

**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 management investment companies to register 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”).

Form N-3 is also the form used to file a registration statement under the Securities Act (and any amendments thereto) for variable annuity contracts funded by separate accounts which would be required to be registered under the Investment Company Act as management investment companies except for the exclusion provided by Section 3(c)(11) of the Investment Company Act (15 U.S.C. 80a-3(c)(11)). 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.

Form N-3 constitutes a collection of information under the Paperwork Reduction Act. Compliance with the disclosure requirements of Form N-3 is mandatory.

On July 21, 2010, the Commission issued a release proposing to replace rule 12b-1 under the Investment Company Act with new rule 12b-2.¹ The release also proposed technical and conforming amendments to certain rules and forms, including Form N-3. The proposed amendments to Form N-3 would require separate accounts that file Form N-3 to: (i) revise prospectus narrative disclosure on asset-based distribution fees; and (ii) revise the SAI disclosure regarding asset-based distribution fees.

In particular, the proposed amendments would revise Instruction 2 to Item 7(a) of Form N-3 to eliminate the requirement that registrants disclose the total amount spent in the most recent fiscal year, and instead require registrants to provide a description of asset-based distribution fees, as defined in the new proposed rule. The proposal would retain the requirement that registrants list the principal types of activities for which asset-based distribution payments are made. The proposed amendments would also revise Item 21(f) to delete references to 12b-1 plans and instead require disclosure of the principal activities paid for through asset-based distribution expenses incurred under rule 12b-2(b) and (d) and rule 6c-10(b). The proposed amendments would also revise Instruction 5 to Item 26(b)(ii) to delete any references to 12b-1 plans, but would maintain the requirement for registrants to provide the same information with respect to expenses

¹ See Mutual Fund Distribution Fees; Confirmations, 33-9128; 34-62544; IC-29367 (July 21, 2010).

and reimbursements accrued pursuant to rule 12b-2(b), rule 12b-2(d), and rule 6c-10(b).

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 certain requirements are met.² The Commission has no information concerning the percentage of such

² 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)).

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

The current disclosure requirements for Form N-3 do not distinguish between small entities and larger entities. The burden on smaller entities may be greater than for larger entities. This burden includes the cost of producing, printing, and filing, and disseminating prospectuses and SAs. 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.

With respect to the proposed amendments, the Commission considered special requirements for small entities. The Commission believes, however, that special compliance or reporting requirements, or different time tables, for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. Finally, with respect to the proposed amendments, the Commission does not consider using performance rather than design standards to be consistent with the statutory requirement that we adopt rules for the protection of investors.

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 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. Less frequent filing would be inconsistent with the filing and disclosure requirements of the Securities Act and the Investment Company Act. In addition, if the form were to be filed less frequently, investors may not be provided with the information necessary to evaluate an investment in the security.

With the proposed amendments, the frequency with which information from Form N-3 is collected would not change.

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-3 before it submitted this request for revision and approval to the Office of Management and Budget. We will consider all comments received on the proposed amendments.

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 are made solely for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), 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 hour paperwork burden estimate for Form N-3 is 13,024 hours. The staff's estimates of the incremental impact of the proposed amendments to Form N-3 are described below.

Only registrants that charge asset-based distribution fees would be affected by our proposed amendments to Form N-3. Based upon a review of filings with the Commission, the staff estimates that 1 registrant that currently files on Form N-3 charges asset-based distribution fees, and would file a post effective amendment. Based upon conversations with fund

representatives, the staff estimates that the proposed amendments would require this registrant to expend 10 hours in internal personnel time (at an internal time cost equivalent rate of \$316 per hour) to revise its prospectus to comply with the proposed amendments.³ The staff further estimates, based on those conversations, that the proposed amendments to Item 21 and Instruction 5 of Item 26 would result in time savings when completing a post-effective amendment of a Form N-3 filing. The staff estimates that this registrant would save approximately 1 hour (at an internal time cost equivalent of \$316 per hour) annually as a result of the proposed amendments.

The staff further estimates that no new registrants that file on Form N-3 are likely to charge asset-based distribution fees under proposed rule 12b-2 and the proposed amendments to rule 6c-10. Accordingly, the staff estimates that there would be no other changes in burden hours for Form N-3 as a result of the proposed amendments.

The staff therefore estimates that our proposed amendments to Form N-3 would result in an incremental annual time burden of approximately 9 hours (with a total internal time equivalent cost burden of \$2844)⁴ compared to the current approved hour burden.

³ The staff estimates that the internal time cost equivalent for time spent by internal counsel is \$316 per hour. This estimate, as well as all other internal time cost estimates made in this analysis (unless otherwise noted) is derived from SIFMA's Management & Professional Earnings in the Securities Industry 2009, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead or from SIFMA's Office Salaries in the Securities Industry 2009, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

13. Estimate of Total Annual Cost Burden

The 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.

The current estimated cost burden allocated to Form N-3 is \$601,400. The proposed amendments would impact the cost burden as described below.

Based upon a review of filings with the Commission, the staff estimates that 1 registrant that currently files on Form N-3 charges asset-based distribution fees, and would file a post effective amendment. The staff estimates it would cost this registrant approximately \$2000 in one-time costs (for outside legal counsel drafting and review) to comply with the proposed amendments.

14. Estimate of Cost to the Federal Government

The annual cost of reviewing and processing new registration statements and post-effective amendments of registration statements of investment companies amounted to approximately \$20.4 million in fiscal year 2009, 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

Form N-3 has a current burden hour inventory of 13,024 hours. As a result of the proposed amendments, the total hour burden for preparing and

⁴ These estimates are based on the following calculations: (10 hours – 1 hour = 9 hours); (9 hours × \$316 per hour = \$2844).

filing Form N-3 would increase by 9 hours to a new annual burden of 13,033 hours.

The current estimated cost burden allocated to Form N-3 is \$601,400. As a result of the proposed amendments, the total cost burden for preparing and filing Form N-3 would increase by \$2000 to a new annual cost burden of \$603,400.

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.