

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 insurance company separate accounts offering variable annuity contracts that 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 that 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. 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. Form N-3 permits separate accounts offering variable annuity contracts 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.

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 rules and forms.¹ In particular, the Commission adopted amendments to Regulation S-T that will require registrants filing on Form N-3 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 of 1995 (44 U.S.C. 3501 *et seq.*) 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 applications received in fiscal year 2018 were related to exhibits filed with the Investment Company Act forms, we did not believe the reduction in burden associated with Investment Company Act forms 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 would have on personally identifiable information (“PII”), we assumed in the Adopting Release that the amendments will result in some incremental reduction in burden,

¹ See FAST Act Modernization and Simplification of Regulation S-K, Securities Act Release No. 10618 (March 20, 2019) [84 FR 12674 (April 2, 2019)] (“Adopting Release”).

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. Given 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 and 13 below.

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 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 (Electronic Data Gathering, Analysis and Retrieval or "EDGAR") automates the filing, processing, and dissemination of disclosure filings. The system permits publicly held companies to transmit their 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 website (<http://www.sec.gov>).

4. Duplication

The Commission periodically evaluates rule- and form-based reporting and recordkeeping requirements for duplication, and reevaluates them whenever it proposes or adopts changes in its rules or forms. Form N-3's requirements generally are not 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 disclosure requirements for registration statements filed on Form N-2 do not distinguish between small entities and other funds. The burden on smaller funds to prepare and file registration statements may be proportionately greater than for larger funds. 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)

This collection is not inconsistent with 5 CFR 1320.5(d)(2)..

8. Consultation Outside the Agency

Before adopting the amendments affecting Form N-3, 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 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.

9. Payment or Gift

No payment or gift to respondents was provided.

10. Confidentiality

No assurance of confidentiality was provided.

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 (the 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 January 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

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 (44 U.S.C. 3501 *et seq.*) and are not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms. Compliance with the disclosure requirements of Form N-2 is mandatory. Responses to the disclosure requirements are not kept confidential.

As summarized in Tables 1 and 2 below, 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 2,518 hours, with

an annual internal time cost equivalent of the hour burden of approximately \$715,112 and estimated annual external cost burden of \$164,144.²

The amendments in connection with the adoption of the FAST Act include amendments to Regulation S-T that will require registrants filing on Form N-3 to submit these documents in HTML format and to include a hyperlink to each exhibit identified in the form's exhibit index are expected to increase the burdens and costs for funds that prepare and file these registration statements. For purposes of the PRA, we estimated the average burden for a fund to hyperlink to exhibits based on the median number of exhibits that are filed with a Form N-3 registration statement.

The tables below show the changes in professional costs and burden hours from the burden estimates currently approved by OMB, and the new burden estimates under the amendments.³ The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time — one hour — 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,⁴ 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

² Form N-3's most recent information collection, which OMB approved in July 2019, reflects the adoption of certain form amendments associated with new rule 30e-3 under the Investment Company Act. *See* Optional Internet Availability of Investment Company Shareholder Reports, Securities Act Release No. 10506 (June 5, 2018) [83 FR 29158 (June 22, 2018)].

Note that the figures in this PRA submission differ from those reflected in the Proposing Release, which relied on the previously approved information collection to estimate the annual burdens associated with Form N-3 (20 responses, 2,505 burden hours, and \$168,944 in external costs) based on (then) current previously approved information collection. *See supra* note 1, at 12714.

³ For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

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.⁵

TABLE 1: BURDEN ESTIMATES FOR INITIAL FORM N-3 FILINGS⁶

⁴ This estimate includes the cost of outside counsel, independent auditors and the services of other professionals retained to assist in the preparation and filing of the form.

⁵ 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.

⁶ 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.

TABLE 2: BURDEN ESTIMATES FOR POST-EFFECTIVE AMENDMENTS

	Internal Burden Per Response		Hourly Wage Rate	Annual Internal Cost Burden	Annual External Cost Burden
CURRENTLY APPROVED ESTIMATES					
Current Form N-3 requirements	179.75 hours	×	\$284 (blended rate for attorneys and intermediate accountants)	\$51,079	\$11,510
Number of annual responses	×	14		×	14
TOTAL ANNUAL BURDEN	2,518 hours			\$715,112	\$161,144
REVISED ESTIMATES					
Current Form N-2 requirements	179.75 hours	×	\$269 ⁷ (blended rate for compliance attorneys and intermediate accountants)	\$48,352.75	\$11,510
+ Preparation and review of exhibit hyperlinks	0.25 hours		\$269	\$67.25	\$300
Annual burden per response	180 hours			\$48,420	\$11,810
Number of annual responses	×	14		×	14
TOTAL ANNUAL BURDEN	2,522 hours			\$677,880	\$165,340

⁷ The Commission used a different attorney position and more recent estimate for the respective wage rates when issuing these amendments in than it did when making the prior wage rate estimates, resulting in a lower internal burden than previously estimated.

TABLE 3: TOTAL BURDEN ESTIMATES FOR FORM N-3

	Internal Burden	Annual Internal Cost Burden	Annual External Cost Burden
CURRENTLY APPROVED ESTIMATES⁸			
Initial Form N-3 filings	0 hours	\$0	\$0
Post-effective amendments	2,518 hours	\$715,112	\$161,144
Total annual burden	2,518 hours	\$715,112	\$161,144
REVISED ESTIMATES			
Initial Form N-3 filings	0 hours	\$0	\$0
Post-effective amendments	2,522 hours	\$677,880	\$161,144
Total annual burden	2,522 hours	\$677,880	\$165,340

TABLE 4: CHANGE IN FORM N-2 BURDEN ESTIMATES

	Annual Number of Responses			Annual Time Burden (hours)			Cost Burden (dollars)		
	Previously Approved	Revised Estimate	Change	Previously Approved	Revised Estimate	Change	Previously Approved	Revised Estimate	Change
Form N-3	14	14	0	2,518	2,522	+ 4	\$161,144	\$165,340	+\$4,196

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 2018, 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 2,522 (reflecting an increase of 4 hours over the previous burden estimate of 2,518 hours).

⁸ The currently approved burden hours reflected in Table 3 differ from the current burden hours reflected in the Adopting Release, which estimated collective burden hours to prepare and file Form N-2 based on the (then) most currently-approved PRA submission. Our figures here reflect the most recently approved PRA submission, which includes the additional burdens associated with new rule 30e-3. *See supra* footnote 2.

In addition, the new annual external cost burden for preparing and filing registration statements on Form N-3 is \$165,340 (reflecting an increase of \$4,196 over the previous annual external cost burden of \$164,144). The changes in hours and costs are based on the staff's estimates of the additional burdens resulting from the amendments to Form N-3 associated with the hyperlinking of exhibits.

16. Information Collection Planned for Statistical Purposes

Not Applicable.

17. Approval to Omit OMB Expiration Date

Not applicable.

18. Exceptions to Certification Statement for Paperwork Reduction Act Submission

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable.