

**SUPPORTING STATEMENT**  
**Form N-5**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Form N-5 (17 CFR 239.24 and 274.5) is the form used by small business investment companies to register their securities under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (“1933 Act”) and to register under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) (“1940 Act”). Section 5 of the 1933 Act (15 U.S.C. 77e) requires a company to file a registration statement with the Commission before it offers a new issue of securities to the public by the use of the mails or other channels of interstate commerce, and Section 8 of the 1940 Act (15 U.S.C. 80a-8) requires a small business investment company to register as an investment company. 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.

Form N-5 is the registration statement form adopted by the Commission for use by a small business investment company that has been licensed as such under the Small Business Investment Act of 1958 or which has received the preliminary approval of the Small Business Administration (“Administration”) and has been notified by the Administration that the company may submit a license application. Form N-5 is an integrated registration form and may be used as the registration statement under both the 1933 Act and 1940 Act. A registration statement on Form N-5 is deemed filed under both Acts unless it is indicated on the facing page that the filing is being made for purposes of only one of the Acts.

**2. Purpose of the Information Collection**

The purpose of Form N-5 is to meet the filing and disclosure requirements of both the 1933 Act and 1940 Act, and to provide investors with information sufficient to evaluate an investment in a small business investment company. 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 System, or "EDGAR") is designed to automate the filing, processing and dissemination of all 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-5 is required to be filed with the Commission electronically on EDGAR.<sup>1</sup> 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 may be sent to investors by electronic means so long as the fund meets certain requirements.<sup>2</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**

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<sup>1</sup> See 17 CFR 232.101(a)(1)(i) and (iv).

<sup>2</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 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 information in Form N-5 is not generally duplicated elsewhere.

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

With respect to registration under the 1940 Act, Form N-5 applies equally to all registrants, regardless of size. There is no alternative that would permit the Commission to afford special treatment to small entities.

With respect to the registration of securities by small business investment companies that are registered under the 1940 Act, Rules 601 to 610 under the 1933 Act (17 CFR 230.601 to 230.610a) exempt certain small offerings of securities from registration under the 1933 Act provided that the companies file with the Commission advance notice of such offerings on Form 1-E (17 CFR 239.200) and deliver an offering circular containing the information specified in Schedule A (17 CFR 230.610a) to each offeree.

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

A small business investment company must file a registration statement on Form N-5 when licensed as a small business investment company by the Small Business Administration. A small business investment company must also file Form N-5 if it chooses to sell securities to the public in order to meet the requirements of Sections 5 and 10(a)(3) of the 1933 Act for delivery of a current prospectus to offerees. A registration statement on Form N-5 must be updated annually.

In the absence of the disclosure requirements in Form N-5, investors in small business investment companies may not receive information crucial to making informed investment decisions. In addition, Form N-5 satisfies the 1940 Act requirement that investment companies

register with the Commission before they conduct business. In the absence of a Form N-5 registration statement, small business investment companies would not be able to comply with the filing requirements of the 1940 Act.

Moreover, if information were collected less frequently, the Commission would be unable to fulfill its responsibilities under the 1940 Act and investors would not have current information on which to base their investment decisions.

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

Not applicable.

**8. Consultation Outside the Agency**

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry and 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. The Commission requested public comment on the collection of information requirements in Form N-5 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 of Gift to Respondents**

Not applicable.

**10. Assurance of Confidentiality**

Not applicable.

**11. Sensitive Questions**

Not applicable.

## **12. Estimate of Hour Burden**

Based on the Commission's experience with the filing of Form N-5 and with disclosure documents generally, we estimate that the reporting burden of compliance with Form N-5 is approximately 352 hours per respondent, for a total of 352 hours.

Based on an estimated wage rate of the professionals who fill out the form, the total estimated aggregate annual cost of the hour burden to comply with Form N-5 is \$81,488 (\$231.50 X 352 hours).<sup>3</sup>

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

Cost burden is the cost of goods and services purchased to prepare and update Form N-5, such as for the services of independent auditors and outside counsel. The cost burden does not include the hour burden discussed in Item 12.

The Commission in recent years has received one (1) Form N-5 filing per year. The cost of compliance will vary considerably depending on factors such as whether a filing is a new registration statement or an update to a previously effective registration statement; whether the fund being registered presents novel or complex legal issues or is similar to other funds; whether amendments are required in response to staff comments; and whether outside counsel and accountants are necessary for preparation of the filing. The cost of compliance may range from less than \$15,000 (for a routine filing) to over \$60,000 (for a registration statement presenting significant legal issues per response) with an average cost per filing of \$26,000 for a total cost to

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<sup>3</sup> The estimated wage figure is based on published rates for compliance attorneys and programmer analyst 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 \$270 and \$193, respectively. See SIFMA's Report on Management & Professional Earnings in the Securities Industry 2008 (Sept. 2008). 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 \$231.50 (( $\$270 \times .50$ ) + ( $\$193 \times .50$ )).

the industry of \$26,000. The current average cost per filing is \$20,000. Adjusting for the effects of inflation since 1998, we now estimate that the total cost burden is approximately \$26,000 per filing. These estimates are based on the Commission's experience with the filing of Form N-5 and with comparable disclosure documents.

**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 \$19.6 million in fiscal year 2008, 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**

The estimated annual hour burden did not change. The current average cost per filing is \$20,000. We now estimate that the total cost burden is approximately \$26,000 per filing. The burden increased in order to reflect the effects of inflation.

**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.