

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Form N-5**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

Form N-5<sup>1</sup> is the form used by small business investment companies (“SBICs”) to register their securities under the Securities Act of 1933 (“Securities Act”)<sup>2</sup> and to register under the Investment Company Act of 1940 (“Investment Company Act”).<sup>3</sup> Section 5 of the Securities Act 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,<sup>4</sup> and Section 8 of the Investment Company Act requires an SBIC to register as an investment company.<sup>5</sup> Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing certain required information prior to the sale or at the time of confirmation or delivery of the securities.<sup>6</sup>

Form N-5 is the registration statement form adopted by the Commission for use by an SBIC 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 (“SBA”) and has been notified by the SBA 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 Securities Act and Investment Company 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.

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<sup>1</sup> 17 CFR 239.24 and 274.5.

<sup>2</sup> 15 U.S.C. 77a *et seq.*

<sup>3</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>4</sup> 15 U.S.C. 77e.

<sup>5</sup> 15 U.S.C. 80a-8.

<sup>6</sup> 15 U.S.C. 77e(b).

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

The purpose of Form N-5 is to meet the filing and disclosure requirements of both the Securities Act and Investment Company Act, and to provide investors with information sufficient to evaluate an investment in an SBIC. 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 that is 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. Consideration Given to Information Technology**

The Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR") automates the filing, processing, and dissemination of full disclosure filings. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets. Registration statements on Form N-5 are required to be filed with the Commission electronically on EDGAR.<sup>7</sup> The public may access filings on EDGAR through the Commission's 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 certain requirements are satisfied.<sup>8</sup>

## **4. 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 information in Form N-5 is not generally duplicated elsewhere.

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

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act,<sup>9</sup> to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. With respect to registration under the Investment Company Act, the requirements of Form N-5 do not distinguish between small entities and other SBICs. Although the burden on smaller SBICs to prepare and file registration statements

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<sup>7</sup> See rules 101(a)(1)(i) and (iv) of Regulation S-T [17 CFR 232.101(a)(1)(i) and (iv)].

<sup>8</sup> See Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)].

<sup>9</sup> 5 U.S.C. 601 *et seq.*

may be greater than for larger SBICs, the Commission believes that imposing different requirements on smaller SBICs would not be consistent with investor protection and the purposes of registration statements.

With respect to the registration of securities by SBICs that are registered under the Investment Company Act, Rules 601 to 610a under the Securities Act exempt certain small offerings of securities from registration under the Securities Act provided that the companies file with the Commission advance notice of such offerings on Form 1-E<sup>10</sup> and deliver an offering circular containing the information specified in Schedule A<sup>11</sup> to each offeree.<sup>12</sup>

## **6. Consequences of Not Conducting Collection**

An SBIC must file a registration statement on Form N-5 when licensed as an SBIC by the SBA. An SBIC 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 Securities 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 SBICs may not receive information crucial to making informed investment decisions. In addition, Form N-5 satisfies the Investment Company Act requirement that investment companies register with the Commission before they conduct business. In the absence of a Form N-5 registration statement, SBICs would not be able to comply with the filing requirements of the Investment Company Act.

Moreover, if information were collected less frequently, the Commission would be unable to fulfill its responsibilities under the Investment Company 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)**

This collection is not inconsistent with 5 CFR 1320.5(d)(2).

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<sup>10</sup> 17 CFR 239.200.

<sup>11</sup> 17 CFR 230.610a.

<sup>12</sup> 17 CFR 230.601 to 230.610a.

## **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 through public conferences, meetings, and informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon the 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 or Gift**

No payment or gift to respondents was provided.

## **10. Assurance of Confidentiality**

No assurance of confidentiality was provided.

## **11. Sensitive Questions**

No information of a sensitive nature will be required in the information collection. The (these) information collection (s) collect basic Personally Identifiable Information (PII) that may include name, business address, and residential address (for sole proprietor only), telephone/cellular/facsimile numbers, and email address. The information collection is covered under the following System of Records Notice (SORN) <http://www.sec.gov/about/privacy/sorn/secsorn1.pdf>

## **12. Burden of Information Collection**

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995<sup>13</sup> and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with Form N-5 is mandatory. Responses to the collection of information will not be kept confidential.

The Commission has received one filing on Form N-5 in the last three years, and we therefore estimate that SBICs will file about 0.333 filings on Form N-5 per year. The currently approved burden of Form N-5 is 352 hours per response, divided evenly

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<sup>13</sup> 44 U.S.C. 3501 *et seq.*

between in-house compliance attorneys and programmer analysts. Therefore the number of currently approved aggregate burden hours, when calculated using the current estimate for number of filings is about 117 hours per year.<sup>14</sup> Based on the Commission's estimate of 117 burden hours and an estimated wage rate of approximately \$277 per hour,<sup>15</sup> the total annual cost to reporting persons of the hour burden for filing Form N-5 is approximately \$32,409.<sup>16</sup>

### **13. Cost to Respondents**

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 cost of the hour burden discussed in Item 12 above. The currently approved cost burden of Form N-5 is \$30,000 per filing.<sup>17</sup> We continue to believe this estimate for Form N-5's cost burden is appropriate. Therefore, we estimate that the aggregate cost burden, when calculated using the Commission's estimate of 0.333 filings per year, is about \$10,000 in external costs per year.<sup>18</sup>

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<sup>14</sup>  $352 \text{ hours per response} \times 0.333 \text{ filings per year} = 117.216 \text{ hours per year.}$

<sup>15</sup> The Commission's estimate concerning the wage rate is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for compliance attorneys, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of \$277.  $(\$334 \text{ per hour for compliance attorneys} \times 0.5) + (\$220 \text{ per hour for compliance analysts} \times 0.5) = \$277 \text{ per hour.}$  See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

<sup>16</sup>  $117 \text{ hours} \times \$277 \text{ per hour} = \$32,409.$

<sup>17</sup> The cost of compliance varies 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. We estimate that 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 \$30,000.

<sup>18</sup>  $\$30,000 \text{ per filings} \times 0.333 \text{ filings per year} = \$9,990 \text{ per year.}$

**14. Costs to Federal Government**

The annual cost of reviewing and processing disclosure documents, including new registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of investment companies amounted to approximately \$19.8 million in fiscal year 2012, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

**15. Changes in Burden**

There has been no change in estimated burden hours or cost burden.

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

The results of any information collected will not be published.

**17. Approval to Omit OMB Expiration Date**

We request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates. The OMB control number will be displayed.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

The Commission is not seeking an exception to the certification statement.

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

The collection of information will not employ statistical methods.