

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

A. JUSTIFICATION

1. Necessity for the Information Collection

Form N-5¹ is the form used by small business investment companies (“SBICs”) to register their securities under the Securities Act of 1933 (“Securities Act”)² and to register under the Investment Company Act of 1940 (“Investment Company Act”).³ 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,⁴ and Section 8 of the Investment Company Act requires an SBIC to register as an investment company.⁵ 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.⁶

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 March 20, 2019, the Commission issued a release adopting rules that will modernize and simplify certain disclosure requirements in Regulation S-K, and related

¹ 17 CFR 239.24 and 274.5.

² 15 U.S.C. 77a *et seq.*

³ 15 U.S.C. 80a-1 *et seq.*

⁴ 15 U.S.C. 77e.

⁵ 15 U.S.C. 80a-8.

⁶ 15 U.S.C. 77e(b).

rules and forms.⁷ In particular, the Commission adopted amendments to Regulation S-T that will require investment companies filing on Form N-5 to submit the document in HTML format and to include a hyperlink to each exhibit identified in the exhibit index of the document.

In several cases, some of these amendments presented only a negligible or offsetting impact on the cost and hourly burdens associated with the Paperwork Reduction Act for certain investment company registration forms, and consequently, we believe did not warrant making any adjustments to those forms' burdens. For example, we noted in the adopting release that because less than 1% of confidential treatment request (CTR) applications received in fiscal year 2018 were related to exhibits filed with the Investment Company Act forms, we did not believe that the reduction in burden associated with Investment Company Act form would be significant enough to warrant an adjustment to our burden estimates. Similarly, with respect to our adoption of new Item 601(a)(5) in Regulation S-K and the analogous amendments to certain investment company registration forms, we noted that although we expected some reduction in burden associated with these amendments, we do not believe the reduction will be significant enough to warrant an adjustment to our burden estimates. Third, with respect to the impact our amendments (including those to certain investment company registration forms) would have on personally identifiable information (PII), we assumed in the adopting release that the amendments will result in some incremental reduction in burden, although we did not believe the reduction will be significant enough to warrant an additional adjustment to our burden estimates. Finally, we did not make any adjustments to the paperwork burden for forms impacted by our amendments to simplify and modernize the rules and forms governing incorporation by reference, because the amendments resulted in offsetting adjustments to the paperwork burden per affected form. As a result of the negligible or offsetting impacts noted above, we did not incorporate any changes to the burden hours or costs associated with the foregoing areas because we did not believe the adjustment would be significant enough to warrant an additional adjustment to our burden estimates in sections 12. Burden of Information Collection and 13. Cost to Respondents.

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

⁷ *FAST Act Modernization and Simplification of Regulation S-K*, Securities Act Release No. 10618 (March 20, 2019) [84 FR 12674 (April 2, 2019)] (“Fast Act Adopting Release”).

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. The adopted amendments, furthermore, will facilitate access to exhibits by investors and other users 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.⁸ 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.⁹

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,¹⁰ 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

⁸ See rules 101(a)(1)(i) and (iv) of Regulation S-T [17 CFR 232.101(a)(1)(i) and (iv)].

⁹ See Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)].

¹⁰ 5 U.S.C. 601 *et seq.*

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-E¹¹ and deliver an offering circular containing the information specified in Schedule A¹² to each offeree.¹³

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

Before adopting the amendments affecting Form N-5, the Commission solicited and evaluated public comments on the proposal and its collection of information requirements. The Commission received no comments in response to its request. Moreover, 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

¹¹ 17 CFR 239.200.

¹² 17 CFR 230.610a.

¹³ 17 CFR 230.601 to 230.610a.

various forums provide the Commission and staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry.

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. No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Estimate of Burden Hours for Information Requested

The following estimates of average internal burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995¹⁴ 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.

¹⁴ 44 U.S.C. 3501 *et seq.*

Table 1: BURDEN ESTIMATES FOR FORM N-5 FILINGS¹

	Burden Per Response						Aggregate Burden			
	Internal Burden		Wage Rate ²	Cost of Internal Burden	Annual Cost Burden	Annual Responses	Internal Burden	Cost of Internal Burden	Annual Cost Burden	
CURRENTLY APPROVED ESTIMATES										
Preparing and filing reports on Form N-5 generally	352 hours	×	\$292 (1:1 blend of compliance attorney and programmer analyst)	\$102,784	\$30,000 ³	×	0.333	117 hours	\$34,164	\$10,000
Total annual burden								117 hours	\$34,164	\$10,000
REVISED ESTIMATES										
Preparing and filing reports on Form N-5 generally	352 hours	×	\$269 (1:1 blend of compliance attorney and intermediate accountant) ⁴	\$102,784	\$30,000	×	0.333	117 hours	\$34,164	\$10,000
Preparation and review of exhibit hyperlinks	0.25 hours	×	\$348 (1:1 blend of compliance attorney and senior programmer)	\$87	\$300	×	0.333	.08325 hours	\$29	\$100
Total annual burden								117 hours	\$34,193	\$10,100

Notes:

1. The cost and hourly burden figures are rounded to the nearest whole number.
2. The Commission's estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are 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, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.
3. 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.
4. The Commission used a more recent estimate for the respective wage rates when issuing these amendments in than it did when making the other wage rate estimates.

As summarized in Table 1 above, the Commission has previously estimated that about 0.333 filings on Form N-5 each year, incurring 117 hours of internal hour burden at a cost of about \$34,186. The hour burden estimates for preparing and filing reports on Form N-5 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 forms is performed by internal staff or outside counsel.

The FAST Act amendments will require funds filing reports on Form N-5 to submit these documents in HTML format and to include a hyperlink to each exhibit identified in the exhibit index of these documents. For purposes of the Paperwork Reduction Act, we estimated the average burden for a fund to hyperlink to exhibits based on the median number of exhibits that are filed with an affected form. As summarized in Table 1 above, we estimate that the total internal burden associated with Form N-5 will be 117 hours per year, at a cost of about \$34,193.

13. Estimate of Total Annual 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. Estimates are based on the Commission's experience with the filing of such reports.

The currently approved external cost burden of Form N-5 is \$10,000 per filing. However, with the added requirements in the FAST Act Adopting Release, the external cost burden per response increased by \$100.¹⁵ The aggregate external cost burden per response is increased to \$10,100.

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

¹⁵ In the FAST Act Adopting Release, we mistakenly noted the external burden increased by \$400 to \$10,400. However, the \$400 increase was not adjusted to reflect that only 75% of the estimated 1 burden hour, would be allocated for external professional services needed to comply with the new requirements. In addition, the hourly burden was not adjusted to reflect 0.333 filings per year. Table 1 above reflects the revised figures.

approximately \$22.2 million in fiscal year 2018, 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 internal burden hours. However, we estimate an annual increase of \$100 in the external cost burden from \$10,000 to \$10,100. The changes in external cost burdens are due to the increase in the external time burden arising from our amendments affecting Form N-5 regarding hyperlinking of exhibits.

Table 2: CHANGE IN BURDEN ESTIMATES

Form N-5	Annual No. of Responses			Annual Time Burden (Hrs.)			Burden Cost Burden (\$)		
	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>
Form N-5	1	1	0	117	117	0	\$10,000	\$10,100	\$100

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.