

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Form S-6

A. JUSTIFICATION

1. Necessity for the Information Collection

Form S-6¹ is a form used for registration under the Securities Act of 1933 (“Securities Act”)² of securities of any unit investment trust (“UIT”) registered under the Investment Company Act of 1940 (“Investment Company Act”)³ on Form N-8B-2.⁴ Section 5 of the Securities Act 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.⁵ 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.

Section 10(a)(3) of the Securities Act provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use.⁶ As a result, most UITs update their registration statements under the Securities Act on an annual basis in order that their sponsors may continue to maintain a

¹ 17 CFR 239.16.

² 15 U.S.C. 77a *et seq.*

³ 15 U.S.C. 80a-1 *et seq.*

⁴ 17 CFR 274.12. Form N-8B-2 is the form used by UITs other than separate accounts that are currently issuing securities, including UITs that are issuers of periodic payment plan certificates and UITs of which a management investment company is the sponsor or depositor to register under the Investment Company Act pursuant to Section 8 thereof.

⁵ 15 U.S.C. 77e.

⁶ 15 U.S.C. 77j(a)(3).

secondary market in the units. UITs that are registered under the Investment Company Act on Form N-8B-2 file post-effective amendments to their registration statements on Form S-6 in order to update their prospectuses.

On May 25, 2022, the Commission issued a release proposing rule and form amendments to enhance and modernize the investor protection provided by the Investment Company Act’s “names rule,” rule 35d-1 under the Investment Company Act.⁷ The names rule currently requires that that registered investment companies whose names suggest a focus in a particular type of investment (among other areas) to adopt a policy to invest at least 80 percent of the value of their assets in those investments (an “80 percent investment policy”). The proposed amendments, among other things, would extend the requirement to any fund name with terms suggesting that the fund focuses in in investments that have (or whose issuers have) particular characteristics.

Further, the proposal would amend Form N-8B-2 to require that each fund that is required to adopt and implement an 80 percent investment policy to include disclosure in its prospectus that defines the terms used in its name, including the specific criteria the fund uses to select the investments that the term describes, if any.⁸

⁷ *Investment Company Names*, Securities Act Release No. 11067; Securities Exchange Act Release No. 94981; Investment Company Act Release No. 34593, File No. S7-16-22 (May 25, 2022) available at <https://www.sec.gov/rules/proposed/2022/33-11067.pdf> (the “Names Rule Proposing Release”).

⁸ See proposed instruction (2) to Item 11 of Form N-8B-2, Names Rule Proposing Release at 207.

UITs that are updating their registration statements on Form S-6 would be required to address these proposed disclosure requirements.

2. Purpose and Use of the Information Collection

The purpose of Form S-6 is to meet the filing and disclosure requirements of the Securities 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 (or "EDGAR") provides for automated 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. Form S-6 is required to be filed with the Commission electronically on EDGAR.⁹ Prospectuses may be sent to investors by electronic means so long as certain requirements are met.¹⁰

⁹ See rule 101(a)(1)(i) of Regulation S-T [17 CFR 232.101(a)(1)(i)].

¹⁰ See Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)].

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. Form S-6 requires a prospectus that includes much of the information requested in Form N-8B-2. Form N-8B-2, however, is filed only once to register the UIT under the Investment Company Act.¹¹

5. Effect on Small Entities

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act,¹² to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. The current disclosure requirements for registration statements on Form S-6 do not distinguish between small entities and other investment companies. The burden on smaller investment companies of preparing and filing registration statements may be proportionately greater than for larger investment companies. This burden includes the cost of producing, printing, filing, and disseminating prospectuses. The Commission believes, however, that

¹¹ To eliminate the duplicative information presented in the registration forms used by UITs, the Commission has proposed and repropounded, but has not yet adopted, Form N-7, an integrated disclosure form under the Securities Act and the Investment Company Act. *See* Investment Company Act Release No. 14513 (May 14, 1985) [50 FR 21282 (May 23, 1985)]; Investment Company Act Release No. 15612 (Mar. 9, 1987) [52 FR 8268 (March 17, 1987)].

Duplication has been lessened for insurance company separate accounts organized as UITs that offer variable annuity or variable life insurance contracts, because each such entity registers offerings of securities under the Securities Act and registers as an investment company under the Investment Company Act using a single form, Form N-4 (for insurance company separate accounts organized as UITs that offer variable annuity contracts) or Form N-6 (for insurance company separate accounts organized as UITs that offer variable life insurance contracts).

¹² 5 U.S.C. 601 *et seq.*

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 S-6 is to meet the filing and disclosure requirements of the Securities 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. 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. Consultations Outside the Agency

Before determining whether to adopt the proposed amendments affecting Form S-6, the Commission will receive and evaluate public comments on the proposal's collection of information requirements. 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 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

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. 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. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995¹³ and are not derived from a comprehensive or even representative, survey or study of the cost of Commission rules and forms. Compliance with Form S-6 is mandatory. Responses to the collection of information will not be kept confidential.

Form N-8B-2 is used by UITs to initially register under the Investment Company Act pursuant to section 8 thereof. UITs are required to file Form S-6 in order to register offerings of securities with the Commission under the Securities Act. As a

¹³ 44 U.S.C. 3501 *et seq.*

result, UITs file Form N-8B-2 only once when the UIT is initially created and then use Form S-6 to file all post-effective amendments to their registration statements in order to update their prospectuses.

TABLE 1: ESTIMATES FOR PROPOSED AMENDMENTS TO FORM S-6

	Initial Hours	Annual hours ¹	Wage rate ²	Internal Costs	Annual External Costs
CURRENTLY APPROVED BURDENS					
Draft and Update Disclosures on Form S-6 ³	24 hours	18 hours	x \$348 (1:1 blend of compliance attorney and senior programmer as submitted in most recently approved PRA)	\$6,264	\$27,265
Number of Responses		2,498		2,498	2,498
Current Burden Requirement		107,359		\$15,647,472	\$68,108,956
PROPOSED BURDENS					
Proposed New Names Rule Disclosure	7 hours	10 hours	x \$356 (1:1 blend of compliance attorney and senior programmer)	\$3,560	\$992
Number of Responses		x 785 filings ⁴		x 785 filings	785 filings ⁵
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Total New Annual Burden⁶		7,850 hours + 107,359 hours = 115,209 hours		\$2,794,600 + \$15,647,472 = \$18,442,072	\$778,720 + \$68,108,956 = \$68,887,676

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. The estimated wage figure is based on published rates for the professionals described in this chart, modified to account for an 1800-hour work-year and inflation. The estimates for the proposed burdens were multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. See Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013.
3. Form S-6 incorporates the disclosure requirements of Form N-8B-2 for UITs on an ongoing basis. We are not proposing amendments to Form S-6. However, because Form S-6 incorporates the requirements of Form N-8B-2, the amendments would indirectly affect these entities. UITs that have made their initial deposit of securities prior to the effective date of any final rule would be required to update their disclosure on Form S-6 to comply with the amended requirements of Form N-8B-2. As discussed above, UITs formed after the adoption of any final rules would be required to comply with the proposed disclosure requirements upon formation when those UITs file Form N-8B-2 with the Commission.
4. The currently-approved PRA burden for rule 35d-1 was based on the Commission's estimate that 83% of funds were covered by rule 35d-1. We now estimate that 75% of funds would be covered by our proposed rule amendments, based on this proposal's economic analysis above. The prior PRA burden was based on an estimate using a different analytical approach than we are now employing. Based on our current analysis, we estimate that 62% of funds are currently subject to rule 35d-1 and that our proposed rule amendments would increase this estimate to 75% of funds. The Commission estimates 49 non-separate account and non-ETF UITs registered with the Commission. However, we believe using the number of filings instead of registrants would form a more accurate estimate of annual disclosure burdens. We estimate 1,047 filings based on the average number of filings made on Form S-6 from 2018 to 2020. We therefore estimate that there are approximately 785 filings for funds that have names that would be covered by the proposed rule amendments, or 75% of the filings for UITs covered by the rule amendments (1,047 filings x 75% = 785 filings).
5. The estimated burden is based on the estimated wage rate of \$496/hour, for 2 hours, for outside legal services. The Commission's estimates of the relevant wage rate for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
6. The estimates in the Commission's proposing release inadvertently did not add the proposed additional burdens to the current burden requirement in the estimated "Total New Annual Burden."

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to prepare and update registration statements on Form S-6, such as for the services of independent auditors and outside counsel. The cost burden does not include the hour burden discussed in Item 12 above. Current estimates are based on the Commission's experience with the filing of registration forms. We estimate that the annual cost of outside services associated with the proposed amendments would be approximately \$778,720, with a total annual external cost burden of \$68,887,676 as detailed in Table 1 above.

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 \$30 million in fiscal year 2021 based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. Changes in Burden

The proposed amendments would result in a number of changes to the currently approved burden. The proposed disclosure requirements would add approximately 10 hours per response, increasing the total annual burden to 115,209 hours. Further, we updated our assessment of the number of responses on Form S-6 to 1,623 responses, thus increasing the estimated average hours per response to approximately 71 hours (115,209 hours / 1,623 responses = 70.99).¹⁴

¹⁴ See *supra* note 4 to Table 1.

16. Information Collection Planned for Statistical Purposes

The results of any information collected will not be published.

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

The Commission is not seeking an exception to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.