

## **SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE SECURITIES ACT OF 1933**

This submission, pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq., consists of this supporting statement and Release No. 33-8933 (June 25, 2008).

### **A. JUSTIFICATION**

#### **1. NECESSITY FOR THE INFORMATION COLLECTION**

In Release No. 33-8933, the Securities and Exchange Commission proposed rule 151A under the Securities Act of 1933. Proposed rule 151A contains no new “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. However, we believe that proposed rule 151A would, if adopted, result in an increase in the burden estimates that are currently approved by OMB for existing Form S-1 as a result of additional filings that would be made on Form S-1.<sup>1</sup> Form S-1 contains “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”). The title for the collection of information is:

“Form S-1” (OMB Control No. 3235-0065)

This collection of information is necessary for the Commission to carry out the provisions of the Securities Act of 1933. It governs the information required to be included in registration statements on Form S-1. This form sets forth the disclosure requirements for registration statements that are prepared by eligible issuers to provide investors with the information they need to make informed investment decisions in registered offerings.

#### **2. PURPOSE OF THE INFORMATION COLLECTION**

In Release No. 33-8933, the Commission proposed rule 151A under the Securities Act of 1933. The proposed rule contains a new definition of “annuity contract” that, on a prospective basis, would define a class of indexed annuities that are outside the scope of Section 3(a)(8) of the Securities Act, which provides an exemption under the Securities Act for certain insurance contracts. The proposed rule would not change Form S-1 and contains no new “collection of information” requirements within the meaning of the PRA.

#### **3. USE OF ELECTRONIC MEDIA**

Registration statements on Form S-1 are filed electronically with the Commission using the Commission’s Electronic Data Gathering and Retrieval (EDGAR) system.

#### **4. DUPLICATION**

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<sup>1</sup> Because proposed rule 151A is anticipated to affect the annual number of Forms S-1 filed and the number of hours per Form S-1, we are required to include Form S-1 in the titles of information collections even though we are not proposing to amend it in this release.

The Commission believes that there are no rules that conflict with or duplicate the proposed rule.

**5. METHODS USED TO MINIMIZE BURDEN ON SMALL BUSINESSES**

The proposed rule would affect small businesses and other small entities, if any, that are insurance companies and that issue indexed annuities that would be required to be registered on Form S-1 as a result of the rule. Currently, no insurance companies that issue indexed annuities are small entities. 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. DESCRIPTION OF CONSEQUENCES OF LESS FREQUENT COLLECTION**

Less frequent collection would mean that current information may not be available to investors and may potentially decrease investor confidence in the full and fair disclosure system that is the hallmark of the U.S. capital markets.

**7. EXPLANATION OF SPECIAL CIRCUMSTANCES**

Not applicable.

**8. CONSULTATION OUTSIDE THE AGENCY**

The Commission has issued a release soliciting comment on proposed rule 151A and the associated paperwork burdens.<sup>2</sup> The proposed rule does not change Form S-1 and contains no new “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. A copy of this release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff of the Division of Investment Management participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. The Commission will consider all comments received.

**9. PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY**

Not applicable.

**11. SENSITIVE QUESTIONS**

Not applicable.

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<sup>2</sup> 73 FR 37752 (July 1, 2008).

## 12. and 13. ESTIMATES OF HOUR AND COST BURDENS

The paperwork burden estimates associated with the proposal include the time and the cost of preparing and reviewing disclosure, filing documents or otherwise publicizing information, and retaining records.

These estimates represent the average burden for all companies, both large and small. We expect that the burdens and costs could be greater for larger companies and lower for smaller companies. For Securities Act registration statements on Form S-1, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the company at an average cost of \$400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

We estimate that there would be an annual increase of 400 responses on Form S-1 as a result of the proposal. We estimate that there would be a decrease of 265 hours per response on Form S-1 as a result of our proposal. The existing estimate is 1,176 hours per response on Form S-1. We believe that registration statements on Form S-1 for indexed annuities would result in a significantly lower number of hours per response, which, based on our experience with other similar contracts, we estimate as 600 hours per indexed annuity response on Form S-1. We attribute this lower estimate to two factors. First, the estimated 400 indexed annuity registration statements will likely be filed by far fewer than 400 different insurance companies, and a significant part of the information in each of the multiple registration statements filed by a single insurance company will be the same, resulting in economies of scale with respect to the multiple filings. Second, many of the 400 responses on Form S-1 each year will be annual updates to registration statements for existing contracts, rather than new registration statements, resulting in a significantly lower hour burden than a new registration statement. Combining our estimate of 600 hours per indexed annuity response on Form S-1 (for an estimated 400 responses) with the existing estimate of 1,176 hours per response on Form S-1 (for an estimated 471 responses), our new estimate is 911 hours per response  $((400 \times 600) + (471 \times 1,176))/871$ . This results in a decrease of 265 hours per response  $(1,176 - 911)$ .

Tables 1 through 3 below illustrate the incremental annual compliance burdens in hours and in cost for Form S-1 that would result from proposed rule 151A. These estimates represent the combined effect of an expected increase in the number of annual responses on Form S-1 and a decrease in the expected hours per response. The burden was calculated by adding the burden associated with the additional Forms S-1 that we expect will be filed annually in the future and subtracting the burden associated with our reduced estimate of hours per response.

**Table 1: Incremental PRA Burden Due to Increased Filings**

Estimated Increase in Annual Responses	Hours/Form After Taking Into Account Estimated Decrease In Hours/Response	Incremental Burden (hours)
(A)	(B)	(C)=(A) X (B)
400	911	364,400

**Table 2: Incremental Decrease in PRA Burden Due to Decrease in Hours Per Response**

Estimated Decrease in Hours/Response	Current Estimated Number of Annual Filings	Incremental Decrease in Burden (hours)
(A)	(B)	(C)=(A) X (B)
(265)	471	(124,815)

**Table 3: Calculation of Total Incremental PRA Burden Estimates**

Form	Incremental Hours Due to Increased Filings	Incremental Hours Due to Decrease in Hours Per Response	Total Incremental Burden	Company Hours <sup>3</sup>	Professional Hours <sup>4</sup>	Professional Cost (1,000s)
	(A)	(B)	(C)=(A) + (B)	(D)	(E)	(F)=(E) X \$400
S-1	364,400	(124,815)	239,585	59,896	179,689	\$71,876

<sup>3</sup> This column is calculated by multiplying column (C) by 25%, based on our determination (discussed in text above) of the proportion of the burden that is borne in-house by company personnel.

<sup>4</sup> This column is calculated by multiplying column (C) by 75%, based on our determination (discussed in text above) of the proportion of the burden that is borne as the cost of outside professionals.

Table 4 below illustrates the total annual compliance burden of the Form S-1 collection of information in hours and in cost. The burden was calculated by adding the incremental burdens to the existing burdens.

**Table 4: Estimates of Hour and Cost Burdens**

Form	Current Annual Responses	Incremental Annual Responses	Total Annual Responses	Current Hours/Form	Incremental Hours/Form	Total Hours/Form	Total Burden Hours	Company <sup>5</sup>	Professional <sup>6</sup>	Professional Cost (1,000s)
	(A)	(B)	(C)=(A)+(B)	(D)	(E)	(F)=(D)+(E)	(G)=(C)*(F)	(H)	(I)	(J)=(I)*\$400
S-1	471	400	871	1,176	(265)	911	793,481	198,370	595,111	\$238,044

**14. ESTIMATE OF COST TO FEDERAL GOVERNMENT**

The annual cost of reviewing and processing new registration statements, post-effective amendments, proxy statements, and shareholder reports by Division of Investment Management staff amounted to approximately \$20.8 million in fiscal year 2007, 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**

Table 5 below illustrates the changes in cost and hour burdens from the burden estimates currently approved by OMB. Columns (A) and (B) represent the total hour and cost burden estimates for Form S-1 under the proposed rule. Columns (C) and (D) represent the previous burden estimates most recently approved by OMB. Columns (E) and (F) represent the change in burden from the previous estimates. Columns (G) and (H) represent the incremental hour and cost burden as a result of the proposed rule. Columns (I) and (J) represent the adjustment, which encompasses any change in burden that is not attributable to the proposed rule.

<sup>5</sup> This column is calculated by multiplying column (G) by 25%, based on our determination (discussed in text above) of the proportion of the burden that is borne in-house by company personnel.

<sup>6</sup> This column is calculated by multiplying column (G) by 75%, based on our determination (discussed in text above) of the proportion of the burden that is borne as the cost of outside professionals.

**Table 5: Explanation of Changes in Burden**

Form	Requested Burdens		Current Burden		Change in Burden		Program Change		Adjustment	
	Burden Hours (A)	Cost (1,000s) (B)	Burden Hours (C)	Cost (1,000s) (D)	Burden Hours (E)=(A)-(C)	Cost (1,000s) (F)=(B)-(D)	Burden Hours <sup>7</sup> (G)	Cost (1,000s) <sup>7</sup> (H)	Burden Hours (I)=(A)-(C)-(G)	Cost (1,000s) (J)=(B)-(D)
S-1	198,370	\$238,044	138,474	\$166,169	59,896	\$71,875	59,896	\$71,875	0	0

**16. INFORMATION COLLECTIONS PLANNED FOR STATISTICAL PURPOSES**

Not applicable.

**17. EXPLANATION AS TO WHY EXPIRATION DATE WILL NOT BE DISPLAYED**

Not applicable.

**18. EXCEPTIONS TO CERTIFICATION**

Not applicable.

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

Not applicable.

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<sup>7</sup> These numbers are rounded in the proposing release and accordingly are shown as 60,000 and \$72,000,000.