

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”) that have 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 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

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.

securities.⁶ 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.

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

In 2019, the Commission adopted changes to Form N-5 to permit the submission of the document in HTML format and to include a hyperlink to each exhibit identified in the exhibit index of the document.⁷ In addition, the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR") automates the filing, processing,

⁵ 15 U.S.C. 80a-8.

⁶ 15 U.S.C. 77e(b).

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

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").

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.*

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-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.

¹¹ 17 CFR 239.200.

¹² 17 CFR 230.610a.

¹³ 17 CFR 230.601 to 230.610a.

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 requested public comment on the collection of information requirements of Form N-5 before it submitted this request for extension and approval to the Office of Management and Budget. [The Commission received no comments in response to this request.] In addition, the Commission and staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the fund industry through public conferences, meetings, and informal exchanges. These forums provide the Commission and the staff useful means to identify and address paperwork burdens that may affect the industry. Before adopting amendments to Form N-5 in 2019, the Commission solicited public comments on the proposal and its collection of information requirements and received no comments in response to its request at that time.

9. Payment or Gift

No payment or gift to respondents was provided.

10. Confidentiality

No assurance of confidentiality was provided.

11. Sensitive Questions

Form N-5 collects certain Personally Identifiable Information (“PII”) that may include information on the officers, directors, and principal shareholders of the registrant, as well as information on certain other persons having a relationship with the registrant. The records describe the individual’s relationship to the registrant and other relevant material business information about the individual. No information of a sensitive nature, including social security numbers, will be required under this collection of information.

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 internal burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995 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.

As summarized in Table 1 below, the Commission has previously estimated that about 0.333 filings on Form N-5 each year, incurring approximately 117 hours of internal hour burden at a cost of about \$34,193. 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 current burden also reflects amendments to the form adopted in 2019 that also 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. The burden estimates in Table 1 below 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 and adding that to the estimated burden hours of completing the form. 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 investment company,

consistent with our prior approach to this collection.¹⁴ We estimate that the total internal burden associated with Form N-5 will be 117 hours per year, at a cost of about \$36,270.¹⁵

Table 1: Summary of Revised Annual Responses, Burden Hours, and Cost Estimates

IC Title	Annual No. of Responses			Annual Time Burden (Hrs.)			External 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	.333	.333	0	117	117	0	\$10,100	\$12,524	+\$2,424

¹⁴ See FAST Act Adopting Release, *supra* footnote 7, at n.421 and accompanying text.

¹⁵ This estimate is based on the following calculation: \$310 (blended hourly rate of a compliance attorney and programmer analyst) x 117 (total amount of hourly burden).

13. 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 \$10,100 per filing. The requested external cost burden for filing one Form N-5 would be \$12,524 per year. This estimated burden is based on the estimated wage rate of \$496/hour, for 25.25 hours, for outside legal services to complete the form and provide the required hyperlinks.

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 \$22.2 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, the aggregate internal burden cost has increased from \$34,193 to \$36,270 and an increase of external costs from \$10,100 to \$12,524. These changes are due to an increase in the wages of industry professionals.

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.