

**SUPPORTING STATEMENT  
FORMS N-54A**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

a. Investment Company Act of 1940

The Securities and Exchange Commission (“Commission”) is statutorily mandated to ensure that information essential for informed decision-making in connection with the purchase and sale of publicly traded securities is publicly disclosed. In particular, Section 7(a) of the Securities Act of 1933 (“1933 Act”) states that a registration statement for the public offer and sale of securities “shall contain such . . . information, and shall be accompanied by . . . documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.”

In order to engage in business, an investment company is required by Section 7 of the Investment Company Act of 1940 (“1940 Act”) to register under Section 8 of the 1940 Act. Section 8(a) of the 1940 Act provides that registration is accomplished at the time that the investment company files a notification of registration with the Commission in such form as the Commission prescribes.

The purpose of this notification requirement is to notify the Commission of the existence of active investment companies and to enable the Commission to administer the provisions of the 1940 Act with respect to those companies. After an investment company has filed its notification of registration under Section 8(a), the company is then subject to the provisions of

the 1940 Act which govern certain aspects of its organization and activities, such as the composition of its board of directors and the issuance of senior securities.

Section 8(b) of the 1940 Act requires every investment company that has registered with the Commission by filing a notification of registration to file a registration statement under the 1940 Act within a reasonable time thereafter. The registration statement is required to be in such form and to contain such information and documents as the Commission prescribes as necessary or appropriate in the public interest or for the protection of investors. Generally, a registration statement under the 1940 Act is required to contain, among other things, information with respect to (i) the registrant's classification or subclassification as defined in Sections 4 and 5 of the 1940 Act; (ii) borrowing money; (iii) the issuance of senior securities; (iv) the extent to which the company will engage in the business of underwriting securities issued by others; (v) the concentration of portfolio investment in a particular industry or group of industries; (vi) the purchase and sale of real estate and commodities; (vii) loans to other persons; (viii) portfolio turnover; and (ix) any fundamental policies of the company.

Section 5(c) of the 1933 Act requires a company to have filed a registration statement with the Commission before it offers securities to the public by the use of the mails or other channels of interstate commerce, and Section 5(a) of the 1933 Act prohibits the use of the mails or interstate commerce to sell the securities, unless the registration statement has become effective. Section 5(b) of the 1933 Act prohibits delivery of the securities and the confirmation of sale by the use of the mails or other channels of interstate commerce, unless such securities

and confirmation are accompanied or preceded by a prospectus containing the pertinent information set forth in the registration statement.<sup>1</sup>

To facilitate the registration under the 1940 Act by different types of investment companies, the Commission has adopted rules under the 1940 Act and separate registration statement forms that vary in their disclosure requirements. The forms require disclosure of the essential facts pertinent to each type of investment company, minimizing the burden and expense of compliance with the law.

b. Form N-54A

Most investment companies having more than one hundred shareholders are subject to the regulatory provisions contained in Sections 1 through 53 of the 1940 Act. Certain investment companies, however, can elect to be business development companies regulated pursuant to Sections 55 through 65 of the 1940 Act. The latter system of regulation provides business development companies with greater flexibility in their capital structure, compensation of directors and officers, and transactions with portfolio companies than does the system of regulation embodied in other sections of the 1940 Act.

Because the system of regulation contained in Sections 55 through 65 of the 1940 Act is elective, business development companies must notify the Commission of their election to be

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<sup>1</sup>

A written confirmation must be accompanied or preceded by a prospectus containing the pertinent information set forth in the registration statement because a written confirmation not so accompanied or preceded would be a prospectus that does not meet the requirements of the 1933 Act. See Release No. 33-8591 (Jul. 19, 2005) [70 FR 44722, 44782 (Aug. 3, 2005)].

regulated pursuant to those sections.<sup>2</sup> To save companies the expense of drafting their own form of notification, and to expedite processing, the Commission has adopted Form N-54A as the form for notification of election to be subject to Sections 55 through 65 of the 1940 Act.

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

The purpose of Form N-54A is to allow business development companies to take advantage of the less burdensome regulatory provisions available to such companies under the 1940 Act. If this Form was not available, the Commission would have no means of implementing the less burdensome regulatory provisions of the 1940 Act applicable to business development companies. There would be a lack of uniformity in the manner in which the Commission was notified of registrant elections, and uncertainty would exist among registrants as to whether they could avail themselves of the special business development company provisions.

## **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 their filings to the Commission electronically. This automation has increased the speed, accuracy and availability of information, generating benefits to investors and financial markets. As of May 1996, all funds file Form N-54A electronically via EDGAR.

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

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<sup>2</sup> Section 54(a) of the 1940 Act.

Completing and filing Form N-54A does not call for duplicative, overlapping, or conflicting disclosure. The Commission staff reviews the collection of information requirements on an ongoing basis to find and eliminate duplicative requirements.

**5. Effect on Small Entities**

The current disclosure requirements for Form N-54A do not distinguish between small entities and other funds. Many investment companies that elect to be regulated as business development companies under the 1940 Act, however, may be small entities. By allowing business development companies to utilize the less burdensome regulatory provisions of the 1940 Act, the Form contributes to a lessening of the overall paperwork burden on these entities. There is no fee for filing the Form.

**6. Consequences of Less Frequent Collection**

The Forms must be filed only once.

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

Not applicable.

**8. Consultation Outside the Agency**

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. These various forums provide the Commission and the staff with a medium of ascertaining and acting upon paperwork burdens confronting the industry.

The Commission requested public comment on the collection of information requirements in Form N-54A, before submitting this request for extension to the Office of Management and Budget. The Commission received no comments in response and is not aware of any dissatisfaction with the Form.

**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 following estimates of average burden hours and costs 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.

The total annual Form N-54A burden would change from 23.0 hours to 3.0 hours. This decrease in burden is attributable to a decrease in the number of respondents from 46 to 6.

Number of respondents	6
Frequency of response per respondent	1
Hours per response	0.5
Total annual burden	3

The Commission, using an estimated hourly wage rate of \$511 for Deputy General Counsel, estimates that the total annual cost of the hour burden imposed by Form N-54A is

\$1,533. These figures were based on salaries and earnings from the SIFMA, Report on Management & Professional Earnings in the Securities Industry 2007 (Sept. 2007).

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

The Form must be filed only once and just by the few investment companies that elect to be regulated as a business development company. As a result, the total annualized cost burden for Form N-54A, other than the cost burden outlined in Item 12 of this Supporting Statement, is minimal.

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

The annual cost of reviewing and processing new registration statements, post-effective amendments, proxy statements, and shareholder reports of investment companies 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. The Commission does not expect a change in staff time or annual operating costs to review and process the registration forms and proxy statements because of the minimal change in the number of respondents filing Form N-54A.

**15. Explanation of Changes in Burden**

The decrease in burden hours for Form N-54A is attributable to a decrease in the number of respondents from 46 to 6.

**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. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.