

**SUPPORTING STATEMENT  
For Rule 27d-2**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Section 27(d) of the Investment Company Act of 1940 (“Act”) [15 U.S.C. 80a-27(d)] provides that a registered investment company issuing a periodic payment plan certificate<sup>1</sup> (“issuer”), or any depositor or underwriter for such company, must include in the certificate a provision that the holder is entitled to exchange the certificate within eighteen months of issuance for a cash payment equaling the value of the account plus any sale charges paid in excess of fifteen percent of the certificate holder’s gross payments. Section 27(f) of the Act [15 U.S.C. 80a-27(f)] provides that, if the sales charge associated with a periodic payment plan exceeds nine percent per year, the custodian bank for the plan must, within sixty days of issuance, send the certificate holder a notice permitting the surrender of the certificate within forty-five days in exchange for a cash payment equaling the value of the account plus the difference between the gross payments made and the net amount invested. Sections 27(d) and 27(f)

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<sup>1</sup> A “periodic payment plan certificate” is “(A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in clause (A) of this paragraph and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in said clause (A) have upon completing the periodic payments for which such securities provide.” 15 U.S.C. 80a-2(a)(27).

On September 29, 2006, Congress enacted the Military Personnel Financial Services Protection Act of 2006 to protect members of the Armed Forces from unscrupulous practices regarding sales of insurance, financial, and investment products. Military Personnel Financial Services Protection Act, 109th Cong., 2d Sess., Pub. L. No. 109- 290, 120 Stat. 1317 (September 29, 2006) (prefatory material). Among other things, the Act prohibits the issuance and sale of new periodic payment plan certificates after October 29, 2006, without invalidating any rights or obligations under a certificate sold before that date.

both authorize the Securities and Exchange Commission (“Commission”) to promulgate rules imposing reserve requirements to ensure that issuers’ underwriters and depositors are able to refund sales charges.

Rule 27d-1 requires the depositor or principal underwriter for an issuer to deposit funds into a segregated trust account to provide assurance of its ability to fulfill its refund obligations under sections 27(d) and 27(f). The rule sets forth minimum reserve amounts and guidelines for the management and disbursement of the assets in the account. A single account may be used for the periodic payment plans of multiple investment companies. Rule 27d-1(j) directs depositors and principal underwriters to make an accounting of their segregated trust accounts on Form N-27D-1, which is filed with the Commission.

Form N-27D-1, which is titled “Accounting of Segregated Trust Account,” is intended to facilitate the Commission’s oversight of compliance with the reserve requirements set forth in rule 27d-1. The form requires depositors and principal underwriters to report deposits to a segregated trust account, including those made pursuant to paragraphs (c) and (e) of the rule. Withdrawals pursuant to paragraph (f) of the rule must also be reported. In addition, the form solicits information regarding the minimum amount required to be maintained under paragraphs (d) and (e) of rule 27d-1. Depositors and principal underwriters must file the form once a year on or before January 31 of the year following the year for which information is presented.

Instead of relying on rule 27d-1 and filing Form N-27D-1, depositors or principal underwriters for the issuers of periodic payment plans may rely on the exemption afforded by rule 27d-2. In order to comply with the rule: (i) the depositor or principal underwriter must secure from an insurance company a written guarantee of the refund requirements, (ii) the insurance company must satisfy certain financial criteria, and (iii) the depositor or principal

underwriter must file as an exhibit to the issuer's registration statement, a copy of the written undertaking, an annual statement that the insurance company has met the requisite financial criteria on a monthly basis, and an annual certified balance sheet.

## **2. Purposes of the Information Collection**

Rules 27d-1 and 27d-2 were explicitly authorized by statute. They provide assurance that depositors and principal underwriters of issuers have access to sufficient cash to meet the demands of certificate holders who reconsider their decisions to invest in a periodic payment plan. The information collection requirements in rules 27d-1 and 27d-2 enable the Commission to monitor compliance with reserve rules.

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

Improved technology has reduced the burden on industry associated with rules 27d-1 and 27d-2 by facilitating the marshalling of the required information. In addition, Form N-27D-1 and the exhibits to the issuer's registration statement under rule 27d-2 are filed electronically on the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR"). EDGAR is designed to automate the filing, processing, and dissemination of full disclosure filings by enabling publicly held companies to transmit filings to the Commission electronically. The automation provides for speed, accuracy and public availability of information, generating benefits to investors and financial markets.

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

The information required to be provided under rules 27d-1 and 27d-2 is not duplicative of information collected under other Commission regulations. Similar information provided to the

Commission in other contexts would not serve as an adequate substitute for the purpose of assessing whether sufficient funds are held in reserve to accommodate refund requests by periodic payment plan certificate holders.

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

The reserve and reporting requirements contained in rules 27d-1 and 27d-2 apply to all issuers and their depositors or underwriters, regardless of their size. The Commission would not be able to minimize the burden on small entities without compromising the mandates set forth in sections 27(d) and 27(f) of the Act. The Commission believes that the requirements in rules 27d-1 and 27d-2 do not currently have any effect on small entities.

#### **6. Consequences of Less Frequent Collection**

If Form N-27D-1 were required to be filed less frequently than annually, the Commission's ability to monitor compliance with reserve requirements would be severely hampered.<sup>2</sup> Similarly, altering the frequency of disclosures made under rule 27d-2 would undermine the purpose of the rule. The requirement that the depositor or principal underwriter of the issuer file the written undertaking with the insurance company and any amendments to the undertaking ensures the availability of current and accurate information about the insurance company. Likewise, the annual filing of a statement demonstrating that the insurance company met, on a monthly basis, the required financial standards and the filing of a certified balance sheet within ninety days after the close of the insurance company's fiscal year, facilitate timely monitoring of the financial soundness of the guarantor insurance company.

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

Not applicable.

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<sup>2</sup> Instruction 1 to Form N-27D-1 requires that the form be filed annually.

**8. Consultation Outside the Agency**

The Commission requested public comment on the collection of information requirements in rules 27d-1 and 27d-2 before it submitted this request for approval to the Office of Management and Budget. The Commission received no comments in response to this request.

More generally, the Commission and the staff at the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens confronting the industry.

**9. Payment or Gift to Respondents**

Not applicable.

**10. Assurance of Confidentiality**

Not applicable. The information collected under rules 27d-1 and 27d-2 is publicly available.

**11. Sensitive Questions**

Not applicable.

**12. Estimate of Hour Burden**

The Commission did not receive any Form N-27D-1 filings in 2007. The staff estimates, therefore, that there were zero burden hours associated with rule 27d-1.

Only one registered investment company has issued a new periodic payment plan certificate within the past 18 months, and the principal underwriter or depositor for this sole issuer relies on the exemption in rule 27d-2. The respondent makes approximately three

responses per year.<sup>3</sup> The insurance company provides the written undertaking, annual statement, and certified balance sheet at no cost to the respondent. We estimate that employees of the depositor or underwriter spend one hour per year at an hourly rate of approximately \$158<sup>4</sup> (for a total cost of approximately \$158) to file the required documents from the insurance company on EDGAR. Thus, we estimate that the annual burden associated with rule 27d-2 is approximately 1 hour at a cost of \$158.

These estimates of burden hours are based on an informal survey of representatives of principal underwriters or depositors and are not derived from a comprehensive or necessarily even representative study of the cost of the Commission's rules and forms.

### **13. Estimate of Total Annual Cost Burden**

The staff believes that rules 27d-1 and 27d-2 and Form N-27D-1 do not impose any cost burdens other than those arising from the hour burdens discussed above.

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

We estimate that there is no cost to the federal government associated with rules 27d-1 and 27d-2 and Form N-27D-1.

### **15. Explanation of Changes in Burden**

The estimated annual burden hours associated with rule 27d-1 and Form N-27D-1 decreased by 22 hours from 22 hours to zero hours. The decrease in hours resulted from a decrease in the number of filings on Form N-27D-1 each year. The estimated annual burden hours associated with rule 27d-2 decreased by 13 hours from 14 hours to 1 hour. The

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<sup>3</sup> The three responses are: (i) obtaining and filing the written undertaking or an amendment to the undertaking, (ii) filing the insurance company's annual statement that the financial conditions were satisfied, and (iii) filing the insurance company's certified balance sheet.

<sup>4</sup> The wage figure is derived from the average annual salaries reported in Securities Industry Association, Management and Professional Earnings in the Securities Industry (2006).

decrease in hours results from a decrease in the number of periodic payment plan certificates issued and a change in the estimated number of hours required to file documents on EDGAR.

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

Not applicable.

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

Not applicable.

**18. Exceptions to Certification Statement**

Not applicable.

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

Not applicable.