

**SUPPORTING STATEMENT**  
**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.

On October 11, 2017, the Commission issued a release proposing amendments to certain of the Commission’s forms that are used by investment companies, including Form N-5. The Commission proposed amendments to Rule 102 of Regulation S-T to apply hyperlinking and HyperText Markup Language (“HTML”) format requirements to registrants filing Form N-5 to facilitate access to the Form’s exhibits for investors and other users of the information. Under the proposed amendments, affected registrants

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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).

would be required to include a hyperlink to each exhibit identified in a filing's exhibit index, unless the exhibit is filed in paper pursuant to a temporary or continuing hardship exemption under Rule 201 or Rule 202 of Regulation S-T, or pursuant to Rule 311 of Regulation S-T. This requirement would apply to registration statements on Form N-5. Consistent with our rules for operating companies, we are not proposing to require registrants to refile electronically any exhibits filed only in paper. Under the proposed amendments, an electronic filer would also be required to correct an inaccurate or nonfunctioning link or hyperlink to an exhibit.

In connection with the proposed exhibit hyperlinking requirements, the Commission is also proposing amendments to Rule 105 of Regulation S-T to require investment company registrants to make Form N-5 filings that include exhibits in HTML format. Currently, investment company registrants must submit electronic filings to the Commission using the EDGAR system in either American Standard Code for Information Interchange ("ASCII") format or HTML format. Because the ASCII format does not support hyperlink functionality, the exhibit hyperlinking requirement would be feasible only if registrants are required to file in HTML. Under the proposed requirement, registrants would be required to file Form N-5 in HTML format. While the affected Form N-5 filings would be required to be filed in HTML pursuant to the proposed amendments to Rule 105, registrants would continue to be permitted to file in ASCII any schedules or forms that are not subject to the exhibit filing requirements, such as proxy statements, or other documents included with a filing, such as an exhibit. The proposed amendments are intended to facilitate access to these exhibits for investors and other users of the information.

## **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 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>

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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.*

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

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

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

## **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).

## **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 proposed amendments and related collection of information requirements before it submitted this request for revision and approval to the Office of Management and Budget. Before adopting the proposed amendments to Form N-5, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements.

## **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 questions of a sensitive nature are involved. The information collection does not include personally identifiable information.

## 12./13. Estimate of Hour and Cost 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.

In our most recent Paperwork Reduction Act submission for Form N-5,<sup>14</sup> Commission staff estimated the annual compliance burden to comply with the collection of information requirement of Form N-5 to be 117 burden hours, with an estimated internal cost burden of \$32,409. We further estimated the external cost burden to be about \$10,000 per year.

The proposed amendments to Form N-5 are expected to increase the burdens and costs for registrants to prepare and file registration statements and reports on the affected forms, but we believe the burdens associated with hyperlinking exhibits would be small.<sup>15</sup>

We assume that the average burden hours of requiring exhibit hyperlinks would vary based on the number of exhibits that are included with a filing. For purposes of the PRA, based on an estimated average and median number of exhibits filed with Form N-5 and the staff's experience, we estimate that the average burden for a registrant to hyperlink to exhibits would be one hour per response for each of the affected forms. As discussed in the Proposing Release, we are not making any adjustments to the paperwork burden of affected forms due to the proposed amendments to simplify and modernize the rules and forms governing incorporation by reference.<sup>16</sup>

The table below shows the total annual compliance burden, in hours and in costs, of the collections of information on Form N-5 resulting from the proposed amendments.<sup>17</sup> The burden estimates were calculated by multiplying the estimated number of responses

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

<sup>14</sup> This estimate is based on the last time the form's information collection was submitted for PRA renewal in 2015.

<sup>15</sup> See Proposing Release at Section IV.B.2.c.

<sup>16</sup> See Proposing Release at Section IV.B.3.b.

<sup>17</sup> For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

by the estimated average amount of time it would take an issuer to prepare and review the exhibit hyperlinks. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. For purposes of the PRA, we estimate that 25% of the burden of preparation is carried by the registrant internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of \$400 per hour.<sup>18</sup>

Form	Proposed number of affected responses (A)	Incremental burden hours/form (B)	Total incremental burden hours (C) = (A) × (B)	25% internal burden (D) = (C) × 0.25	75% outside professional (E) = (C) × 0.75	Professional costs (F) = E × \$400
Form N-5	<b>1</b>	1	1	0	1	<b>\$400</b>

The figures above reflect our estimated increase of approximately 0.25 internal burden hours per fund. Given an estimated time cost of \$329 per fund (based on updated data concerning funds and fund personnel salaries),<sup>19</sup> we estimate that in the aggregate, funds will annually incur an additional internal burden of 0.25 hours<sup>20</sup> and time cost of \$82.25<sup>21</sup> to comply with the proposed amendments to Form N-5. We estimate that with the additional hour burdens and time costs associated with the proposed amendments, the total annual internal burden to comply would be 117.25 burden hours<sup>22</sup> and time costs of \$32,491.25<sup>23</sup> for Form N-5.

<sup>18</sup> We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of \$400 per hour. These estimates are based on our estimates for the parallel requirement for operating companies.

<sup>19</sup> This estimate is based on the following calculation: Blended rate for a compliance attorney (\$345) and a senior programmer (\$313) = \$329. The Commission estimates the wage rate associated with these burden hours based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (adjusted to account for the effects of inflation).

<sup>20</sup> This estimate is based on the following calculation: 0.25 internal burden hours x 1 response = 0.25 hours.

<sup>21</sup> This estimate is based on the following calculation: 0.25 hours x \$329 (blended rate for a compliance attorney (\$345) and a senior programmer (\$313)) = \$82.25.

<sup>22</sup> This estimate is based on the following calculation: 117 + 0.25 = 117.25 hours.

<sup>23</sup> This estimate is based on the following calculation: \$32,409 + 82.25 = \$32,491.25.

**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 \$22.9 million in fiscal year 2016, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

**15. Changes in Burden**

The total annual hour burden of 117.25 represents an increase of 0.25 hours over the previous hour estimate of 117 hours. In addition, the annual cost burden of \$10,400 represents an increase of \$400 over the previous external cost burden estimate of \$10,000 per year. The changes in burden hours and external costs are due to the staff's estimates of the time costs and external costs that would result from our proposed amendments to Form N-5 regarding hyperlinking.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.