

SUPPORTING STATEMENT
Rule 607 under Regulation E

A. JUSTIFICATION

1. Necessity for the Information Collection

Regulation E, a series of rules that provides specific exemptions from the registration provisions of the Securities Act for small business investment companies (“SBICs”) and investment companies that elect to be treated as business development companies (“BDCs”), was adopted pursuant to Sections 3(b) and (c) (15 USC 77c(b) and (c)) of the Securities Act of 1933 (“Securities Act”) (15 U.S.C. 77a et seq.). Section 3(b) and (c) permits the Securities and Exchange Commission (“Commission”) to add any class of securities to the securities exempted from the Securities Act by Section 3 and specifically empowers the Commission to exempt completely or conditionally securities issued by SBICs from the registration provisions of the Securities Act. Regulation E allows the exemption of securities issued by an SBIC which is registered under the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-1 et seq.) or a closed-end investment company that has elected to be regulated as a BDC under the Investment Company Act from registration under the Securities Act, so long as the aggregate offering price of all securities of the issuer that may be sold within a 12-month period does not exceed \$5,000,000 and certain other conditions are met.

Rule 607 (17 CFR 230.607) entitled, “Sales material to be filed,” requires that sales material used in connection with securities offerings under Regulation E to be filed with the Commission at least five days (excluding weekends and holidays) prior to its use.¹

¹ Sales material includes advertisements, articles or other communications to be published in newspapers, magazines, or other periodicals; radio and television scripts; and letters, circulars or other written communications proposed to be sent given or otherwise communicated to more than ten persons.

2. Purpose of the Information Collection

As mentioned above, sale materials used in connection with offerings under Regulation E must be filed with the Commission at least five days (excluding weekends and holidays) prior to its use. Commission staff reviews these filings for materially misleading statements and omissions. The requirements of rule 607 are designed to protect investors from the use of false or misleading sales material in connection with Regulation E offerings.

3. Role of Improved Information Technology

Currently, sales material filed pursuant to rule 607 under Regulation E are not permitted to be filed electronically, but the Commission may consider them for electronic filing in the future.

4. Efforts to Identify Duplication

The Commission periodically evaluates collection of information requirements for duplication, and reevaluates them whenever it proposes a rule or form, or a change in either. The reporting requirements of rule 607 are not duplicated elsewhere.

5. Effect on Small Entities

A primary purpose of the small offering exemption under Regulation E is to provide a simple and relatively inexpensive procedure by which small businesses can raise limited amounts of needed capital. Offerings under Regulation E require less extensive disclosure than Securities Act registrations. Generally, the less burdensome provisions under Regulation E reflect a commitment by the Commission to facilitate capital formation by SBICs and BDCs while protecting investors.

6. Consequences of Less Frequent Collection

Without this information collection requirement, the Commission would not be able to effectively monitor the content of sales material used in connection with offerings under Regulation E, limiting the Commission's ability to protect investors from false or misleading advertisements.

7. Inconsistencies With Guidelines in 5 CFR 1320.5(d)(2)

Rule 607 requires four copies of each sales communication to be filed with the Commission. Multiple copies are needed because they must be distributed to several different offices. One copy goes to the contractor to be microfilmed, one goes to the Public Reference Room, and two go to the Office within the Division of Investment Management responsible for reviewing the materials.

8. Consultations Outside the Agency

The Commission requested public comment on the collection of information requirements in rule 607 under Regulation E before it submitted this request for approval to the Office of Management and Budget. The Commission received no comments in response to its request.

In addition, 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 the staff with a medium of ascertaining and acting upon paperwork burdens confronting the industry.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

Respondents to this collection of information include SBICs and BDCs making an offering of securities pursuant to Regulation E. Each respondent's reporting burden under rule 607 relates to the burden associated with filing its sales material electronically. The burden of filing electronically, however, is negligible and there have been no filings made under this rule, so this collection of information does not impose any burden on the industry. However, we are requesting approval of one burden hour for administrative purposes.

13. Estimate of Total Annual Cost Burden

We estimate that rule 607 does not impose any cost burdens.

14. Estimate of Cost to the Federal Government

The annual cost of reviewing and processing new registration statements, post-effective amendments, proxy statements, and shareholder reports of investment companies amounted to

approximately \$16.8 million in fiscal year 2006, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. Explanation of Changes in Burden

This information collection imposes no hour or cost burdens; however, we are requesting one hour burden for administrative purposes. The increase in burden can be attributed to our request for a new OMB control number for an existing collection.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.