Because the landing point will have already been reached, the disclosure that the asset allocation changes over time and the landing point disclosures will be of limited, if any, relevance to investors. However, the marketing materials would nonetheless be required to include a statement that advises an investor whether, and the extent to which, the intended percentage allocations among types of investments may be modified without a shareholder vote.[72]

We are not proposing to apply the table, chart, or graph requirement or a similar requirement to radio or television advertisements because it appears to be difficult to convey this information effectively in those media and could result in the imposition of very substantial costs for additional advertising time. We believe, however, that investors who are attempting to determine whether a target date fund is an appropriate investment would consider the disclosure of the landing point and the fund's asset allocation at the landing point to be important information. Therefore, we are proposing to amend rules 482 and 34b–1 to require that a radio or television advertisement that is submitted for use prior to the landing point and that places a more than insubstantial focus on one or more target date funds, and that uses the name of a target date fund that includes a date (including a year), must disclose the landing point, an explanation that the allocation of the fund becomes fixed at the landing point, and the intended percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the landing point.[73] We are limiting this disclosure to advertisements that relate to funds whose name includes a date because those advertisements would be required to contain the target date allocation,[74] and we are concerned that investors understand that the target date allocation is not the final allocation. The proposed disclosure would be required to be given emphasis equal to that used in the major portion of the advertisement.[75]

We are not proposing to require the landing point disclosures in radio and television advertisements that are submitted for use at and after the landing point. The reason is that those advertisements would be required to contain the fund's actual asset allocation as of the most recent calendar quarter, which should be the same as, or more relevant than, the fund's past asset allocation at the landing point.[76]

We request comment on the proposed asset allocation table, chart, or graph and related narrative disclosure and, in particular, on the following:

- Is the proposed definition of "target date" appropriate? Should it be modified in any way? Do all target date funds use a target date in their names or prospectuses? Do any target date funds use an alternative to a specific target date in their names or prospectuses? For example, do some target date funds provide a range of years (*e.g.,* 2010–2014)? If so, should we modify the definition of "target date" to reflect this?
- As proposed, the amendments, with the exception of the amendments relating to radio and television advertisements that use the name of a target date fund that includes a date, would apply to all target date funds. Should any or all of the proposed amendments apply only to target date funds that include a date in their name? Should radio and television advertisements for target date funds be required to include the target date and/or landing point asset allocations, whether or not the fund name includes a date?
- Would the proposed table, chart, or graph requirement be helpful to investors? Should we prescribe the specific format of the table, chart, or graph in order to enhance comparability for investors? For example, would one form (*e.g.,* graph) be more easily understandable by investors than another (*e.g.,* table)? Should we try to enhance comparability among target date funds by prescribing a methodology for calculating a fund's percentage allocations? Should we specify the particular types of investments for which allocations must be shown in the table, chart, or graph and how these types should be defined?[77]
- Should the table, chart, or graph be required to be prominent? Are there other presentation requirements that would be more appropriate?
- Should the table, chart, or graph, as proposed, be required in supplemental sales literature that is preceded or accompanied by a statutory prospectus, or is it unnecessary in those instances because sufficient information is contained in the prospectus?
- Are the differences in requirements for marketing materials that relate to a single target date fund and multiple target date funds appropriate, or should they be modified? Should the table, chart, or graph for a single target date fund be required to show the fund's actual historical asset allocations? Will the use of actual historical asset allocations be helpful or confusing to investors in cases where a fund has changed from its previous glide path? Should the table, chart, or graph for a single target date fund instead be permitted to show the current glide path that is common to all target date funds in a fund family? Would it be misleading for marketing materials for a single target date fund to omit the fund's historical asset allocations?
- Should the table, chart, or graph for a single target date fund be required to clearly depict the current asset allocation? Should we, as proposed, require the asset allocation as of the most recent calendar quarter ended prior to the submission of the marketing materials for publication? Are there any circumstances where we should permit the table, chart, or graph for a single target date fund to exclude asset allocations for past periods? If we

[72] Proposed rule 482(b)(5)(ii)(C); proposed rule 34b–1(c).

[73] Proposed rule 482(b)(5)(v). As discussed in Part II.A.4 *infra,* radio and television advertisements that place a more than insubstantial focus on one or more target date funds must also include a statement that advises an investor whether, and the extent to which, the intended percentage allocation of the target date fund among types of investments may be modified without a shareholder vote. *See* proposed rule 482(b)(5)(ii)(C).

[74] *See* proposed rule 482(b)(5)(iii).

[75] *See* proposed rule 482(b)(6); proposed rule 34b–1(c). This is the same requirement that currently applies to certain legend-type disclosures under rule 482(b)(5), which we propose to renumber as rule 482(b)(6).

[76] *See* proposed rule 482(b)(5)(iii).

[77] We have raised a number of questions on methodology and types of investments in our request for comment in Part II.A.2 regarding disclosure of asset allocation at the target date in proximity to fund names. Commenters are invited to address those questions on methodology and types of investments with respect to the table, chart, or graph as well.

permit a single target date fund to exclude past asset allocations in any circumstances, should we nonetheless prohibit a fund from excluding past asset allocations if the marketing materials contain past performance information for the fund? Are past asset allocations helpful to allow an investor to assess the performance of the target date fund relative to the risk taken? Would disclosure of past performance information without disclosure of past asset allocations confuse or mislead investors?

• Is the proposed maximum five-year interval for the table, chart, or graph appropriate? Should it be shorter (*e.g.,* 1 year or 3 years) or longer (*e.g.,* 10, 15, or 20 years)? Are there any periods for which intervals of shorter duration should be shown? For example, should the table, chart, or graph depict the five years before the target date and/or landing point using one-year intervals? Is it necessary to require any particular interval? Is it also appropriate to require asset allocations at the fund's inception, target date, and landing point, as proposed?

• Would the proposed required statement preceding the table, chart, or graph be helpful to investors? Is any of the information unnecessary? Is there additional information that should be required to be included in the proposed statement? Should we prescribe the particular content of the statement? What would be the clearest plain English format for the statement? Should any particular presentation requirements, such as font size or style, apply to the statement that is required to accompany the table, chart, or graph? Should we require marketing materials that relate to a single target date fund that are submitted for publication on or after the landing point to include the explanatory statement preceding the table, chart, or graph?

• We are proposing that radio and television advertisements provide information relating to the landing point. Should this information be required in marketing materials that are submitted for use on or after the landing point? Is there additional information that should be required to be included in radio and television advertisements? For example, is there a means of effectively communicating information comparable to that contained in the table, chart, or graph requirement in radio or television advertisements?

4. Disclosure of Risks and Considerations Relating to Target Date Funds

We are proposing to amend rules 482 and 34b–1 to require target date fund advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds to include a statement that is intended to inform an investor regarding certain risks and considerations that are important when deciding whether to invest in a target date fund. Because of the importance of this information, we are proposing that the required statement be subject to the presentation requirements that currently apply to other important legend disclosures under rules 482 and 34b–1.[78] In addition, because we believe that this disclosure would be pertinent to investors in all target date funds, including those that do not have a date in their names, the statement would be required in the marketing materials for all target date funds, regardless of whether a fund includes a date in its name.

First, the statement would be required to advise an investor to consider, in addition to his or her age or retirement date, other factors, including the investor's risk tolerance, personal circumstances, and complete financial situation.[79] As described above, our staff has reviewed a sample of target date fund marketing materials and observed that these materials often characterize target date funds as offering investors a simple solution for their retirement needs, such as by inviting investors to choose the fund whose target date most closely matches their anticipated retirement date.[80] In addition, the inclusion of a date in a target date fund's name, as is typically the case today, provides a mechanism by which an investor may identify a fund that appears to meet his or her retirement needs based simply on a retirement date. As a result, we believe that it is important to highlight the fact that the appropriateness of a target date fund investment depends not only on age or retirement date, but on other factors.

Second, the statement would be required to advise an investor that an investment in the fund is not guaranteed and that it is possible to lose money by investing in the fund, including at and after the target date.[81] Concerns have been raised about the degree to which marketing materials for target date funds may have contributed to a lack of understanding by investors of those funds and their associated investment strategies and risks. Investors may expect that at the target date, most, if not all, of their fund's assets will be invested conservatively to provide a pool of assets for retirement needs. Some marketing materials may be misperceived as promising minimal risks or a guaranteed investment.[82] To address potential investor misunderstanding with respect to the safety of target date funds, particularly at and after an investor's retirement, the proposed amendments would require target date fund marketing materials to alert investors to the risk of loss.

Third, unless disclosed as part of the statement immediately preceding the table, chart, or graph that is required in marketing materials that are in print or delivered through an electronic medium, the statement would be required to advise an investor whether, and the extent to which, the intended percentage allocations of a target date fund among types of investments may be modified without a shareholder vote.[83] Target date funds are designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically among asset classes over time. A target date fund's disclosed intended asset allocations over time are a principal distinguishing feature of the fund. The proposed amendments are intended to inform investors of any flexibility that the fund and its investment adviser retain to modify allocations from time to time. We would note that, because a target date fund is, in essence, marketing the expertise of its manager in designing appropriate asset allocations over the long term, as a general matter, we would not expect target date funds to modify their glide paths frequently. In addition, we would expect that a manager would have a sound basis for any changes to a target date fund's glide path. Further, we would expect a target date fund's board of directors to monitor both the frequency and nature of the manager's exercise of its flexibility to modify the fund's glide path.[84]

[78] Proposed rule 482(b)(6); proposed rule 34b–1(c).

[79] Proposed rule 482(b)(5)(ii)(A); proposed rule 34b–1(c).

[80] *See* discussion *supra* Part I.B.

[81] Proposed rule 482(b)(5)(ii)(B); proposed rule 34b–1(c).

[82] *See* notes 37–38 and discussion at accompanying text.

[83] Proposed rule 482(b)(5)(ii)(C). *See* proposed rule 482(b)(5)(iv)(C) (statement required to precede table, chart, or graph). *See also* note 71 and discussion at accompanying paragraph (discussion of statement required to precede table, chart, or graph).

[84] *Cf.* Independent Directors Council, *Board Oversight of Target Retirement Date Funds* (2010), available at *http://www.ici.org/idc/idc_directors_resources/idc_public_other_publications/10_idc_trdf* (suggesting that a target date fund board may want to ask questions about the adviser's flexibility to actively adjust asset allocation along the glide path to take into account market conditions, how

Continued

We request comment generally on the proposed required statement regarding risks and considerations and, in particular, on the following issues:

- The proposed amendments apply to all target date funds. Should the proposed amendments apply only to target date funds that include a date in their name?
- Will the proposed required statement that is intended to inform an investor regarding important risks and considerations be effective? Should the proposed requirement be modified? Are any of the proposed disclosures not relevant or helpful in the case of some or all target date funds? Should additional disclosures be required? Should we prescribe the particular language of the statement?
- As proposed, the existing presentation requirements under rules 482 and 34b–1 would apply to the proposed new statement. Should they be modified in any way for this context?
- Are there additional rule amendments that would address any concerns regarding target date fund marketing materials? For example, should such materials disclose the past performance of the fund's asset allocation model or similar models? If this information should be disclosed, would this information be more appropriately included in prospectuses or shareholder reports?

B. Antifraud Guidance

Rule 156 under the Securities Act provides guidance on the types of information in investment company sales literature that could be misleading. It applies to all sales literature, whether or not those materials are preceded or accompanied by the fund's statutory prospectus.[85] Under rule 156, whether a statement involving a material fact is misleading depends on an evaluation of the context in which it is made. Rule 156 outlines certain situations in which a statement could be misleading. These include certain general factors that could cause a statement to be misleading,[86] as well as circumstances where representations about past or future investment performance[87] and statements involving a material fact about the characteristics or attributes of an investment company[88] could be misleading.

We are proposing to amend rule 156 to address certain statements suggesting that securities of an investment company are an appropriate investment. Marketing materials for target date funds often focus to a significant extent on the purpose for which (*i.e.,* to meet retirement needs) and the investors for whom (*i.e.,* investors of specified ages and retirement dates) the funds are intended. In light of the nature of target date fund marketing materials, and the concerns that have been raised about those materials, we are proposing to amend rule 156 to address statements that relate to the appropriateness of an investment. While target date funds are the immediate impetus for the proposed amendments to rule 156, the proposed amendments, like the current provisions of rule 156 would, if adopted, apply to all types of investment companies. This reflects our view that certain types of statements or representations have the potential to mislead investors, regardless of the type of investment company that is the subject of these statements.

The proposed amendments to rule 156 would provide that a statement suggesting that securities of an investment company are an appropriate investment could be misleading in two circumstances. First, such a statement could be misleading because of the emphasis it places on a single factor, such as an investor's age or tax bracket, as the basis for determining that an investment is appropriate.[89] Age and tax bracket are specified in the proposed rule language as examples of factors that could be overemphasized within sales literature, but this is not intended to suggest that they are the only factors whose overemphasis could cause sales literature to be misleading.

This proposed provision of the rule arises out of our recognition that while target date funds use investor ages and expected retirement dates as a mechanism by which an investor may identify a fund that appears to meet his or her retirement needs, undue emphasis on the single factor of age or retirement date could cause an investor to fail to consider other factors, such as the investor's particular financial situation, personal circumstances, and risk tolerance, that are important in selecting an appropriate investment.[90] This could result in investor confusion, and, in some circumstances, could even result in an investor being misled. We have included tax bracket as an example of a factor that could be overemphasized by some investment companies, for example, tax-exempt funds or variable annuity issuers, and not because it has been emphasized by target date funds.

Second, a statement suggesting that securities of an investment company are an appropriate investment could be misleading under the proposed amendment because of representations, whether express or implied, that investing in the securities is a simple investment plan or that it requires little or no monitoring by the investor.[91] While target date funds are designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically among asset classes over time, the selection of an appropriate fund does not entail a simple decision. The fact that target date fund managers have adopted very different asset allocation strategies is itself indicative of the complexity involved in selecting an appropriate asset allocation and, as discussed in the preceding paragraph, the selection of

frequently adjustments might be made, and criteria and limits for making adjustments).

[85] Rule 156(c) under the Securities Act [17 CFR 230.156(c)] defines "sales literature" to include "any communication (whether in writing, by radio, or by television) used by any person to offer to sell or induce the sale of securities of any investment company."

[86] A statement could be misleading because of (i) other statements being made in connection with the offer of sale or sale of the securities in question; (ii) the absence of explanations, qualifications, limitations, or other statements necessary or appropriate to make such statement not misleading; or (iii) general economic or financial conditions or circumstances. *See* rule 156(b)(1) under the Securities Act [17 CFR 230.156(b)(1)].

[87] Representations about past or future investment performance could be misleading because of statements or omissions made involving a material fact, including situations where (i) portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances; and (ii) representations, whether express or implied, are made about future investment performance. *See* rule 156(b)(2) under the Securities Act [17 CFR 230.156(b)(2)].

[88] A statement involving a material fact about the characteristics or attributes of an investment company could be misleading because of (i) statements about possible benefits connected with or resulting from services to be provided or methods of operation which do not give equal prominence to discussion of any risks or limitations associated therewith; (ii) exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment company or an investment in securities issued by the company, services, security of investment or funds, effects of government supervision, or other attributes; and (iii) unwarranted or incompletely explained comparisons to other investment vehicles or to indexes. *See* rule 156(b)(3) under the Securities Act [17 CFR 230.156(b)(3)].

[89] Proposed rule 156(b)(4)(i).

[90] The models used for asset allocation in target date funds are based on additional factors and not solely on an investor's retirement date. For example, target date fund models may make certain assumptions about investors' contributions, salary increases, loans, and distributions that may vary widely across investors in the same age or retirement groups. *See* J.P. Morgan Asset Management, *Ready! Fire! Aim? How Some Target Date Fund Designs are Missing the Mark on Providing Retirement Security to Those Who Need It Most* at 7–9 (Oct. 2007), available at *http://www.dol.gov/ebsa/pdf/TDFSupp6.pdf* (observing that differences in these assumptions have a large impact on the assets projected to be available at retirement).

[91] Proposed rule 156(b)(4)(ii).

appropriate investments involves the consideration of multiple factors. Similarly, a decision to invest in an investment company of another type is not a simple decision, as it involves numerous considerations, including the investment objectives and strategies, costs, and risks of the fund and the investor's complete financial situation, personal circumstances, and risk tolerance.

In addition, while a particular target date fund could be an appropriate investment at the time the fund was initially selected by the investor, this may change over time as, for example, the investor experiences changes in his or her life expectancy or other personal circumstances, financial condition, or risk tolerance. This is equally true of all types of investment companies. As a result, the Commission is concerned that representations that an investment in the securities of a target date fund or other investment company is a simple investment plan or requires little or no monitoring by the investor have the capacity to confuse and potentially to mislead investors. These representations may dissuade an investor from sufficient examination of the investment objectives and strategies, costs, and risks of a target date fund or other investment company and of the appropriateness of an initial or additional investment in the fund, given the investor's complete financial situation, personal circumstances, and risk tolerance. These representations may also dissuade an investor from monitoring an investment or conducting a periodic review and assessment of the fund's performance and continuing fit with the investor's objectives and changing life situation.

We request comment on the proposed amendments to rule 156 and, in particular, on the following issues:

- Are the proposed amendments to rule 156 appropriate? Should the proposed amendments apply to all investment companies or only to target date funds? If the proposed amendments are not made applicable to all investment companies, are there types of funds other than target date funds (*e.g.,* balanced or lifestyle funds), to which the proposed amendments should apply?
- Will the proposed amendments to rule 156 discourage marketing materials for target date funds and other funds that have the potential to confuse or mislead investors? Are there additional amendments to rule 156 that would help to emphasize the obligations under the antifraud provisions of funds and their underwriters and dealers and that would address concerns regarding target date fund marketing materials?
- Are there any factors, in addition to age and tax bracket, that should be included in the proposed amendments as examples of single factors that could be overemphasized in determining whether an investment is appropriate?

C. Technical and Conforming Amendments

We are proposing technical and conforming amendments to rule 34b–1. We are proposing to remove references to paragraphs (a) and (b) of rule 34b–1 in the introductory text and the note to introductory text to indicate, in a more straightforward manner, that the references are to the entirety of rule 34b–1.[92] We are also proposing to revise the heading of the current note that follows paragraph (b) of rule 34b–1 to state explicitly that the note applies to paragraph (b). We are also proposing amendments to cross-references in rule 34b–1 to reflect the proposed redesignation of paragraph (b)(5) in rule 482 as paragraph (b)(6). In addition, we are proposing to replace the reference to "NASD Regulation, Inc." in the note to paragraph (h) of rule 482 with "Financial Industry Regulatory Authority, Inc."

D. Compliance Date

If the proposed amendments to rules 482 and 34b–1 are adopted, the Commission expects to require target date fund advertisements and supplemental sales literature that are used 90 days or more after the effective date of the amendments to comply with the amendments. If the proposed amendments to rule 156 are adopted, the Commission expects that the amendments to rule 156 will take effect immediately upon the effective date of the amendments.

The Commission requests comment on the proposed compliance dates. Are the proposed periods an appropriate transition period for compliance, or should they be shorter or longer? Should the Commission require compliance with rules 482 and 34b–1 based on the date that advertisements and supplemental sales literature are used or the date that advertisements and supplemental sales literature are submitted for publication, or should it require compliance on some other basis?

E. Request for Comments on Prospectus Disclosure Requirements

The amendments that we are proposing address the concerns that have been raised regarding the potential for investor misunderstanding to arise from target date fund names and marketing materials. In this release, we are not proposing amendments to the prospectus disclosure requirements. A target date fund is currently required to disclose, among other things, its investment objective, principal investment strategies, including the particular type or types of investments in which the fund principally invests or will invest, the principal risks of investing in the fund, and its fees and expenses.[93] Our staff has examined the prospectus disclosures made by a number of target date funds in their registration statements filed with the Commission and has observed that, pursuant to existing requirements, target date fund prospectuses generally disclose:

- A description of the glide path of the target date fund, often presented as a table or graph broken down by asset class, such as equity securities, fixed income securities, and cash and cash equivalents;
- The significance of specific points along the glide path, such as the target date used in the fund's name and the landing point, and any flexibility retained by the investment adviser to deviate from the glide path; and
- The specific risks attendant to investments in target date funds, such as the risk of loss up to and after the target date, and the risk of loss due to the absence of guarantees associated with the investment.

We believe that these disclosures are material to target date fund investors and required to be disclosed as part of the discussion of a fund's principal investment strategies and principal investment risks. We are, however, concerned that there may be disclosures about target date funds that are important to investors and that are not required by our current prospectus and registration statement line item disclosure requirements, and we request comment on this matter.

We request comment on prospectus disclosure requirements for target date funds and, in particular, on the following issues:

- Generally, Form N–1A, the registration form for mutual funds, does not prescribe separate requirements for different types of funds. Should Form N–1A be amended to provide specific requirements for target date funds? If so, what types of disclosures should be addressed?
- Should target date fund prospectuses and/or statements of additional information be expressly

[92] Paragraphs (a) and (b) are the only paragraphs of current rule 34b–1.

[93] *See* Items 2, 3, 4, and 9 of Form N–1A [17 CFR 239.15A and 274.11A].

required to disclose the fund's landing point? Should we expressly require disclosure as to whether the target date fund manager is managing the fund "to" the stated target date or "through" that date, *e.g.,* based on life expectancy?

• Should target date fund prospectuses and/or statements of additional information be expressly required to disclose the underlying assumptions that led the target date fund manager to select the fund's current glide path? For example, should a target date fund prospectus or statement of additional information be required to disclose the manager's assumptions, such as assumptions about life expectancy, inflation, savings rate, other investments, retirement and labor income, and withdrawal rates, that were used in construction of its asset allocation glide path? Would this disclosure help an investor and/or the investor's financial adviser to determine whether a particular target date fund is appropriate for the investor? Would this disclosure assist investors by facilitating the ability of third party information providers to publish comparisons across target date funds? Would investors be able to make effective use of this information by themselves? Or would this disclosure confuse and/or overwhelm investors?

• Should a target date fund be expressly required to disclose in its prospectus or statement of additional information the flexibility retained by the target date fund manager to change the glide path in the future? Should a target date fund be expressly required to disclose in its prospectus or statement of additional information the number of times that it has previously changed its glide path and/or the number of times that target date funds in the same complex have previously changed their glide paths and the reasons for those changes?

• Should a target date fund be expressly required to disclose in its prospectus or statement of additional information the latitude it has to deviate from its stated glide path, the circumstances under which it may deviate from its stated glide path, past instances when it has deviated from its stated glide path, and the reasons for any past deviations?

• Should we expressly require disclosure in the prospectus or statement of additional information regarding the use of any commodities, derivatives, or other alternative investments by a target date fund? Should we expressly require disclosure regarding the effect of leverage on a target date fund's asset allocation, whether attributable to borrowing, derivative investments, or other sources?

• If we require new line item disclosures that are specific to target date funds, should these be included in the prospectus or the statement of additional information? If they should be in the prospectus, should they be required to be included in the summary section at the front of the prospectus and in the summary prospectus, if any, that a fund chooses to use under rule 498 under the Securities Act.[94]

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might affect the proposals contained in this release.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[95] We are submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[96] The titles for the existing collections of information are: (1) "Rule 482 under the Securities Act of 1933 Advertising by an Investment Company as Satisfying Requirements of Section 10"; and (2) "Rule 34b–1 (17 CFR 270.34b–1) under the Investment Company Act of 1940, Sales Literature Deemed to Be Misleading."[97] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Rule 482 (OMB Control No. 3235–0565) was adopted pursuant to Section 10(b) of the Securities Act.[98] Rule 34b–1 (OMB Control No. 3235–0346) was adopted pursuant to Section 34(b) of the Investment Company Act.[99] Rules 482 and 34b–1, including the proposed amendments, contain collection of information requirements. Rule 482 permits a registered investment company to advertise information prior to delivery of a statutory prospectus. Rule 34b–1 prescribes the requirements for supplemental sales literature (*i.e.,* sales literature that is preceded or accompanied by the statutory prospectus). Compliance with the rules is mandatory. Responses to the disclosure requirements will not be kept confidential.

We are proposing amendments to rules 482 and 34b–1 that would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. Specifically, we are proposing amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. The Commission is also proposing amendments to rules 482 and 34b–1 that would require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund.

The information required by the proposed amendments is primarily for the use and benefit of investors. The amendments that we are proposing in this release are intended to address concerns that have been raised regarding the potential for investor misunderstanding to arise from target date fund names and marketing materials. The additional information that would be required to be disclosed pursuant to the collection of information provisions of the proposed amendments would address these concerns regarding investor protection.

The proposed amendments to rule 482 require: (i) For advertisements relating to a target date fund whose name includes a date, disclosure of the asset allocation of the fund at the target date (or for advertisements that are submitted for publication or use on or after the target date, a fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the advertisement for publication or use); (ii) for print or electronic advertisements relating to a single target date fund, a table, chart, or graph that depicts the actual percentage allocation of the fund among types of investments from the inception of the fund through the most recent calendar quarter ended prior to the submission of the advertisement for publication and the future intended allocations of the fund;

[94] 17 CFR 230.498.

[95] 44 U.S.C. 3501, *et seq.*

[96] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[97] Rule 156 does not contain "collection of information" requirements within the meaning of the PRA. The proposed amendments to rule 156 also do not involve a "collection of information."

[98] 15 U.S.C. 77j(b).

[99] 15 U.S.C. 80a–33(b).

(iii) for print or electronic advertisements relating to multiple target date funds with different target dates that all have the same pattern of asset allocations, either separate presentations for each target date fund that meet the requirements of clause (ii) or a single table, chart, or graph that depicts the intended allocations of the funds among types of investments; (iv) for advertisements that relate to a single target date fund and are submitted for publication prior to the landing point or that relate to multiple target date funds with different target dates that all have the same pattern of asset allocations, a statement preceding the table, chart, or graph that explains the table, chart, or graph and provides certain information about the glide path and landing point; (v) enhanced disclosures relating to the landing point in radio and television advertisements that are submitted for use prior to the landing point for funds whose names include a target date; and (vi) statements alerting investors to certain risks and considerations relating to an investment in a target date fund. The proposed amendments to rule 34b–1 would apply the same requirements, other than those described in clause (v), to supplemental sales literature.

The PRA burden estimates for the proposed amendments to rules 482 and 34b–1 are based on the Commission staff's experience with the various types of investment companies registered with the Commission, including PRA burden estimates that the Commission has used for other requirements. The Commission estimates that there are approximately 357 funds that are either a registered management investment company or a separate series of a registered management investment company that would fall within the proposed definition of "target date fund" for purposes of the proposed amendments to rules 482 and 34b–1.[100] We believe that part of the PRA burden will be incurred on an initial one-time basis and that part of the PRA burden will be ongoing.

The Commission estimates that internal marketing personnel and compliance attorneys of a target date fund subject to the proposed amendments would spend, as an initial one time burden in order to comply with the proposed amendments, an average of 15 hours, consisting of: (1) One hour to prepare and review the fund's intended target date (or current) asset allocation disclosure; (2) 10 hours to prepare and review the table, chart, or graph that depicts the glide path of the fund, the statement preceding the table, chart, or graph, and the enhanced disclosures relating to the landing point in radio and television advertisements; and (3) four hours to prepare and review the statement alerting investors to certain risks and considerations relating to an investment in a target date fund. We estimate the initial one-time burden for all target date funds to comply with the proposed amendments to be approximately 5,355 hours.[101] Because the disclosures proposed to be required under rules 482 and 34b–1 are the same, we believe that the hour burden associated with initial compliance would not be duplicated under both rules and do not believe that there would be any additional burden associated with rule 34b–1 because the proposed amendments would not affect the level of review needed by funds to comply with rule 34b–1. Therefore, we have assigned the initial one-time burden to rule 482.

We also estimate certain ongoing costs with respect to advertisements and supplemental sales literature associated with the proposed amendments to rules 482 and 34b–1. First, we anticipate that there will be ongoing costs associated with the proposed requirement that a target date fund submitting an advertisement or supplemental sales literature for publication or use on or after the date that is included in the fund's name must disclose, immediately adjacent to the fund's name, the fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the advertisement. We estimate that internal marketing personnel and compliance attorneys of a target date fund subject to the proposed amendments would spend an average of one hour per response on an ongoing basis to update the asset allocations disclosed immediately adjacent to the fund's name.

We estimate that 58,368 responses[102] to rule 482 are filed annually by 3,540 registered investment companies offering approximately 16,225 funds, or approximately 3.6 responses per fund annually.[103] Therefore, we estimate that the 357 target date funds would file 1,285 responses to rule 482 annually.[104] Of these responses, we estimate that 15% would be responses submitted on or after the date that is included in the fund's name.[105] In the first year, we estimate that the ongoing burden associated with the proposed requirement that a target date fund submitting an advertisement on or after the date that is included in the fund's name must disclose the fund's actual asset allocation as of the most recent calendar quarter ended would be 139 hours.[106] In each subsequent year, we estimate that the ongoing burden associated with this requirement would be 193 hours.[107]

With regard to rule 34b–1, we estimate that 11,544[108] responses are filed annually by 3,540 registered investment companies offering approximately 16,225 funds, or approximately 0.7 responses per fund annually.[109] Therefore, we estimate that the 357 target date funds would file approximately 250 responses to rule 34b–1 annually.[110] Of these responses, we estimate that 15% would be responses submitted on or after the date that is included in the fund's name.[111] Therefore, we estimate that the ongoing annual burden associated with the requirement that a target date fund submitting supplemental sales literature on or after the date that is included in the fund's name must disclose the fund's actual asset allocation as of the

[100] This estimate is based on Commission staff analysis of data obtained from Morningstar Direct. The Commission staff believes that all funds that meet the proposed definition of a target date fund currently use a date in their names and would be subject to all of the proposed amendments to rules 482 and 34b–1.

[101] 357 target date funds × 15 hours = 5,355 hours.

[102] The estimated number of responses to rule 482 is composed of 58,093 responses filed with the Financial Industry Regulatory Authority, Inc. ("FINRA") and 275 responses filed with the Commission in 2009.

[103] 58,368 responses ÷ 16,225 funds = 3.6 responses per fund.

[104] 357 funds × 3.6 responses per fund = 1,285 responses.

[105] Based on Commission staff analysis of data as of March 31, 2010, obtained from Morningstar Direct, 47 target date funds contain a date in the name that is on or before the year 2010. This amounts to approximately 13% of the 357 target date funds (357 target date funds ÷ 47 target date funds = 13%), which we have rounded up for purposes of our estimates to 15%.

[106] Because we have assumed in the first year that one response will not impose any burden beyond the initial one time burden of 15 hours, target date funds submitting an advertisement for publication on or after the date that is included in the fund's name would bear an ongoing burden of 1 hour with respect to the remaining 2.6 responses (357 target date funds × 0.15 × 1 hour × 2.6 responses = 139 hours).

[107] In subsequent years, the ongoing cost burden for target date funds submitting an advertisement for publication on or after the date that is included in the fund's name would equal 193 hours (357 target date funds × 0.15 × 1 hour × 3.6 responses = 193 hours).

[108] The estimated number of responses to rule 34b–1 is composed of 10,904 responses filed with FINRA and 640 responses filed with the Commission in 2009.

[109] 11,544 responses ÷ 16,225 funds = 0.7 responses per fund.

[110] 357 funds × 0.7 responses per fund = 250 responses.

[111] *See supra* note 105.

most recent calendar quarter ended would be approximately 37 hours.[112]

Second, we further estimate that there will be ongoing costs associated with the requirement that, in advertisements and supplemental sales literature that relate to a single target date fund, the table, chart, or graph must clearly depict the actual percentage allocations among types of investments from the inception of the fund through the most recent calendar quarter ended prior to the submission of the materials for publication and the future intended percentage allocations of the fund. We estimate that internal marketing personnel and compliance attorneys of a target date fund subject to the proposed amendments would spend an average of two hours per response on an ongoing basis for single-fund advertisements and supplemental sales literature to comply with the proposed table, chart, or graph requirement.

We estimate that the 357 target date funds would file 1,285 responses to rule 482 annually.[113] Of these responses, we estimate that 25% would be single fund advertisements and 75% would be multiple fund advertisements.[114] In the first year, we estimate that the ongoing burden associated with the proposed table, chart, or graph requirement for single target date fund responses would be 464 hours.[115] In each subsequent year, we estimate that the ongoing burden associated with the proposed table, chart, or graph requirement for single target date fund advertisements would be 643 hours.[116]

Of the approximately 250 responses to rule 34b–1 annually, we also estimate that 25% would be single fund supplemental sales literature and 75% would be multiple fund supplemental sales literature.[117] We estimate that the ongoing burden associated with the proposed table, chart, or graph requirement for single target date fund supplemental sales literature would be approximately 125 hours.[118]

Based on the foregoing estimates, the hour burden associated with the proposed amendments to rule 482 over three years would be approximately 7,630 hours.[119] Because the PRA estimates represent the average burden over a three-year period, we estimate the average annual hour burden for target date funds to comply with the proposed amendments to rule 482 to be approximately 2,543 hours.[120] The PRA burden associated with rule 482 is presently estimated to be 5.16 hours per response, for a total annual hour burden of 301,179 hours.[121] Therefore, we estimate that if the proposed amendments to rule 482 are adopted, the total annual hour burden for all funds to comply with the requirements of rule 482 would be 303,722 hours,[122] or 5.20 hours per response.[123]

The PRA burden associated with rule 34b–1 is presently estimated to be 2.41 hours per response, which, when multiplied by our estimate of 11,544 total annual responses to rule 34b–1, provides a total annual hour burden of 27,821 hours.[124] Therefore, we estimate that if the proposed amendments to rule 34b–1 are adopted, the total annual hour burden for all funds to comply with the requirements of rule 34b–1 would be 27,983 hours,[125] or approximately 2.42 hours per response.[126]

We anticipate that target date funds would also incur initial one time external costs, such as the costs of modifying and reformatting layouts and typesetting, and no ongoing external costs.[127] We estimate that these initial external costs would be approximately $2,900 per target date fund,[128] or $1,035,300 in the aggregate,[129] which we have assigned to rule 482.

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. We request comment and supporting empirical data on our burden and cost estimates for the proposed amendments, including the external costs that target date funds may incur.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503 and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–12–10. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–12–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. OMB is required to make a decision concerning the collections of information between 30 and 60 days

[112] We estimate that 15% of the 357 target date funds would be required to update the fund's actual asset allocation as of the most recent calendar quarter immediately adjacent to the fund's name and bear an ongoing burden of 1 hour with respect to the 0.7 average annual responses (357 target date funds × 0.15 × 1 hour × 0.7 responses = 37 hours).

[113] 357 funds × 3.6 responses per fund = 1,285 responses.

[114] These estimates are based on the Commission staff's review of a sample of target date fund materials filed with FINRA.

[115] Because we have assumed in the first year that one response will not impose any burden beyond the initial one time burden of 15 hours, each of the 357 target date funds would bear an ongoing burden of 2 hours for single target date fund advertisements with respect to 25% of the remaining 2.6 responses (357 target date funds × 2 hours × 0.25 × 2.6 responses = 464 hours).

[116] In subsequent years, the ongoing cost burden for single target date fund advertisements would equal 643 hours (357 target date funds × 2 hours × 0.25 × 3.6 responses = 643 hours).

[117] These estimates are based on the Commission staff's review of a sample of target date fund materials filed with FINRA.

[118] We estimate 357 target date funds would bear an ongoing burden of 2 hours for single target date fund supplemental sales literature with respect to 25% of the 0.7 average annual responses (357 target date funds × 2 hours × 0.25 × 0.7 responses = 125 hours).

[119] We estimate that the total incremental hour burden associated with the proposed amendments to rule 482 over three years would be 7,630 hours (5,355 hours for initial compliance + 603 hours in year 1 (139 hours + 464 hours) + 836 hours in year 2 (193 hours + 643 hours) + 836 hours in year 3 (193 hours + 643 hours) = 7,630 hours).

[120] 7,630 hours ÷ 3 years = 2,543 hours.

[121] 58,368 responses × 5.16 hours per response = 301,179 hours.

[122] 301,179 hours + 2,543 hours = 303,722 hours.

[123] 303,722 hours ÷ 58,368 responses = 5.20 hours per response.

[124] 11,544 responses × 2.41 hours per response = 27,821 hours.

[125] 27,821 hours + 37 hours + 125 hours = 27,983 hours per year.

[126] 27,983 hours ÷ 11,544 responses = 2.42 hours per response.

[127] We believe that it is usual and customary for investment companies to periodically update and replace marketing materials. We have proposed a 90-day transition period for the proposed amendments to rules 482 and 34b–1 to minimize the burden on target date funds.

[128] This estimate is based on the estimate of $2,417 for external costs that we made in 2003 when we last amended rules 482 and 34b–1. *See* Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760, 57771 (Oct. 6, 2003)]. We have adjusted our estimate to account for an increase of 19.4% in the consumer price index between 2003 and 2009, based on Commission staff analysis of data obtained from the Bureau of Labor Statistics.

[129] 357 target date funds × $2,900 per target date fund = $1,035,300.

after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The Commission is proposing amendments to rules 482 and 34b–1 that would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. Specifically, the Commission is proposing amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. The Commission is also proposing amendments to rules 482 and 34b–1 that would require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund. Finally, the Commission is proposing amendments to rule 156 that would provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading.

A. Benefits

While difficult to quantify, we believe the benefits to investors resulting from the proposed amendments would be significant given the approximately $270 billion in assets held by target date funds registered with the Commission.[130]

The proposed amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature are intended to convey information about the target date (or current) allocation of the fund's assets and reduce the potential for names that include a target date to contribute to investor misunderstanding of target date funds. For example, if a target date fund remains significantly invested in equity securities at the target date, the proposed disclosure would help to reduce or eliminate incorrect investor expectations that the fund's assets will be invested in a more conservative manner at that time.

In the case of target date funds, the names are designed to be significant to investors when selecting a fund. The proposed amendments are intended to benefit investors by reducing the potential of target date fund names to confuse or mislead investors regarding the fund's target date (or current) asset allocation.

The proposed amendments to rules 482 and 34b–1 are intended to benefit investors by requiring enhanced disclosure in advertisements and supplemental sales literature to provide investors basic information about the fund's glide path, in order to facilitate more informed investment decisions. Print and electronic marketing materials would be required to include a prominent table, chart, or graph that clearly depicts the percentage allocations of the fund among types of investments over the entire life of the target date fund. The proposed required statement preceding the table, chart, or graph would explain the table, chart, or graph and include the following information: (i) A statement that the fund's asset allocation changes over time; (ii) the landing point (or in the case of a table, chart, or graph for multiple target date funds, the number of years after the target date at which the landing point will be reached), an explanation that the allocation of the fund becomes fixed at the landing point, and the percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the landing point; and (iii) whether, and the extent to which, the intended percentage allocations of the fund among types of investments may be modified without a shareholder vote. The proposed table, chart, or graph requirement would present information regarding the glide path as a graphical illustration, which may benefit investors by providing the information in a manner that is likely to be more easily understood by investors than if the information were presented in narrative format. The proposed required statement preceding the table, chart, or graph may benefit investors by helping them to better understand the table, chart, or graph.

While the proposed table, chart, or graph requirement would not apply to radio and television advertisements, we propose to require that radio or television advertisements that are submitted for use prior to the landing point, that place a more than insubstantial focus on one or more target date funds, and that use the name of a target date fund that includes a date (including a year) must disclose the landing point, an explanation that the allocation of the fund becomes fixed at the landing point, and the percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the landing point. This disclosure would benefit investors by alerting them that the target date allocation is not the final allocation.

The proposed statement on risks and considerations that are important when deciding whether to invest in a target date fund would benefit investors who review marketing materials for target date funds by providing them with information that will help prevent several types of misunderstandings about target date funds. Target date fund marketing materials would be required to advise an investor to consider, in addition to his or her age or retirement date, other factors, including the investor's risk tolerance, personal circumstances, and complete financial situation. Marketing materials also would be required to advise an investor that an investment in the target date fund is not guaranteed and that it is possible to lose money by investing in the fund, including at and after the target date. Finally, marketing materials would be required to advise an investor whether, and the extent to which, the intended percentage allocations of a target date fund among types of investments may be modified without a shareholder vote. Better understanding of target date funds may result in investors making better informed decisions in line with their investment goals.

In addition to the benefits discussed above, the proposed amendments to rules 482 and 34b–1 may enhance efficiency by making it easier for investors to make more informed investment decisions. This ability to make more informed investment decisions may also lead to increased competitiveness among target date funds. We also believe that, as a result of investors making better informed investment decisions, companies would be able to allocate resources more efficiently in line with preferences for risk and returns.

We are proposing to amend rule 156 to provide that a statement in investment company sales literature that suggests that securities of an investment

[130] *See supra* note 17 and accompanying text.

company are an appropriate investment could be misleading because of the emphasis it places on a single factor, such as an investor's age or tax bracket, as the basis for determining that the investment is appropriate, or representations, whether express or implied, that investing in the securities is a simple investment plan or that it requires little or no monitoring by the investor. This proposal is intended to reduce the potential for certain types of statements or representations to mislead investors. Marketing materials for target date funds often focus to a significant extent on the purpose for which (*i.e.,* to meet retirement needs) and the investors for whom (*i.e.,* investors of specified ages and retirement dates) the funds are intended. In light of the nature of target date fund marketing materials, and the concerns that have been raised about those materials, we are proposing to amend rule 156 to address statements that relate to the appropriateness of an investment. While target date funds are the immediate impetus for the proposed amendments to rule 156, the proposed amendments, like the current provisions of rule 156 would, if adopted, apply to all types of investment companies. This reflects our view that certain types of statements or representations have the potential to mislead investors, regardless of the type of investment company that is the subject of these statements.

B. Costs

Our proposed amendments to rules 482 and 34b–1 would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. The proposed amendments to rules 482 and 34b–1 would also require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund.

We believe that a target date fund would not incur significant costs in providing the disclosures required by rules 482 and 34b–1 because that information should be readily available to the fund. We note that many target date funds already provide the required information in their prospectuses, such as a table, chart, or graph depicting the asset allocation over time.[131] Furthermore, Commission staff observed in its review of a sample of marketing materials that some materials currently contain statements similar to those contained in the proposed amendments (*i.e.,* advising an investor to consider, in addition to age or retirement date, other factors; that an investment in a target date fund is not guaranteed; and that it is possible to lose money by investing in a target date fund). As a result, we believe that the costs associated with the disclosure of the proposed required information will be limited.

The Commission estimates that funds would incur one time initial costs in modifying their current marketing materials to meet the proposed disclosure requirements. For example, funds may have to modify and reformat their layouts and typesetting in order to convert existing marketing materials to meet the enhanced disclosure requirements of the amended rules. The Commission estimates that there are approximately 357 target date funds that would be required to comply with the proposed amendments. Based on our PRA analysis, we estimate that the one time initial costs for each target date fund attributable to the proposed amendments would be approximately $3,825 in internal costs for marketing personnel and compliance attorneys to prepare and review the revised marketing materials [132] and $2,900 in external costs for modifying and reformatting layouts, typesetting, and printing for new advertisements.[133] We estimate that the aggregate initial one time costs imposed by the proposed amendments would be approximately $2.4 million.[134]

The Commission also estimates that there will be ongoing costs associated with the proposed requirement that a target date fund submitting an advertisement or supplemental sales literature for publication or use on or after the date that is included in the fund's name must disclose, immediately adjacent to the fund's name, the fund's actual asset allocations as of the most recent calendar quarter ended prior to the submission of the advertisement or supplemental sales literature. Based on our PRA analysis, we estimate that the ongoing cost for each advertisement or supplemental sales literature piece for a target date fund that would be required to disclose the fund's actual asset allocation as of the most recent calendar quarter ended would be approximately $264 in costs for internal marketing personnel and compliance attorneys to prepare and review the revised marketing materials.[135]

The Commission further estimates that target date funds would incur ongoing costs associated with the requirement that marketing materials that are focused on a single target date fund provide information about the fund's actual and intended asset allocations in the proposed table, chart, or graph. Based on our PRA analysis, we estimate that the ongoing costs for each single target date fund advertisement or supplemental sales literature piece attributable to the proposed table, chart, or graph requirement would be approximately $528 in costs for internal marketing personnel and compliance attorneys to prepare and review the revised marketing materials.[136]

We do not anticipate that target date funds will incur any significant ongoing external costs in connection with the proposed amendments. While we anticipate that target date funds will bear external costs (such as the costs of modifying and reformatting layouts, typesetting, and printing for new marketing materials) in complying with

[131] Based on Commission staff review of registration statements filed with the Commission.

[132] With respect to our initial one time internal burden estimate of 15 hours, we estimate that marketing personnel will spend 10 hours to prepare the revised marketing materials and compliance attorneys will spend 5 hours to review the materials. *See supra* note 101 and discussion at accompanying paragraph. The hourly wage rate of $237 for a marketing manager and $291 for a compliance attorney is based on the salary information from the Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2009, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Therefore, the internal costs associated with this burden equals $3,825 per target date fund (10 hours × $237 per hour + 5 hours × $291 per hour = $3,825).

[133] *See supra* note 128 and accompanying text.

[134] $3,825 in internal costs per fund × 357 target date funds + $2,900 in external costs per fund × 357 target date funds = $2,400,825.

[135] With respect to our ongoing internal burden estimate of 1 hour per advertisement or supplemental sales literature piece for a target date fund that would be required to disclose the fund's actual asset allocation as of the most recent calendar quarter ended, we estimate that the marketing personnel will spend 0.5 hours to prepare the revised marketing materials and compliance personnel will spend 0.5 hours to review the marketing materials. For hourly wage rates, *see supra* note 132. Therefore, the internal costs associated with this burden equal $264 per response (0.5 hour × $237 per hour + 0.5 hour × $291 per hour = $264).

[136] With respect to our ongoing internal burden estimate of 2 hours per single target date fund marketing materials, we estimate that marketing personnel will spend 1 hour to prepare the revised marketing materials and compliance personnel will spend 1 hour to review the marketing materials. For hourly wage rates, *see supra* note 132. Therefore, the internal costs associated with this burden equal $528 per response (1 hour × $237 per hour + 1 hour × $291 per hour = $528).

the proposed amendments, we believe that these costs would largely be borne as one time costs when target date funds initially comply with the proposed rule and not on an ongoing basis.

In considering the proposed amendments to rules 482 and 34b-1, the Commission was mindful of ways to minimize costs. For example, with respect to the table, chart, or graph requirement for marketing materials that relate to multiple target date funds with different target dates that all have the same pattern of asset allocations, the proposal would permit the materials to include either separate presentations for each fund or a single generic table, chart, or graph illustrating the glide path for all the funds. In addition, our proposal to require target date fund marketing materials to include a prominent table, chart, or graph would not apply to radio and television advertisements because, among other things, we determined that it could result in the imposition of very substantial costs for additional advertising time. Our proposal permits more limited disclosure in a radio or television advertisement for a fund whose name includes a target date of the landing point, an explanation that the allocation of the fund becomes fixed at the landing point, and the percentage allocations of the fund among types of investments at the landing point.

Rule 156 is an interpretive rule that provides guidance to investment companies regarding the applicability of the antifraud provisions of the federal securities laws. The proposed amendment to rule 156 would provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading. Funds may incur some one-time costs in reviewing their marketing materials for consistency with the proposed interpretive guidance set forth in the amendments to rule 156. However, we expect such review to be largely incorporated into the review associated with complying with the proposed amendments to rules 482 and 34b–1. As a result, we do not expect that significant costs would be associated with the review for compliance with rule 156. In addition, because we believe that investment companies already review their sales literature for misleading statements, we believe that the proposed amendment to rule 156 would not impose significant compliance costs on target date funds or other investment companies on an ongoing basis.

We request comment on the nature and amount of our estimates of the costs of the additional disclosure that would be required if our proposals were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible. In particular, we request comment on the following issues:

- Should any adjustments be made to our quantitative estimates of costs?
- If the proposed amendments are adopted, what changes in behavior by either investors or target date fund managers may result, and what would be the associated benefits and costs?
- Are there any additional costs that target date funds would likely incur with respect to their marketing materials in order to comply with the proposed amendments other than those mentioned in the cost-benefit analysis? For example, we have not identified any quantifiable ongoing external costs to comply with the proposed amendments. Are there quantifiable ongoing costs that a target date fund would likely incur to comply with the proposed amendments?

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) [137] of the Securities Exchange Act of 1934 ("Exchange Act") [138] requires the Commission, in adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Further, Section 2(c) of the Investment Company Act,[139] Section 2(b) of the Securities Act,[140] and Section 3(f) of the Exchange Act [141] 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.[142]

We are proposing amendments to rule 482 that would apply to advertisements that place a more than insubstantial focus on one or more target date funds. Specifically, we are proposing amendments to rule 482 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements. We are also proposing amendments to rule 482 that would require enhanced disclosure in advertisements for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund. Finally, we are proposing amendments to rule 156 that would provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading.

The proposed amendments may enhance efficiency by making it easier for investors to make more informed investment decisions. For example, if a target date fund remains significantly invested in equity investments at the target date, the proposed disclosure would help to reduce or eliminate incorrect investor expectations that the fund's assets will be invested in a more conservative manner at that time. The proposed amendments may also enhance efficiency by providing investors with readily available information about certain considerations and risks of the fund and the manner in which the fund's asset allocation may change over time. The proposed amendments to rule 156 regarding investment company sales literature would apply to all investment companies and may enhance efficiency by providing clearer guidance as to what may constitute misleading information in sales literature for target date funds and other investment companies.

We anticipate that improving investors' ability to make informed investment decisions may also lead to increased competitiveness among target date funds. The transparency resulting from the enhanced disclosure in marketing materials may promote competition by promoting better informed decisions by investors who are considering target date funds along with

[137] 15 U.S.C. 78w(a)(2).

[138] 15 U.S.C. 78a *et seq.*

[139] 15 U.S.C. 80a–2(c).

[140] 15 U.S.C. 77b(b).

[141] 15 U.S.C. 78c(f).

[142] The Commission is proposing amendments to rule 34b–1 pursuant to authority set forth in Sections 34(b) and 38(a) of the Investment Company Act. For a discussion of the effects of the proposed amendments to rule 34b–1 on efficiency, competition, and capital formation, *see* Parts IV, V, and VII.

other types of investments. Increased transparency and investor awareness of target date fund asset allocations may also spur further innovation in the design of target date fund asset allocation models by fund sponsors due to enhanced competition. Finally, although target date funds may compete with similar non-investment company products that have similar investment objectives, we do not believe that the proposed amendments will significantly affect the competitiveness of target date funds in comparison with these other products.

With respect to the proposed amendments to rule 156, we believe that the proposed amendments would not impose any burden on competition. We believe that the proposed amendments may improve investors' ability to make informed investment decisions, which thereby may lead to increased competition among target date funds. We believe that any costs that might be associated with compliance with the proposed amendments would be limited and, therefore, would not impose a burden on competition.

We anticipate that the proposed amendments would have a positive impact on capital formation. As a result of investors making better informed investment decisions, companies would be able to allocate resources more efficiently in line with preferences for risk and return in the economy. We request comment on whether the proposed amendments, if adopted, would affect efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.[143] It relates to the Commission's proposed rule amendments under the Securities Act, Exchange Act, and the Investment Company Act to our rules governing investment company advertisements and supplemental sales literature, which are intended to facilitate investor understanding of target date funds and reduce the potential for investors to be confused or misled.

A. Reasons for, and Objectives of, Proposed Amendments

The Commission is proposing amendments to rules 482 and 34b–1 that would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. Specifically, the Commission is proposing amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. The Commission is also proposing amendments to rules 482 and 34b–1 that would require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund. Finally, the Commission is proposing amendments to rule 156 that would provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading.

The proposed amendments to rules 482 and 34b–1 are intended to help address any potential investor misunderstanding that a target date fund may be invested more conservatively at the target date specified in its name or that every fund with the same target date in its name is managed in the same way. The proposed requirement to disclose the intended asset allocations of a target date fund at the target date (or, for periods on and after the target date, a fund's actual asset allocation as of the most recent calendar quarter) would, in essence, serve to alert investors to the existence of investment risk associated with the fund at and after the target date. The asset allocation may help counterbalance any misimpression that a fund is necessarily conservatively managed at the target date or that all funds with the same target date are similarly managed. The proposed table, chart, or graph requirement and landing point disclosure are intended to ensure that investors who receive target date fund marketing materials also receive basic information about the fund's glide path. The proposed amendments requiring disclosure of risks and considerations that are important when deciding whether to invest in a target date fund are intended to advise investors who review marketing materials for target date funds that a fund should not be selected based solely on age or retirement date, that a target date fund is not a guaranteed investment, and that a target date fund's stated asset allocation may be subject to change.

The proposed amendments to rule 156 are intended to emphasize the potential for certain statements suggesting that securities of an investment company are an appropriate investment to mislead investors, in the context of target date funds or other investment companies.

B. Legal Basis

The Commission is proposing amendments to rule 482 pursuant to authority set forth in Sections 5, 10(b), 19(a), and 28 of the Securities Act and Sections 24(g) and 38(a) of the Investment Company Act. The Commission is proposing amendments to rule 34b–1 pursuant to authority set forth in Sections 34(b) and 38(a) of the Investment Company Act. The Commission is proposing amendments to rule 156 pursuant to authority set forth in Section 19(a) of the Securities Act and Sections 10(b) and 23(a) of the Exchange Act.

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[144] Approximately 158 registered investment companies meet this definition, but the Commission estimates that no target date funds meet this definition.[145] The proposed amendments to rules 482 and 34b–1, if adopted, would apply to registered investment companies that are target date funds, and therefore we do not expect that they would affect any small entities. The proposed amendments to rule 156, if adopted, would apply to all investment companies and may affect the 158 registered investment companies that are small entities, as well as investment companies that are small entities, but that are not subject to Investment Company Act registration

[143] 5 U.S.C. 603 *et seq.*

[144] 17 CFR 230.157; 17 CFR 270.0–10.

[145] Commission staff determined that each target date fund is part of a group of related investment companies that had net assets of more than $50 million as of the end of its most recent fiscal year. The staff compiled a list of target date funds and aggregate net target date fund assets based on classifications by Morningstar Direct. To the extent that a group of related investment companies had aggregate net target date fund assets of $50 million or less as reported by Morningstar Direct, the staff reviewed the filings made with the Commission by the other related investment companies within that group to determine the aggregate net assets of the target date funds, together with other related investment companies.

requirements, including 32 business development companies.[146] Except for business development companies, we do not collect data to determine how many investment companies that are not subject to Investment Company Act registration requirements are small entities. Therefore, we are unable to determine the total number of small entities that would be affected by the proposed amendments to rule 156.

D. Reporting, Recordkeeping, and Other Compliance Requirements

We are proposing amendments to rules 482 and 34b–1 that would apply to advertisements and supplemental sales literature that place a more than insubstantial focus on one or more target date funds. Specifically, we are proposing amendments to rules 482 and 34b–1 that would require a target date fund that includes the target date in its name to disclose the target date (or current) asset allocation of the fund immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the fund's name in advertisements and supplemental sales literature. We are also proposing amendments to rules 482 and 34b–1 that would require enhanced disclosure in advertisements and supplemental sales literature for a target date fund regarding the fund's glide path and asset allocation at the landing point, as well as the risks and considerations that are important when deciding whether to invest in a target date fund.

The proposed amendments to rules 482 and 34b–1, if adopted, would apply to registered investment companies that are target date funds. As noted earlier, the Commission estimates that no target date funds are small entities. Therefore, we do not expect that the proposed amendments to rules 482 and 34b–1 would affect any small entities.

We are also proposing amendments to rule 156 to provide additional guidance regarding statements in sales literature for target date funds and other investment companies that could be misleading. Because the proposed amendment to rule 156 is interpretive and provides guidance as to when sales literature could be misleading, we believe that the proposed amendment would not impose significant reporting, recordkeeping, or other compliance costs on target date funds or other investment companies.

The Commission solicits comment on these estimates and the anticipated effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed 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 proposed amendments to rules 482 and 34b-1, if adopted, would apply to registered investment companies that are target date funds. As noted earlier, the Commission estimates that no target date funds are small entities. Therefore, we do not expect that the proposed amendments to rules 482 and 34b-1 would affect any small entities.

The proposed amendments to rule 156 would apply to all investment companies, including some that may be small entities, and would provide additional guidance in determining whether statements contained in sales literature are misleading. Different requirements for investment companies that are small entities may create an increased risk that investors would receive misleading information in sales literature about target date funds or other investment companies that are small entities. Therefore, we believe it is important for the proposed amendments to apply to all investment companies, regardless of size.

We have endeavored through the proposed amendments to minimize the regulatory burden on all investment companies, including small entities, while meeting our regulatory objectives. We have endeavored to clarify, consolidate, and simplify the requirements applicable to all investment companies, including those that are small entities. Finally, we do not consider using performance rather than design standards to be consistent with investor protection in the context of requirements for investment company marketing materials.

G. Request for Comments

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be subject to the proposed amendments and the likely impact of the proposal on those small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted and will be placed in the same public file as comments on the proposed amendments themselves.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[147] a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

IX. Statutory Authority

The Commission is proposing amendments to rule 156 pursuant to authority set forth in Section 19(a) of the Securities Act [15 U.S.C. 77s(a)] and Sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. 78j(b) and 78w(a)]. The Commission is proposing amendments to rule 482 pursuant to authority set

[146] Examples of investment companies not subject to registration under Section 8 of the Investment Company Act include business development companies and employees' security companies.

[147] Public Law 104–21, Title II, 110 Stat. 857 (1996).

forth in Sections 5, 10(b), 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77j(b), 77s(a), and 77z–3] and Sections 24(g) and 38(a) of the Investment Company Act [15 U.S.C. 80a–24(g) and 80a–37(a)]. The Commission is proposing amendments to rule 34b–1 pursuant to authority set forth in Sections 34(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–33(b) and 80a–37(a)].

List of Subjects

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.156 is amended by adding paragraph (b)(4) to read as follows:

§ 230.156 Investment company sales literature.

* * * * *

(b) * * *

(4) A statement suggesting that securities of an investment company are an appropriate investment could be misleading because of:

(i) The emphasis it places on a single factor (such as an investor's age or tax bracket) as the basis for determining that the investment is appropriate; or

(ii) Representations, whether express or implied, that investing in the securities is a simple investment plan or requires little or no monitoring by the investor.

* * * * *

3. Section 230.482 is amended by:

a. Redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7);

b. Adding new paragraph (b)(5);

c. In newly redesignated paragraph (b)(6), revising the first and second references "paragraphs (b)(1) through (b)(4)" to read "paragraphs (b)(1) through (b)(4) and paragraph (b)(5)(ii)";

d. In newly redesignated paragraph (b)(6), revising the third reference "paragraphs (b)(1) through (b)(4)" to read "paragraphs (b)(1) through (b)(4) and paragraphs (b)(5)(ii) and (v)"; and

e. Revising the phrase "NASD Regulation, Inc." in the note to paragraph (h) to read "Financial Industry Regulatory Authority, Inc."

The addition reads as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of Section 10.

* * * * *

(b) * * *

(5) *Target date funds.*

(i) *Definitions.* For purposes of this section:

(A) *Target Date Fund* means an investment company that has an investment objective or strategy of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures that changes over time based on an investor's age, target retirement date, or life expectancy.

(B) *Target Date* means any date, including a year, that is used in the name of a Target Date Fund or, if no date is used in the name of a Target Date Fund, the date described in the fund's prospectus as the approximate date that an investor is expected to retire or cease purchasing shares of the fund.

(C) *Landing Point* means the first date, including a year, at which the asset allocation of a Target Date Fund reaches its final asset allocation among types of investments.

(ii) An advertisement that places a more than insubstantial focus on one or more Target Date Funds must include a statement that:

(A) Advises an investor to consider, in addition to age or retirement date, other factors, including the investor's risk tolerance, personal circumstances, and complete financial situation;

(B) Advises an investor that an investment in the Target Date Fund(s) is not guaranteed and that it is possible to lose money by investing in the Target Date Fund(s), including at and after the Target Date; and

(C) Unless disclosed pursuant to paragraph (b)(5)(iv)(C) of this section, advises an investor whether, and the extent to which, the intended percentage allocations of the Target Date Fund(s) among types of investments may be modified without a shareholder vote.

(iii) An advertisement that places a more than insubstantial focus on one or more Target Date Funds, and that uses the name of a Target Date Fund that includes a date, including a year, must disclose the percentage allocations of the Target Date Fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) as follows: (1) An advertisement that is submitted for publication or use prior to the date that is included in the name must disclose the Target Date Fund's intended asset allocation at the date that is included in the name and must clearly indicate that the percentage allocations are as of the date in the name; and (2) an advertisement that is submitted for publication or use on or after the date that is included in the name must disclose the Target Date Fund's actual asset allocation as of the most recent calendar quarter ended prior to the submission of the advertisement for publication or use and must clearly indicate that the percentage allocations are as of that date. This information must appear immediately adjacent to (or, in a radio or television advertisement, immediately following) the first use of the Target Date Fund's name in the advertisement and must be presented in a manner reasonably calculated to draw investor attention to the information.

(iv) A print advertisement or an advertisement delivered through an electronic medium that places a more than insubstantial focus on one or more Target Date Funds must include a prominent table, chart, or graph clearly depicting the percentage allocations of the Target Date Fund(s) among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) over the entire life of the Target Date Fund(s) at identified periodic intervals that are no longer than five years in duration and at the inception of the Target Date Fund(s), the Target Date, the Landing Point, and, in the case of an advertisement that relates to a single Target Date Fund, as of the most recent calendar quarter ended prior to the submission of the advertisement for publication. If the advertisement relates to a single Target Date Fund, the table, chart, or graph must clearly depict the actual percentage allocations among types of investments from the inception of the Target Date Fund through the most recent calendar quarter ended prior to the submission of the advertisement for publication, clearly depict the future intended percentage allocations among types of investments, and identify the periodic intervals and other required points using specific dates (which may include years, such as 2015 or 2020). If

the advertisement relates to multiple Target Date Funds with different Target Dates that all have the same pattern of asset allocations, the advertisement may include separate presentations for each Target Date Fund that meet the requirements of the preceding sentence or may include a single table, chart, or graph that clearly depicts the intended percentage allocations of the Target Date Funds among types of investments and identifies the periodic intervals and other required points using numbers of years before and after the Target Date. If the advertisement (1) relates to a single Target Date Fund and is submitted for publication prior to the Landing Point; or (2) relates to multiple Target Date Funds with different Target Dates that all have the same pattern of asset allocations, the table, chart, or graph must be immediately preceded by a statement explaining the table, chart, or graph that includes the following information:

(A) The asset allocation changes over time;

(B) The Landing Point (or in the case of a table, chart, or graph for multiple Target Date Funds, the number of years after the Target Date at which the Landing Point will be reached); an explanation that the asset allocation becomes fixed at the Landing Point; and the intended percentage allocations among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the Landing Point; and

(C) Whether, and the extent to which, the intended percentage allocations among types of investments may be modified without a shareholder vote.

(v) A radio or television advertisement that is submitted for use prior to the Landing Point and that places a more than insubstantial focus on one or more Target Date Funds, and that uses the name of a Target Date Fund that includes a date (including a year), must include a statement that includes the Landing Point, an explanation that the asset allocation becomes fixed at the Landing Point, and the intended percentage allocations of the fund among types of investments (*e.g.,* equity securities, fixed income securities, and cash and cash equivalents) at the Landing Point.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

4. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

5. Section 270.34b–1 is amended by:

a. Removing the language "paragraphs (a) and (b) of" in the introductory text and the note to introductory text;

b. Revising the references "paragraph (b)(5) of § 230.482 of this chapter" in paragraph (a) and paragraph (b)(1)(i) to read "paragraph (b)(6) of § 230.482 of this chapter";

c. Revising the heading to the note following paragraph (b) to read "Note to paragraph (b)"; and

d. Adding paragraph (c) at the end thereof.

The addition reads as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(c) Sales literature that places a more than insubstantial focus on one or more Target Date Funds (as defined in paragraph (b)(5)(i)(A) of § 230.482 of this chapter) must contain the information required by paragraphs (b)(5)(ii), (iii), and (iv) of § 230.482 of this chapter, presented in the manner required by those paragraphs and by paragraph (b)(6) of § 230.482 of this chapter.

By the Commission.

Dated: June 16, 2010.

Elizabeth M. Murphy,

Secretary.

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