

## SUPPORTING STATEMENT FOR SMALLER REPORTING COMPANY REGULATORY RELIEF AND SIMPLIFICATION

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 and Exchange Act Release No's 8819 and 56013,<sup>1</sup> the Commission proposes rule amendments relating to our disclosure and reporting requirements for smaller companies under the Securities Act of 1933 and Securities Exchange Act of 1934. The proposals would extend the benefits of our current optional disclosure and reporting requirements for smaller companies to a much larger group of companies. The proposals would allow companies with a public float of less than \$75 million to qualify for the smaller reporting company requirements, up from \$25 million for most companies today. The proposals would combine for most purposes the "small business issuer" and "non-accelerated filer" categories for smaller companies into a single category of "smaller reporting companies." Finally, the proposals would maintain the current disclosure requirements for smaller companies contained in Regulation S-B, but integrate them into Regulation S-K.

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

The purpose of the proposed amendments is to simplify regulation for small business and lower costs. The current dual system scheme is complex, and we believe this complexity may deter small companies from taking advantage of scaled regulation. The Commission also proposes to extend the benefits of our current small business issuer disclosure requirements to a much larger group of companies.

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

The proposed rule amendments will not change the way or the amount data gathered by the Commission. The forms would be filed electronically using the Commission's Electronic Data Gathering and Retrieval ("EDGAR") system.

#### 4. Efforts to Identify Duplication

The proposed rule amendments to our disclosure and reporting requirements for smaller companies would not duplicate, overlap, or conflict with other federal

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<sup>1</sup> Release No. 33-8819 and 34-56013 (July 5, 2007) [72 FR 39670].

rules. States typically use Federal forms to meet at least some of their disclosure requirements.

5. Effect on Small Entities

The proposed rule amendments could affect small entities, the securities of which are registered under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of the Exchange Act. If the small entity is currently a small business issuer the proposal will require it to use Form 10-K rather than Form 10-KSB for its annual report and Form 10-Q rather than Form 10-QSB for its quarterly reports. For small entities filing a Securities Act registration statement the proposed rule amendments would require that Form S-1 be used rather than Form SB-2.

6. Consequences of Less Frequent Collection

The proposed rule amendments relate to the disclosure required to be filed with the Commission for smaller companies. Quarterly and annual disclosure is required to protect investors in public companies. Without such disclosure, investors in smaller companies 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 chartered the Advisory Committee on Smaller Public Companies in March 2005 asking the panel to assess the current regulatory system for smaller companies under the federal securities laws and to recommend changes to that system. The major rule amendments we are proposing stem from Advisory Committee recommendations. A copy of the Advisory Committee's Final Report is attached.

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

The Commission's estimate of the average burden hours that would be imposed if the proposed amendments are adopted is set forth below:

We estimate that the total increase in burden hours for Form 10-K, Form 10-Q, Form 10, Form S-1, and Form S-11 would be 7,857,948 and that the total increase in cost would be \$1,114,044,563. These increases would be offset by the proposed total decrease in burden hours for Form 10-KSB, Form 10-QSB, Form 10-SB, Form SB-1, and Form SB-2 of 7,855,935 burden hours and a proposed total decrease in cost of \$1,111,628,563. The net difference between the increase and decrease is an increase of 2,013 burden hours and a cost of \$ 2,416,000. The reason for the net difference is that small real estate companies, which are currently eligible to use Form SB-2, would be required to use Form S-11 if these proposals are adopted. Form S-11 is a form tailored to the real estate industry that requires more internal burden hours and increased professional costs.

Our methodologies for deriving the burden hour and cost estimates presented below represent the average burdens for all issuers, both large and small. For Exchange Act annual reports and quarterly reports on Form 10-K and 10-Q, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the issuer at an average cost of \$400 per hour.<sup>2</sup>

For purposes of the Paperwork Reduction Act, we estimate that over a three-year period<sup>3</sup> the annual increased incremental disclosure burden imposed by the proposed revisions would average 6,130,748 hours per Form 10-K, 7,387 hours per Form 10, 1,665,027 hours per Form 10-Q, 47,372 hours per Form S-1, and 7,413.75 hours per Form S-11. The plain English requirements would apply to these disclosure statements and is factored into the incremental burden of preparing these forms.

These estimates were based on the following assumptions:

**Form 10-K**

- The proposed elimination of Form 10-KSB would cause the number of Form 10-Ks filed to increase. We estimate there were approximately 3,504 Form 10-KSBs filed in the last fiscal year so there would be a corresponding increase of 3,504 Form 10-Ks filed.

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<sup>2</sup> In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of \$400 as the average cost of outside professionals that assist issuers in preparing disclosure and conducting registered offerings.

<sup>3</sup> We calculated an annual average over a three-year period because OMB approval of Paperwork Reduction Act submissions covers a three year period.

- We estimate that an increase of 3,504 Form 10-Ks filed would result in an increase in the compliance burden by an estimated 6,130,748 hours (3,504 companies x 1,749.6426 internal hours per company) and an annual cost increase of \$817,433,163 (\$233,285.72 cost per response x 3,504 annual responses) with respect to the current Form 10-K.<sup>4</sup>

### **Form 10-Q**

- The proposed elimination of Form 10-QSB would cause the number of Form 10-Qs to increase. We estimate that there were approximately 12,198 Form 10-QSBs filed last fiscal year so there would be a corresponding increase of 12,198 more Form 10-Qs filed.
- We estimate that an increase of 12,198 to the number of Form 10-Qs filed would result in an increase in the compliance burden by 1,665,027 hours (12,198 responses by companies x 136.5 internal hours per response) and an annual cost increase of \$222,003,600 (45.5 professional hours x \$400 per hour = \$18,200 cost per response x 12,198 responses annually) with respect to the current Form 10-Q.

### **Form 10**

- The proposed elimination of Form 10-SB would cause the number of Form 10s to increase. We estimate that approximately 166 Form 10-SBs were filed in the last fiscal year so there would be a corresponding increase of 166 Form 10s.
- We estimate that an increase of 166 to the number of Form 10s filed would result in an increase in the compliance burden by 7,387 hours (166 responses by companies x 44.5 internal hours per response) and an annual cost increase of \$8,864,000 (133.5 professional hours x \$400 per hour = \$53,400 cost per response x 166 responses annually) with respect to the current Form 10.

### **Form S-1**

- The proposed elimination of Form SB-1 would cause the number of Form S-1s to increase. We estimate there were approximately 17 Form SB-1s filed in the last fiscal year so there would be a corresponding increase of 17 Form S-1s filed.
- We estimate that 17 more Form S-1s would increase the compliance burden by 3,009 hours (17 company responses x 177 internal hours per response) and increase the annual cost by \$3,610,800 (531 professional hours x \$400 per hour = \$212,400 cost per response x 17 responses annually).
- The elimination of Form SB-2 would cause the number of Form S-1s to increase. We estimate that there were approximately Form SB-2s filed in the last fiscal year so there would be a corresponding increase of 297 Form S-1s filed.
- We estimate that 297 Form S-1s would result in an increase in the compliance burden by 47,372 hours (297 company responses x 159.5 internal hours per response) and an

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<sup>4</sup> Our current PRA inventory for completing a Form 10-KSB is 1,272 burden hours and a cost of \$169,600 (424 professional hours x \$400/hour) per report.

annual cost of \$56,845,800 (478.5 professional hours x \$400 per hour = \$191,400 cost per response x 297 responses annually) increase to the current Form S-1.

### **Form S-11**

- The proposed elimination of Form SB-2 would also cause the number of Form S-11s to increase. We estimate there were approximately 15 Form SB-2s filed by real estate companies in the last fiscal year so that there would be a corresponding increase of 15 Form S-11s filed.
- We estimate that 15 more Form S-11s would result in an increase in the compliance burden by 7,414 hours (15 company responses x 494.25 internal hours per response) and an annual cost of \$8,898,000 (1,483 professional hours x \$400 per hour = \$593,200 cost per response x 15 responses annually) increase in the current Form S-11.

The annual decrease in incremental disclosure burden resulting from the proposed revisions would average 6,130,748 hours per Form 10-KSB, 7,387 hours per Form 10-SB, 1,665,027 hours per Form 10-QSB, 3,009 hours per Form SB-1, and 49,764 hours per Form SB-2. The annual decrease in incremental cost burden resulting from the proposed revisions would average \$817,433,163 per Form 10-KSB, \$8,864,000 per Form 10-SB, \$222,003,600 per Form 10-QSB, \$3,610,800 per Form SB-1, and \$59,717,000 per Form SB-2. The plain English requirements would apply to these disclosure statements and is factored into the incremental burden of preparing these forms.

Additionally, we estimate that approximately 1,581 companies would become newly eligible to use scaled disclosure for smaller reporting companies or have a new opportunity to assess whether they should avail themselves of scaled regulation under the restructured regime and could experience significant burden and cost savings if these proposals are adopted.<sup>5</sup> We estimate that if these smaller reporting companies use all of the scaled smaller reporting company requirements, they would save 713,031 burden hours and an aggregate cost of \$95,018,100.<sup>6</sup> We do not expect all of the 1,581 companies, however, to use all of the scaled disclosure available to smaller reporting companies.

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<sup>5</sup> We estimate that 1,227 companies would be newly eligible to use the scaled disclosure available to smaller reporting companies in addition to another 354 companies that currently are eligible for scaled disclosure but do not use it, resulting in a total of 1,581 companies. Approximately 1,227 companies have a public float between \$25 and \$75 million, in addition to approximately 354 companies with a public float below \$25 million that currently use the “SK” forms rather than the “SB” forms.

<sup>6</sup> A smaller reporting company generally may choose to comply with one, some, all, or none of the scaled disclosure requirements available for smaller reporting companies under our proposals. If a smaller reporting company used all scaled disclosure available, it would decrease the compliance burden by up to 713,031 hours (1,581 responses by companies using regular Regulation S-K disclosure x 1,723 internal hours per company = 2,724,063 hours minus 1,581 responses by companies using scaled disclosure x 1,272 internal hours per company = 2,011,032 hours for smaller reporting companies) and decrease the annual cost by up to \$95,018,100 (574.25 professional hours x \$400 per hour = \$229,700 cost per response using the regular Regulation S-K disclosure x 1,581 annual responses minus 424 professional hours x \$400 per hour = \$169,600 cost per response x 1,581 annual responses).

While we are unsure how many of the 1,581 smaller reporting companies would use the scaled disclosure requirements, for purposes of this analysis, we estimate that approximately 50% of these companies would use the proposed scaled disclosure available to smaller reporting companies. As a result, we estimate that these 790 smaller reporting companies could save 356,390 internal burden hours and costs of \$47,479,000 as indicated in the table below showing our estimates if 50% of the companies used the scaled disclosure in preparing their Form 10-K.<sup>7</sup>

## Totals

The tables below illustrate the incremental annual compliance burden in the collection of information in hours and cost for Exchange Act periodic reports, Exchange Act registration statements, and Securities Act registration statements.

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

**Table 1-Increases**

| Form  | Current Annual Responses | Increased Annual Responses | Proposed Annual Responses | Current Burden Hours | Increase in Burden Hours | Proposed Burden Hours | Current Professional Costs | Increase in Professional Costs | Proposed Professional Costs |
|-------|--------------------------|----------------------------|---------------------------|----------------------|--------------------------|-----------------------|----------------------------|--------------------------------|-----------------------------|
| 10-K  | 10,041                   | 3,504                      | 13,545                    | 17,299,422           | 6,130,748                | 23,430,170            | \$2,306,589,600            | \$817,433,163                  | 3,124,022,763               |
| 10-Q  | 20,264                   | 12,198                     | 32,462                    | 2,918,263            | 1,665,027                | 4,583,290             | \$291,826,000              | \$222,003,600                  | \$513,829,600               |
| 10    | 72                       | 166                        | 238                       | 4,338                | 7,387                    | 11,725                | \$5,206,000                | \$8,864,000                    | \$14,070,000                |
| S-1   | 410                      | 297                        | 707                       | 120,540              | 47,372                   | 167,912               | \$144,648,000              | \$56,845,800                   | \$201,493,800               |
| S-11  | 60                       | 15                         | 75                        | 29,655               | 7,414                    | 37,069                | \$35,586,000               | \$8,898,000                    | \$44,484,000                |
| Total |                          |                            |                           | 20,372,218           | 7,857,948                | 28,230,166            | \$2,783,855,600            | \$1,114,044,563                | \$3,897,900,163             |

**Table 2- Decrease for Newly Eligible Companies**

| Companies between \$25 Million and \$75 Million | Current Burden Hours under Standard Regulation S-K | Decrease in Burden Hours using Scaled Disclosure | Decrease in Burden Hours using Scaled Disclosure | Current Professional Costs under Standard Regulation S-K | Proposed Professional Costs using Scaled Disclosure | Decrease in Professional Costs using Scaled Disclosure |
|---|--|--|--|--|---|--|
| 790   | 1,361,170  | 1,004,880  | 356,290  | \$181,463,000  | \$133,984,000                                       | \$47,479,000   |

## 13. Estimate Cost to the Federal Government

<sup>7</sup> This estimate of a decrease in the compliance burden by 356,290 hours is based upon 790 responses by companies using regular Regulation S-K disclosure x 1,723 internal hours per company = 1,361,170 hours minus 790 responses by companies x 1,272 internal hours per company = 1,004,880 hours for smaller reporting companies and a decrease in the annual cost by \$47,479,000 (574.25 professional hours x \$400 per hour = \$229,700 cost per response using regular Regulation S-K disclosure x 790 responses minus 424 professional hours X \$400 per hour = \$169,600 cost per response using the scaled disclosure x 790 annual responses).

The estimated cost of preparing the proposed amendments was approximately \$70,000.

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.