

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
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.

On October 13, 2016, the Commission issued a release adopting, among other things, amendments to Form N-3 requiring certain disclosures regarding securities lending activities.¹ Specifically, the Commission adopted amendments to the Statement of Additional Information requirements in Form N-3 to require funds to disclose the dollar amounts of income and fees and compensation paid to service providers related to their securities lending activities during their most recent fiscal year, as illustrated in Table 1 below.²

SECURITIES LENDING ACTIVITIES

Gross income from securities lending activities	\$ _____
<i>Fees and/or compensation for securities lending activities and related services</i>	
Fees paid to securities lending agent from a revenue split	\$ _____
Fees paid for any cash collateral management service (including fees deducted from a pooled cash collateral reinvestment vehicle) that are not included in the revenue split	\$ _____
Administrative fees not included in revenue split	\$ _____
Indemnification fee not included in revenue split	\$ _____
Rebate (paid to borrower)	\$ _____
Other fees not included in revenue split (specify)	\$ _____
Aggregate fees/compensation for securities lending activities	\$ _____
Net income from securities lending activities	\$ _____

Table 1

We proposed similar requirements as part of proposed amendments to Regulation S-X, including disclosure in the fund's financial statements of (1) the gross income from securities lending,

¹ See Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (October 13, 2016).

² See Item 19(i)(1) of Form N-1A. The disclosure need not be presented in a tabular format.

including income from cash collateral reinvestment; (2) the dollar amount of all fees and/or compensation paid by the fund for securities lending activities and related services, including borrower rebates and cash collateral management services; (3) the net income from securities lending activities; (4) the terms governing the compensation of the securities lending agent, including any revenue sharing split, with the related percentage split between the fund and the securities lending agent, and/or any fee-for-service, and a description of services included; (5) the details of any other fees paid directly or indirectly, including any fees paid directly by the fund for cash collateral management and any management fee deducted from a pooled investment vehicle in which cash collateral is invested; and (6) the monthly average of the value of portfolio securities on loan.³ We proposed these disclosures in order to allow investors to better understand the income generated from, as well as the expenses associated with, a fund's securities lending activities.⁴

2. Purpose and Use of the Information Collection

The title for the collection of information is: Form N-3 under the Securities Act of 1933 and under the Investment Company Act of 1940, registration of separate accounts organized as management investment companies. 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

³ See proposed rule 6-03(m) of Regulation S-X; Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (May 20, 2015) [80 FR 33590 (June 12, 2015)] at 33624.

⁴ See *id.*

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 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.⁵

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 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.

⁵ 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)].

This burden includes the cost of producing, printing, and filing, and disseminating prospectuses and SAIs. 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. 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 Not Conducting 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.

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 proposed amendments to Regulation S-X regarding securities lending activities disclosures and related information

collection requirements that were adopted in Form N-3 before it submitted this request for revision and approval to the OMB. The Commission received no comments on this aspect of the proposal in response to its request.

9. Payment or Gift

Not Applicable.

10. Confidentiality

Not Applicable.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII) that may include names, job titles and work addresses. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on 1/29/2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. Burden of Information Collection

The estimate of the annual number of registration statements filed on Form N-3 is based on the average annual number of filings received by the Commission in the 12-month period ending December 31, 2015. The hour burden estimates for preparing and filing Form N-3 are based on the Commission's experience with the contents of the form. The number of burden

hours may vary depending on, among other things, the complexity of the filing and whether preparation of the form is performed by internal staff or outside counsel. The estimated average burden hours 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.

Form N-3 generally imposes two types of reporting burdens on investment companies: (1) the burden of preparing and filing the initial registration statement; and (2) the burden of preparing and filing post-effective amendments to a previously effective registration statement. Separate accounts organized as management investment companies and offering variable annuities register as investment companies under the Investment Company Act and register their securities under the Securities Act on Form N-3. In our most recent Paperwork Reduction Act submission for Form N-3, Commission staff estimated the annual compliance burden to comply with the collection of information requirement of Form N-3 is 3,104 hours.

As a result of the amendments to Form N-3 concerning securities lending activities, we estimate that registrants will incur an additional 2 burden hours in the first year and an additional 0.5 hours for filings in subsequent years. Amortized over three years, we estimate that the average additional annual hour burden will therefore be 1 hour per fund.⁶

Based on a review of Form N-3 filings made with the Commission, Commission staff estimates that the annual burden hours imposed by Form N-3 are as follows:⁷

⁶ 2 hours in first year + (0.5 hours per year thereafter × 2 years) = 2 hours + 1 hour = 3 hours total. 3 hours total ÷ 3 years = 1 hour per year.

⁷ Commission staff reviewed initial filings and post-effective amendments for Form N-3 filed with the Commission from January 1, 2015 to December 31, 2015. There were no initial filings of Form N-3 during that time period.

Calculation of Hour Burden of Initial Form N-3 Filings

• Number of initial Form N-3 filings annually	0
• Average number of portfolios per filing	0
• Number of portfolios referenced in initial Form N-3 filings annually	0
• Current hour burden per portfolio for initial Form N-3 filing	0
• Total annual hour burden for initial Form N-3 filings	0

Calculation of Hour Burden of Post-Effective Amendments

• Number of post-effective amendments filed annually	8
• Average number of portfolios per filing	2
• Number of portfolios in post-effective amendments to Form N-3 filings annually	16
• Current hour burden per portfolio for preparing post-effective amendments	156.2 ⁸
• Total annual hour burden to prepare post-effective amendments (16 x 156.2)	2499.2

Total Annual Hour Burden

Annual hours for post effective amendments + annual hours for initial Form N-3 filings (0 + 2499.2)	2499.2
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Based on an estimated hourly wage rate of \$324, Commission staff estimates the annual internal time cost equivalent of the hour burden of Form N-3 is approximately \$809,740.80.⁹

⁸ This calculation is based on the following: 156.2 hours = 155.2 hours (current hour burden per portfolio for preparing post-effective amendments) + 1 hour (average additional annual hour burden for amendments concerning securities lending activities).

⁹ The internal time cost equivalent is calculated by multiplying the total annual hour burden (2499.2 hours) by the estimated hourly wage rate of \$324. The estimated wage figure is based on published rates for Compliance Attorneys (\$340) and Senior Programmers (\$308). The \$340/hour figure for a Compliance Attorney and \$308/hour figure for a Senior Programmer are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work year; multiplied by

13. Cost to Respondents

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. Estimates are based on Commission staff's discussions with fund representatives and the Commission's experience with the filing of registration forms.

In our most recent Paperwork Reduction Act submission for Form N-3, Commission staff estimated that, on an annual basis, 0 portfolios will be referenced in initial filings on Form N-3 and 20 portfolios will be referenced in post-effective amendments of Form N-3 filings. Commission staff further estimated the cost burden for preparing a post-effective amendment to a previously effective registration statement is \$10,259¹⁰ per portfolio. The staff estimates that the amendments to Form N-3 do not impose any additional material cost burdens on registrants, apart from the cost of the burden hours discussed above. Thus, the staff estimates that the total cost burden allocated to Form N-3 would be as follows:

Cost Burden of Preparing and Filing Initial Form N-3

• Cost burden per portfolio for initial Form N-3 filings	\$0
• Number of portfolios referenced in initial Form N-3 filings annually	0
• Cost burden of initial Form N-3 filings	\$0

5.35 to account for bonuses, firm size, employee benefits, and overhead; and adjusted to account for the effects of inflation. The estimated wage rate was further based on the estimate that Compliance Attorneys and Senior Programmers would divide time equally, resulting in a weighted wage rate of \$324 (((\$340 x .50) + (\$308 x .50)).

¹⁰ The previous cost burden for preparing a post-effective amendment to a previously effective registration statement on Form N-3 was \$9,950 per portfolio. To account for the effects of inflation since 2012, a rate of 3.11% was applied, which was calculated using the Consumer Price Index.

Cost Burden of Preparing and Filing Post-Effective Amendments

• Cost burden per portfolio of post-effective amendments Form N-3 filings	\$10,259
• Number of portfolios referenced in post-effective amendments to Form N-3 filings annually	16
• Cost burden of post-effective amendments to Form N-3 filings (16 x \$10,259)	\$164,144

Total Cost Burden for Form N-3

• Initial Form N-3 filings + post-effective amendments (\$0 + \$164,144)	\$164,144
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14. Cost to the Federal Government

The annual cost of reviewing and processing registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of investment companies amounted to approximately \$19.5 million in fiscal year 2015, based on the Commission's computation of the value of staff time devoted to this activity and related overhead. A portion of those costs relate to processing and reviewing Form N-3 filings submitted to the Commission.

15. Change in Burden

Annual Hour Burden. Currently, the approved annual hour burden for preparing and filing registration statements on Form N-3 is 3,104 hours based on the previous estimate of 20 responses per year. The new estimate of the total annual hour burden is 2,499.2 hours based on the new estimate of 16 responses per year and takes into account the average additional annual hour burden of one hour in connection with amendments to Form N-3 concerning securities lending activities. The decrease in the total annual hour burden is 604.8 hours. This decrease is

due to the decrease in our estimates of the annual number of responses for post-effective amendments.

Total Cost Burden. The current approved total cost burden for preparing and filing registration statements on Form N-3 is \$205,180, based on the previous estimate of 20 responses per year. Based on the new estimate of 16 responses per year, the new estimate of the total cost burden is \$164,144 in external costs per year, resulting in a decrease of \$41,036 per year. This decrease is due to the decrease in our estimates of the annual number of responses for post-effective amendments.

16. Information Collection Planned for Statistical Purposes

Not Applicable.

17. Approval to Omit OMB Expiration Date

We request authorization to omit the expiration date on the electronic version of the form, although the OMB control number will be displayed. Including the expiration date on the electronic version of this 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.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable.