

SUPPORTING STATEMENT FOR RULE 155

This submission, pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et.seq., consists of this supporting statement and the following exhibits:

- A – Statutory Authority
- B. –Rule 155

A. Justification

1. Necessity of Information Collection

Under the Securities Act, an integration analysis often is made to determine whether multiple securities offerings should be considered part of the same offering. This analysis helps to determine whether registration is required under Section 5 of the Securities Act, or an exemption from registration is available. The concept of integration prevents an issuer from improperly avoiding registration by artificially dividing a single offering so that exemptions appear to apply to the various parts where no exemption would be available for the whole. Improper reliance on an exemption can harm investors by depriving them of the disclosure benefits and legal remedies that flow from registration.

Rule 155 provides safe harbors from integration in two circumstances: a registered offering that follows an abandoned private offering, and a private offering that follows a withdrawn registered offering. Each of the rule's safe harbors imposes conditions designed to assure that there is a clean break between the abandoned offering and the later offering. In each safe harbor, these conditions include specified disclosure designed to assure that investors understand this break as they consider an investment decision in the later offering.

2. Purposes of, and Consequences of Not Requiring, the Information Collection

Rule 155(b) provides a safe harbor from integration where an abandoned private offering is followed by a registered offering if specified conditions are satisfied. One of these conditions is that the Section 10(a) final prospectus and any Section 10 preliminary prospectus used in the registered offering disclose certain information about the abandoned private offering, so that the registered offering is not confused with the private offering. Specifically, any prospectus filed as part of the registration statement discloses information about the abandoned private offering, including: the size and nature of the private offering; the date on which the issuer terminated all offering activity in the private offering; that any offers to buy or indications of interest in the private offering were rejected or otherwise not accepted; and that the prospectus delivered in the registered offering supersedes any selling material used in the private offering.

Rule 155(c) provides a safe harbor from integration where an abandoned registered offering is followed by a private offering. The conditions for this safe harbor include that the

issuer notify each offeree in the private offering that the registration statement for the abandoned offering was withdrawn, specifying the effective date of the withdrawal. The issuer also must notify each offeree in the private offering that the private offering is not registered, the securities are “restricted,” and purchasers do not have the protection of Securities Act Section 11. These conditions are designed to assure that the private offering is not confused with the registered offering. For the same reason, Rule 155(c) also requires any disclosure document used in the private offering to disclose any changes in the issuer’s business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering. Unlike the other Rule 155 requirements described above, which always apply, this requirement will not necessarily apply to all private offerings that rely on Rule 155(c) and may require more disclosure in some cases than others where it does apply.

With respect to both Rule 155(b) and Rule 155(c), failure to satisfy the applicable information collection conditions will result in unavailability of the safe harbor provided by the rule. However, compliance with the rule is not the exclusive test for avoiding integration of the registered and private offerings. Alternative tests that were available before the rule’s adoption will remain available.

3. Role of Improved Technology and Obstacles to Reducing Burden

Rule 155 submissions are filed using the Electronic Data Gathering Analysis and Retrieval System (EDGAR).

4. Efforts to Identify Duplication

The Commission is involved in an on-going program to identify and integrate disclosure requirements.

5. Effect on Small Entities

Rule 155 will be available to all issuers, including small business issuers. The rule will enable issuers more easily to avoid incurring the expense of filing a registration statement, only to discover later that a registered offering cannot be completed. This flexibility should be particularly beneficial to small issuers, for whom the costs of a registered offering typically represent a greater proportion of resources.

6. Consequences of Less Frequent Collection

Not applicable.

7. Inconsistencies with Guidelines in 5 C.F.R. 1320.6

Not applicable.

8. Consultations Outside the Agency

Before being adopted, Rule 155 was proposed for public comment. No comments were received.

9. Payment or Gift to Respondent

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Respondent Reporting Burden

Rule 155 takes approximately 4 hours per response to prepare and is filed by 600 respondents. We estimate that 50% of the 4 hours per response (2 hours per response) is prepared by the company for a total annual reporting burden of 1,200 hours (2 hours per response x 600 responses). The estimated hours are made solely for the purposes of the Paperwork Reduction Act. They are not derived from a comprehensive or even a representative survey or study of the cost of Commission rules and forms.

13. Estimate of Total Annualized Cost Burden

We estimate that 50% of the 4 hours per response (2 hours) is prepared by outside counsel. We estimate that it will cost \$400 per hour (\$400 x 2 hours per response x 600 responses) for a total cost of \$480,000. The estimated cost burden is made solely for the purposes of the Paperwork Reduction Act. The cost is not derived from a comprehensive or even a representative survey or study of the cost of Commission rules and forms.

14. Estimate of Cost to the Federal Government

The estimated cost to the federal government is \$50,000.

15. Explanation of Changes in Burden

The increase in cost burden is due to an adjustment. The increase of \$120,000 in cost burden reflects an increase in the hourly cost to \$400 per hour from \$300 per hour.

16. Information Collections Planned for Statistical Purposes

Not Applicable.

17. Explanation as to Why Expiration Date Will Not Be Displayed

The information collection is not in a form that is published.

18. Exceptions to Certification

See Item 17. Additionally, Rule 155 does not display a valid OMB control number because its information collection requirements are not included in a published form.

B. Collection of Information Employing Statistical Methods

Not applicable.