

SUPPORTING STATEMENT FOR REVISIONS TO FORM S-11 TO PERMIT HISTORICAL INCORPORATION BY REFERENCE

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

A. Justification

1. Necessity of Information Collection

In Securities Act Release No. 8871¹ the Commission proposes rule amendments relating to Form S-11, a registration statement used by real estate entities to register offerings under the Securities Act of 1933. The amendments would permit an entity that has filed at least one annual report and that is current in its reporting obligations under the Securities Exchange Act of 1934 to incorporate by reference into Form S-11 information from its previously filed Exchange Act reports and documents.

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

The purpose of the proposed amendments is to integrate further the disclosure requirements of the Exchange Act and the Securities Act. The proposed amendments would reduce the reporting burden on real estate companies by permitting them to incorporate by reference information already disclosed in their Exchange Act reports.

3. Role of Improved Technology and Obstacles to Reducing Burden

The proposed amendments will not change the way or the amount of data gathered by the Commission. Form S-11 would continue to be filed electronically using the Commission's Electronic Data Gathering and Retrieval ("EDGAR") system.

4. Efforts to Identify Duplication

The proposed amendments to our disclosure requirements for real estate entities would not duplicate, overlap, or conflict with other federal rules. States typically use Federal forms to meet at least some of their disclosure requirements.

5. Effect on Small Entities

The proposed amendments could affect small entities that are required to utilize Form S-11 with respect to securities offerings subject to the Securities Act.

¹ Release No. 33-8871 (December 14, 2007) [72 FR 72274].

6. Consequences of Less Frequent Collection

The proposed amendments relate to the disclosure required to be filed with the Commission for real estate entities registering offerings of securities pursuant to the Securities Act. Without such disclosure, investors in securities of real estate entities could be harmed.

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

There have been no inconsistencies with the Guideline in 5 C.F.R. 1320.6.

8. Consultations Outside the Agency

The Commission received a comment letter from the national trade association that represents non-traded real estate investment trusts requesting that the Commission amend Form S-11 to permit the incorporation by reference of previously filed Exchange Act reports and documents.

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, Estimate of Total Annualized Cost Burden, and Explanation of Changes in Burden

We currently estimate that the paperwork burden for companies to comply with Form S-11 without the ability to incorporate by reference to be 29,655 internal hours and \$35,586,000 of professional costs. If the proposed amendments are adopted and the proposed adjustments are made, we estimate that the annual increase in the paperwork burden for companies to comply with Form S-11 to be approximately 16,245 hours of in-house company personnel time and approximately \$21,786,000² for the services of outside professionals.³ These

² Consistent with recent rulemakings and based on discussions with several private law firms, we estimate that the cost of outside professionals retained by the issuer is an average of \$400 per hour.

³ In the proposing release (Release No. 33-8871) the Commission used the number of actual filings for the prior 12 month period in computing its estimates. However, for purposes of this submission the Commission has estimated the number of filings based on prior history and future estimates. The estimates

estimates include the time and the cost of preparing and reviewing disclosure, filing documents, and retaining records. In addition, these estimates include changes due to an adjustment in the Commission's estimate regarding number of Forms S-11 filed annually. These estimates were based on the following assumptions:

- Each year, approximately 100 registration statements on Form S-11, including post-effective amendments, would incorporate information by reference. This estimate reflects an increase of 40 filings as compared to our earlier submissions.
- The estimated paperwork burden for a Form S-11 that does not incorporate information by reference is 494.25 internal hours and \$593,000 of professional costs. The estimated paperwork burden for a Form S-11 that incorporates information by reference would be the same as the burden currently imposed by Form S-3, which is 459 internal hours and \$138,000 of professional costs. The amount of time eliminated for each Form S-11 that incorporates information by reference would be 35.25 hours per registration statement (494.25 hours for a Form S-11 that does not incorporate information by reference minus 459 hours for a Form S-11 that does). The amount of professional costs that would be eliminated for each Form S-11 that incorporates information by reference would be \$455,000 per registration statement (\$593,000 for a Form S-11 that does not incorporate information by reference minus \$138,000 for a Form S-11 that does).
- We estimate that the annual decrease in compliance burden resulting from the proposal would be 2,115 hours (60 registration statements multiplied by 35.25 hours per registration statement) and \$27,306,000 of professional time (60 registration statements multiplied by \$455,000 per registration statement).
- As noted above, the Commission has adjusted its estimate regarding the number of Forms S-11 to be filed annually by 40 from 60 to 100. We estimate that the annual increase in compliance burden resulting from this adjustment would be 18,360 hours (40 additional registration statements multiplied by 459 hours per registration statement) and \$5,520,000 of professional time (40 registration statements multiplied by \$138,000 per registration statement).

Calculation of Paperwork Reduction Act Burden Estimates for Exchange Act Reports, Exchange Act Registration Statements, and Securities Act Registration Statements

used in this submission will be used in the final release.

Table 1-Increases/ Decreases

Form	Current Annual Responses	Increased Annual Responses	Proposed Annual Responses	Current Burden Hours	Increase in Burden Hours	Proposed Burden Hours	Current Professional Costs	Decrease in Professional Costs	Proposed Professional Costs
S-11	60	40 ⁴	100	29,655	16,245 ⁵	45,900	\$35,586,000	\$21,786,000 ⁶	\$13,800,000

13. Estimate Cost to the Federal Government

The estimated cost of preparing the proposed amendments was approximately \$20,000.

14. Information Collections Planned for Statistical Purposes

Not applicable.

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

Not applicable.

16. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

Not applicable.

⁴ The increased annual responses are the result of a change due to an adjustment in the Commission’s estimates for Forms S-11 filed per year from 60 to 100.

⁵ The increase in burden hours includes an increase of 18,360 hours due to a change in the Commission’s estimates noted above and a decrease of 2,115 hours related to the present Commission action.

⁶ The decrease in professional costs includes an increase of \$5,508,000 due to a change in the Commission’s estimates noted above and a decrease of \$27,325,200 related to the present Commission action.