

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”). 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. Section 5(b) of the Securities Act makes it unlawful to carry or cause to be carried a security for purposes of sale or for delivery after the sale “unless accompanied or preceded” by a prospectus that meets the requirements of section 10(a) of the Act (which, in turn, generally requires a prospectus relating to a security to contain the information contained in the registration statement). For separate accounts organized as management investment companies that offer variable annuity contracts, Form N-3 provides the information required to appear in prospectus meeting the requirements of section 10(a) of the Securities Act (as well as the information required to appear in the statement of additional information (“SAI”).

On October 30, 2018, the Commission issued a release proposing rule and form amendments designed to enhance disclosures for variable annuities and variable life insurance contracts (together, “variable contracts”). The proposed rules use a layered disclosure approach

that would permit a person to satisfy its prospectus delivery obligations under the Securities Act for a variable contract by sending or giving a summary prospectus that presents key information about a variable contract's terms, benefits, and risks, with access to more detailed information available online and electronically or in paper format on request.¹ The Commission also proposed amendments to the registration forms for variable contracts, including Form N-3, to update and enhance the disclosures to investors in these contracts, and to implement the proposed summary prospectus framework. The Commission proposed to amend certain disclosure requirements that Form N-3 currently includes, as well as to require certain new disclosures regarding, among other things: an overview of the contract, key information about the contract, principal risks, optional benefits available under the contract, loans, and the investment options available under the contract. The Commission also proposed to eliminate or reduce certain disclosures currently required by the form, such as disclosure of condensed financial information for each class of accumulation units of the registrant for the last five fiscal years, as opposed to the last ten fiscal years as is currently required.

2. Purpose and Use of the Information 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. 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

¹ Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33286 (Oct. 30, 2016), available at <https://www.sec.gov/rules/proposed/2018/33-10569.pdf>.

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 (*see* 17 CFR 232.101(a)(1)(i) and (iv)). The public may access filings on EDGAR through the Commission's internet website (<http://www.sec.gov>) or by using an EDGAR terminal located in the Commission's public reference rooms. Prospectuses and SAIs may be sent to investors by electronic means so long as certain requirements are met.²

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 Commission reviews all rules periodically, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. The current and proposed disclosure requirements for

² 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)].

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.

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

Before determining whether to adopt the proposed amendments to Form N-3, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements. Moreover, the Commission and 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 paperwork burdens that may confront the industry.

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 following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and are not derived from a comprehensive or even representative survey or study of the cost of 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. Providing the information required by Form N-3 is mandatory, and responses will not be kept

confidential.

In our most recently approved Paperwork Reduction Act submission for Form N-3, Commission staff estimated that the total internal compliance burden to comply with Form N-3's collection of information requirement was 2,518 hours annually, with an estimated cost of \$164,144 each year.³ Based on a review of Form N-3 filings made with the Commission, Commission staff estimates that there will be no initial filings and that eight post-effective amendments would be made on Form N-3 per year.⁴ Commission staff further estimates these filings would be made by five registrants and would cover an average of three investment options per registration statement or post-effective amendment filing.⁵

The proposed amendments would include certain disclosure changes and new disclosures, but also would simplify certain current disclosure requirements in Form N-3. Based on this, we estimate that, on a net basis, the proposed amendments to Form N-3 would increase the burden of preparing an initial registration statement on Form N-3 by 5 hours per investment option per filing. Amortizing this burden over a three-year period results in an estimated average

³ These estimates are based on the last time Form N-3's information collection was approved, pursuant to a submission for PRA renewal in 2018.

⁴ Commission staff reviewed initial filings and post-effective amendments for Form N-3 filed with the Commission from January 1, 2015 to December 31, 2017. There were no initial filings of Form N-3 during that time period. There were eleven, seven, and six post-effective amendments filed during 2015, 2016, and 2017, respectively. Averaging those post-effective amendments over three years results in an average of eight post-effective amendments per year. This estimate is based on the following calculation: $(11 + 7 + 6) / 3 \text{ years} = 8 \text{ per year}$.

⁵ Based on a review of filings with the Commission, we are increasing our estimate of the current number of investment options per filing from two to three investment options. There are currently five registration statements filed with the Commission on Form N-3 that cover 14 investment options. For purposes of this Paperwork Reduction Act analysis, we assume each registration statement would cover an average of three investment options. $14 \text{ investment options} / 5 \text{ registration statements} = 2.8 \text{ investment options per registration statement}$.

annual burden of 1.7 hours per year, at an estimated internal time cost equivalent of \$571.⁶

However, because Commission staff estimates there would be no initial filings using Form N-3, we estimate that the proposed amendments would result in no change to the total annual hour burden for initial filings on Form N-3.

We further estimate a one-time burden of an additional 20 hours per registration statement to update disclosures that are not related to the variable contract's investment options the first time the registration statement is amended by post-effective amendment following adoption of the proposed amendments. Subsequently, we estimate an ongoing burden of an additional 5 hours per registration statement per year to prepare and file a post-effective amendment to update these disclosures. Amortizing these burdens over a three-year period results in an estimated average annual burden of an additional 10 hours per registration statement to prepare and file the post-effective amendment, at an estimated internal time cost equivalent of \$3,360.⁷

⁶ The estimate of 1.7 hours is based upon the following calculation: $(5 + 0 + 0) / 3 \text{ years} = 1.67$. We are assuming 0 hours in years 2 and 3 because, after year 1, the registrant would prepare and file post-effective amendments to the registration statement, and the hour burden of this is captured in the paragraph accompanying *infra* note 7.

The internal time cost equivalent of \$571 is calculated by multiplying the hour burden (1.7 hours) by the estimated hourly wage of \$336. The estimated wage figure is based on published rates for Compliance Attorneys (\$352) and Senior Programmers (\$319). These hourly figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work year; multiplied by 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 \$336 $(\$352 + \$319) / 2 = 335.5$.

⁷ The estimate of 15 hours is based upon the following calculation: $(20 \text{ hours in year 1} + (5 \text{ hours in year 2}) + (5 \text{ hours in year 3}) / 3 \text{ years} = 10 \text{ hours}$. The internal time cost equivalent of \$3,360 is calculated by multiplying the hour burden (10 hours) by the estimated hourly wage of \$336. *See supra* note 6.

In addition, we estimate a further burden of 6 hours per investment option to update registration statement disclosures that are related to the variable contract's investment options, the first time the registration statement is amended by post-effective amendment following adoption of the proposed amendments. Subsequently, we estimate an ongoing burden of an additional 1.5 hours per investment option per year to prepare and file a post-effective amendment to update these disclosures. Amortizing these burdens over a three-year period results in an estimated average annual burden of an additional 3 hours per investment option to prepare and file a post-effective amendment, at an estimated internal time cost equivalent of \$3,360.⁸

Therefore, we estimate that the proposed amendments to Form N-3 would cause registrants to incur an additional annual burden of 152 hours, at an internal time cost equivalent of \$51,072.⁹ In the aggregate, we estimate the total annual hour burden to update registration

⁸ The estimate of 3 hours is based upon the following calculation: (6 hours in year 1 + (1.5 hours in year 2) + (1.5 hours in year 3) / 3 years = 3 hours. The internal time cost equivalent of \$1,008 is calculated by multiplying the hour burden (3 hours) by the estimated hourly wage of \$336. *See supra* note 6.

In our most recently approved Paperwork Reduction Act submission, we estimated that a registrant with multiple investment options would experience a burden of complying with the requirements of Form N-3 that is proportional to the number of investment options that the registrant offers. Thus, we assumed that 8 post-effective amendment filings per year that cover 14 investment options would represent 14 responses. However, since many of the disclosure requirements of Form N-3 do not depend on the number of investment options offered by the registrant, we have revised that estimate to reflect an incremental burden per investment option, as opposed to a burden that is proportional to the number of investment options that the registrant offers. Thus, we now assume that 8 post-effective amendment filings per year, each covering three investment options, would represent 8 responses.

⁹ The estimate of 152 hours is based upon the following calculation: (10 hours per post-effective amendment x 8 post-effective amendments) + (3 hours per investment option per post-effective amendment x 3 investment options per registration statement x 8 post-effective amendments). The estimate of \$51,072 is based upon the following calculation: 152 hours x \$336/hour = \$51,072.

statements as a result of the proposed amendments would be 1,491 hours, at an internal time cost equivalent of \$500,976.¹⁰

The estimates associated with Form N-3’s burden hours are as follows:

Table 1: Summary of Annual Responses, Burden Hours, and Burden Hour Costs Estimates for the Information Collection in Proposed Form N-3

Form N-3	No. of Responses (annual)	Total Burden Hours (annual)	Total Burden Hour Costs (annual)
Initial Registration Statements	0	0	\$0
Post-Effective Amendments	8	1,491	\$500,976
TOTAL:	8	1,491	\$500,976

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to prepare and update filings on Form N-3, such as for the services of independent auditors and outside counsel. The external cost burden does not include the cost of the internal hour burden discussed in Item 12. Estimates are based on the Commission’s experience with the filing of registration forms. In our most recently approved Paperwork Reduction Act submission for Form N-3, Commission staff estimated the cost burden for preparing and filing a post-effective amendment to a previously-effective registration statement is \$10,259 per investment option, with a total annual approved external cost burden of \$164,144.¹¹ Consistent with the change in our methodology for estimating burdens attributable to investment options, we are revising those estimates.

¹⁰ This estimate is based on the following calculation: 0 initial registration statements + (8 post-effective amendments x (179.86 hours current burden + 10 hours under proposed amendments)) + (8 post-effective amendments x 3 hours per investment option x 3 investment options) = approximately 1,491 hours. The estimate of \$500,976 is based upon the following calculation: 1,491 hours x \$336/hour = \$500,976.

¹¹ This estimate is based on the following calculation: 0 initial registration statements + (\$10,259 per investment option per post-effective amendment x 8 post-effective amendments per year x 2 investment options per post-effective amendment) = \$164,144.

We estimate that the cost burden for preparing and filing a post-effective amendment to a previously-effective registration statement would be \$10,259 per registration statement to update disclosures that are not related to the contract’s investment options, and an additional \$3,420 per investment option to update disclosures that are related to the contract’s investment options.¹² Therefore, we estimate the total external cost burden as a result of the proposed amendments would be \$164,152, which would represent an increase due to the change in our methodology for estimating burdens attributable to investment options.¹³

The estimates associated with Form N-3’s external costs are as follows:

Table 2: Summary of Annual Responses and Total External Cost Estimates for the Information Collection in Proposed Form N-3

Form N-3	No. of Responses (annual)	Total External Costs (annual)
Initial Registration Statements	0	\$0
Post-Effective Amendments	8	\$164,152
TOTAL:	8	\$164,152

¹² See *supra* note 8. Based on staff experience, we estimate that the external cost burden to update disclosures associated with each investment option would be approximately 1/3 of the cost burden to update disclosures associated with the registration statement. $\$10,259 / 3 = \$3,420$. We request comment on this assumption and this estimate.

¹³ This estimate is based on the following calculation: 0 initial registration statements + (\$10,259 per registration statement per post-effective amendment x 8 post-effective amendments per year) + (\$3,420 per investment option x 3 investment options x 8 post-effective amendments) = \$164,152.

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 \$22.2 million in fiscal year 2017, 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

Currently, the approved total annual hour burden for preparing and filing registration statements on Form N-3 is 2,518 internal burden hours. We estimate that the new internal burden would be approximately 1,491 hours annually, reflecting a decrease of 1,027 internal burden hours associated with the proposed amendments. This decrease in the total annual hour burden is due to the change in our methodology regarding burdens attributable to investment options, notwithstanding the increase in the estimated number of investment options associated with Form N-3 registrants, as well as the increased burden hours per filing as a result of the proposed amendments.¹⁴

The current estimate for the external annual cost burdens associated with preparing and filing initial and post-effective registration statements on Form N-3 is \$164,144. We estimate that the new external annual cost burden would be approximately \$164,152, reflecting an increase of \$8 associated with the proposed amendments. This increase in the total external cost estimate is due to the change in our methodology regarding burdens attributable to investment

¹⁴ As discussed above, we have changed our methodology for determining burdens attributable to investment options, which now reflect an incremental burden per investment option as opposed to being proportional to the number of investment options that the registrant offers. Thus, we now assume that 8 post-effective amendment filings per year, covering 14 investment options, would represent 8 responses, as opposed to 14. *See supra* note 8.

options, notwithstanding the increase in the estimated number of investment options associated with Form N-3 registrants, as well as the increased burden hours per filing as a result of the proposed amendments.¹⁵

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 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.

¹⁵ See *supra* note 8.