

**SUPPORTING STATEMENT  
FORM N-3**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Form N-3 (17 CFR 239.17a and 274.11b) is the form used by separate accounts offering variable annuity contracts which are organized as investment companies (“funds”) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) (“Investment Company Act”) and/or to register their securities under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (“Securities Act”). Section 5 of the Securities Act (15 U.S.C. 77e) requires the filing of a registration statement prior to the offer of securities to the public and that the statement be effective before any securities are sold, and Section 8 of the Investment Company Act (15 U.S.C. 80a-8) requires a separate account to register as an investment company. Form N-3 also permits separate accounts offering variable annuity contracts which are organized as investment companies to provide investors with a prospectus and a statement of additional information (“SAI”) covering essential information about the separate account when it makes an initial or additional offering of its securities. Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing the information required in a registration statement prior to the sale or at the time of confirmation or delivery of the securities.

**2. Purpose of the Information Collection**

The purpose of Form N-3 is to meet the filing and disclosure requirements of the Securities Act and the Investment Company Act and to enable filers to provide investors with information necessary to evaluate an investment in the security. This information collection differs significantly from many other federal information collections, which are primarily for the

use and benefit of the collecting agency. The information required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

### **3. Role of Improved Information Technology**

The Commission's electronic filing system (Electronic Data Gathering, Analysis and Retrieval or "EDGAR") is designed to automate the filing, processing, and dissemination of full disclosure filings. The system permits publicly held companies to transmit filings to the Commission electronically. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets. Form N-3 is required to be filed with the Commission electronically on EDGAR. (17 CFR 232.101(a)(1)(i) and (iv)). The public may access filings on EDGAR through the Commission's Internet Web site (<http://www.sec.gov>) or at EDGAR terminals located at the Commission's public reference rooms. Prospectuses and SAIs may be sent to investors by electronic means so long as the fund meets certain requirements.<sup>1</sup> The Commission has no information concerning the percentage of such documents sent electronically, but believes it is a small percentage.

### **4. Efforts to Identify Duplication**

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates them whenever it proposes a rule or a change in a rule. The requirements of Form N-3 are not generally duplicated elsewhere.

### **5. Effect on Small Entities**

---

<sup>1</sup>See Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233, Exchange Act Release No. 36345, Investment Company Act Release No. 21399 (Oct. 6, 1995) (60 FR 53458 (Oct. 13, 1995)).

The current disclosure requirements for Form N-3 do not distinguish between small entities and other funds. The burden on smaller funds, however, to prepare and file registration statements may be greater than for larger funds. This burden includes the cost of producing, printing, filing, and disseminating the prospectuses and SAIs. The Commission believes, however, that imposing different requirements on smaller investment companies would not be consistent with investor protection and the purposes of the registration statements. The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.

**6. Consequences of Less Frequent Collection**

The Investment Company Act requires that funds file annual amendments to their registration statements. Less frequent collection would mean that current information might not be available to fund investors.

**7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

Not Applicable.

**8. Consultation Outside the Agency**

Form N-3 has previously been amended through rulemaking actions pursuant to the Administrative Procedures Act. Comments are generally received from registrants, trade associations, the legal and accounting professions, and other interested parties. In addition, the Commission and staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. The Commission requested public comment on the collection of information requirements in Form N-3 before it submitted this request for extension and

approval to the Office of Management and Budget. The Commission received no comments in response to its request.

**9. Payment or Gift to Respondents**

Not Applicable.

**10. Assurance of Confidentiality**

Not Applicable.

**11. Sensitive Questions**

Not Applicable.

**12. Estimate of Hour Burden**

The estimate of the annual number of registration statements filed on Form N-3 is based on the average annual number of filings received by the Commission over the past three years. The hour burden estimates for preparing and filing Form N-3 are based on the Commission's experience with the contents of the form. The number of burden hours may vary depending on, among other things, the complexity of the filing and whether preparation of the form is performed by fund staff or outside counsel. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

Form N-3 generally imposes two types of reporting burdens on investment companies: (1) the burden of preparing and filing the initial registration statement; and (2) the burden of preparing and filing post-effective amendments to a previously effective registration statement. Separate accounts organized as management investment companies and offering variable annuities register as investment companies under the Investment Company Act and register their

securities under the Securities Act on Form N-3. The Commission estimates that the burden hours that will be imposed by Form N-3 are as follows:

Calculation of Hour Burden of Initial Form N-3 Filings

• Number of initial Form N-3 filings annually	2
• Average number of portfolios per filing	2
• Number of portfolios referenced in initial Form N-3 filings annually	4
• Current hour burden per portfolio for initial Form N-3 filing	922.7
• Total annual hour burden for initial Form N-3 filings (4 x 922.7)	3,690.8

Calculation of Hour Burden of Post-Effective Amendments

• Number of post-effective amendments filed annually	30
• Average number of portfolios per filing	2
• Number of portfolios in post-effective amendments to Form N-3 filings annually	60
• Current hour burden per portfolio for preparing post-effective amendments	154.7
• Total annual hour burden to prepare post-effective amendments (60 x 154.7)	9,282

Total Annual Hour Burden

• Annual hours for post effective amendments + annual hours for initial Form N-3 filings (3,690.8 + 9,282)	12,972.8
--	----------

Based on the estimated wage rate, the total cost to the fund industry of the hour burden for complying with Form N-3 is approximately \$3.64 million.<sup>2</sup>

<sup>2</sup>The cost to the industry is calculated by multiplying the total annual hour burden (12,972.8 hours) by the estimated hourly wage rate of \$280.50. The estimated wage figure is based on published rates for compliance attorneys (\$57.94) and programmers (\$46.92) outside New York City, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, yielding effective hourly rates of \$310 and \$251, respectively.

### 13. Estimate of Total Annual Cost Burden

Cost burden is the cost of goods and services purchased to prepare and update Form N-3, such as for the services of independent auditors and outside counsel. The cost burden does not include the hour burden discussed in Item 12. Estimates are based on the Commission's experience with the filing of registration forms.

The current estimated cost burden for preparing an initial Form N-3 is \$20,300 per portfolio and for preparing a post-effective amendment to a previously effective registration statement is \$7,650 per portfolio. The Commission estimates that, on an annual basis, 4 portfolios will be referenced in initial filings on Form N-3 and 60 portfolios will be referenced in post-effective amendments of Form N-3 filings. Thus, the total cost burden allocated to Form N-3 would be as follows:

#### Cost Burden of Preparing and Filing Initial Form N-3

• Cost burden per portfolio for initial Form N-3 filings	\$20,300
• Number of portfolios referenced in initial Form N-3 filings annually	4
• Cost burden of initial Form N-3 filings (4 x \$20,300)	\$81,200

---

See Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2005 (Sept. 2005). The estimated wage rate was further based on the estimate that attorneys and programmers would divide time equally, resulting in a weighted wage rate of \$280.50 (( $\$310 \times .50$ ) + ( $\$251 \times .50$ )).

Cost Burden of Preparing and Filing Post-Effective Amendments

- Cost burden per portfolio of post-effective amendments Form N-3 filings \$7,650
- Number of portfolios referenced in post-effective amendments to Form N-3 filings annually 60
- Cost burden of post-effective amendments to Form N-3 filings (60 x 7,650) \$459,000

Total Cost Burden for Form N-3

- Initial Form N-3 filings + post-effective amendments (\$81,200 + \$459,000) \$540,200

**14. Estimate of Cost to the Federal Government**

The annual cost of reviewing and processing new registration statements, and post-effective amendments of investment companies amounted to approximately \$16.8 million in fiscal year 2006, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

**15. Explanation of Changes in Burden**

Currently, the approved annual hour burden for preparing and filing registration statements on Form N-3 is 34,674 hours based on the previous estimate of 38 responses. The new estimate of the total annual hour burden is 12,972.8 hours based on the new estimated total number of responses of 32. The decrease in the total annual hour burden is 21,701.2 hours. This decrease is due to the decrease in our estimates of both the annual number of responses and the average annual number of portfolios per response.

**16. Information Collection Planned for Statistical Purposes**

Not Applicable.

**17. Approval to not Display Expiration Date**

Not Applicable.

**18. Exceptions to Certification Statement**

Not Applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not Applicable.