

**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 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-3. 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-3 to facilitate access to the Form's exhibits for investors and other users of the information. Under the proposed amendments, affected registrants 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-3. 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-3 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-3 in HTML format. While the affected Form N-3 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 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 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.<sup>1</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 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 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

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<sup>1</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)].

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 and related information collection requirements before it submitted this request for revision and approval to the OMB.

Before adopting the proposed amendments to Form N-3, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements.

**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>.

### **12/13. Estimate of Hour and Cost Burden of Information Collection**

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. 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. The hour and cost 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 and cost 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 following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act<sup>2</sup> and are not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

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<sup>2</sup> 44 U.S.C. 3501 *et seq.*

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 was approximately 2,500 hours, with an annual internal time cost equivalent of the hour burden of approximately \$809,740.80, and estimated annual external cost burden of \$164,144.<sup>3</sup>

The proposed amendments to Form N-3 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>4</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-3 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>5</sup>

The table below shows the total annual compliance burden, in hours and in costs, of the collections of information on Form N-3 resulting from the proposed amendments.<sup>6</sup> The burden estimates were calculated by multiplying the estimated number of responses by the estimated

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<sup>3</sup> These estimates are based on the last time the form's information collection was submitted for PRA renewal in 2017.

<sup>4</sup> See Proposing Release at Section IV.B.2.c.

<sup>5</sup> See Proposing Release at Section IV.B.3.b.

<sup>6</sup> For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

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>7</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-3	20	1	20	5	15	<b>\$6,000</b>

The figures above reflect our estimated increase of approximately 0.25 internal burden hours per filing. Given an estimated internal time cost of \$329 per filing (based on updated data concerning funds and fund personnel salaries),<sup>8</sup> we estimate that in the aggregate, registrants will annually incur an additional internal burden of 5 hours<sup>9</sup> and time cost of \$1,190<sup>10</sup> to comply with the

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<sup>7</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>8</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>9</sup> This estimate is based on the following calculation: 0.25 internal burden hours x 20 responses = 5 hours.

<sup>10</sup> This estimate is based on the following calculation: 5 hours x \$329 (blended rate for a compliance attorney (\$345) and a senior programmer (\$313)) = \$1,190.



proposed amendments to Form N-3. We therefore estimate that with the additional hour burdens and time costs associated with the proposed amendments, the total annual internal burden to comply would be 2,505 burden hours<sup>11</sup> and time costs of \$810,930.80<sup>12</sup> for Form N-3.

#### **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 \$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. A portion of those costs relate to processing and reviewing Form N-3 filings submitted to the Commission. **15.**

#### **Change in Burden**

The new total annual hour burden for preparing and filing registration statements on Form N-3 is 2,505 (reflecting an increase of 5 hours over the previous burden estimate of 2,500 hours). In addition, the new annual external cost burden for preparing and filing registration statements on Form N-3 is \$170,144 (reflecting an increase of \$6,000 over the previous annual external cost burden of \$164,144). The changes in burden hours and external costs are due to the staff's estimates of the additional time burdens and external costs that would result from our proposed amendments to Form N-3 regarding hyperlinking.

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

Not Applicable.

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<sup>11</sup> This estimate is based on the following calculation: 2,500 (prior estimate) + 5 (additional hours) = 2,505 hours.

<sup>12</sup> This estimate is based on the following calculation: \$809,740.80 (prior estimate) + \$1,190 (additional internal cost) = \$810,930.80.

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

We request authorization to omit the expiration date on the electronic version of the form for design and IT project scheduling reasons. The OMB control number will be displayed.

**18. Exceptions to Certification Statement for Paperwork Reduction Act Submission**

Not Applicable.

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

Not Applicable.