

## SUPPORTING STATEMENT FOR REGULATIONS 14D AND 14E

A.

### Justification

#### 1. Necessity of Information Collection

The disclosure requirements for persons engaging in corporate control transactions are designed to make material facts concerning the nature of the transaction and the participants involved public so that security holders have the opportunity to make informed investment decisions. Disclosure of this information is required primarily by the rules adopted under the Williams Act amendments to the Securities Exchange Act of 1934 (“Exchange Act”) and the proxy rules promulgated under Section 14(a) of the Exchange Act.

Regulation 14D applies to any tender offer which is subject to Section 14(d)(1) of the Exchange Act, including, but not limited to, any tender offer for securities of a class described in that section that is made by an affiliate of the issuer. Regulation 14E applies general to tender offers for securities, other than exempted securities.

Sections 14(d) and 14(e) of the Exchange Act of 1934 provide for the filing of Schedule 14D-9. Schedule 14D-9 requires persons publishing or distributing to security holders a solicitation or recommendation concerning tender offers for securities to disclose related information.

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

The primary purpose of the Commission’s forms and rules under the disclosure provisions of the federal securities laws is to ensure public availability and dissemination of material information to security holders and the securities markets. Except on an occasional basis in the enforcement of the securities laws, the Commission uses very little of the collected information. In this respect, these information collections differ significantly from most other federal information collections that are primarily for the use and benefit of the collecting agency. Security holders, investors, broker-dealers, investment banking firms, professional securities analysts and others can use the information on Schedule 14D-9 in evaluating transactions and making investment decisions.

#### 3. Role of Improved Technology and Obstacles to Reducing Burden

Schedule 14D-9 is filed using the Electronic Data Gathering Analysis and Retrieval (EDGAR) system.

4. Efforts to Identify Duplication

Information provided on Schedule 14D-9 is not duplicative of any other disclosure requirements. This information is not otherwise readily available to investors or the securities markets.

5. Effect on Small Entities

A small entity may be required to file a Schedule 14D-9 if it has significant equity participation in a control transaction.

6. Consequences of Less Frequent Collection

Schedule 14D-9 elicits disclosure concerning substantial equity participants in control transactions and identifies indirect control that is difficult to prove factually. This disclosure helps the Commission to carry out its mission to protect the investing public. The legislative intent for this information collection would not be satisfied by fewer collections.

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

Not applicable.

8. Consultations Outside the Agency

Schedule 14D-9 was proposed for public comment. No comments were received on this request during the 60-day comment period prior to OMB's review.

9. Payment or Gift to Respondent

Not applicable.

10. Assurance of Confidentiality

All information filed with the Commission is provided to the public upon request.

11. Sensitive Questions

Not applicable.

12. Estimate of Respondent Reporting Burden

Schedule 14D-9 takes approximately 258 hours per response to prepare and is filed by 600 companies annually. We estimate that 25% of the 258 hours per response (64.5 hours) is prepared by the company for an annual reporting burden of 38,700 hours (64.5 hours per response x 600 responses). The estimated burden hours are solely for the purpose 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 estimated that 75% of the 258 hours per response (193.5 outside hours) is prepared by outside counsel. We estimate that it will cost \$400 per hour (\$400 per hour x 193.5 hours per response x 600 responses) for a total cost burden of \$46,440,000. The estimated cost burden is made solely for the purpose of the Paperwork Reduction Act. It is not derived from a comprehensive or even a representative survey study of the cost of Commission rules and forms.

14. Estimate Cost to the Federal Government

Information is not readily available to estimate the cost to the Federal Government for reviewing and processing Schedule 14D-9.

15. Explanation of Changes in Burden

The increase of 15,480 burden hours and the increase of \$25,542,000 in cost burden are due to adjustments. The change in burden hours is due an adjustment in the number of Schedule 14D-9 reports filed with Commission and a change in how the Commission calculates reporting burden. The increase in cost burden reflects both a change in the hourly cost to \$400 per hour from \$300 per hour and an increase in the number of respondents. Also, the increase in cost burden is due to a change how the Commission calculates such burdens.

16. Information Collections Planned for Statistical Purposes

Not applicable.

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

Not applicable.

18. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

Not applicable.