

## 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. 8909<sup>1</sup> the Commission adopted amendments to Form S-11, a registration statement used by real estate entities to register offerings under the Securities Act of 1933. The amendments permit an entity that has filed an annual report for its most recently completed fiscal year 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 amendments is to integrate further the disclosure requirements of the Exchange Act and the Securities Act. The amendments 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 amendments will not change the way or the amount of data gathered by the Commission. Form S-11 will continue to be filed electronically using the Commission's Electronic Data Gathering and Retrieval ("EDGAR") system.

#### 4. Efforts to Identify Duplication

The amendments to our disclosure requirements for real estate entities do 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 amendments will affect small entities that are required to utilize Form S-11 with respect to securities offerings subject to the Securities Act.

#### 6. Consequences of Less Frequent Collection

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<sup>1</sup> Release No. 33-8909 (April 10, 2008) [73 FR 20512].

The 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. In response to the proposal of the amendments on December 14, 2007, the Commission received six comment letters.

9. Payment or Gift to Respondent

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. and 13. 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 37,069 internal hours and \$44,484,000 of professional costs. Based on the amendments and the proposed adjustments to our previous estimates noted below, we estimate that the annual decrease in the paperwork burden for companies to comply with Form S-11 to be approximately 18,004 hours of in-house company personnel time and approximately \$21,606,000<sup>2</sup> for the services of outside professionals. These estimates include the time and the cost of preparing and reviewing disclosure, filing documents, and retaining records. These estimates were based on the following assumptions:

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<sup>2</sup> 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.

- Each year, approximately 100 registration statements on Form S-11, including post-effective amendments, would incorporate information by reference. This reflects an adjustment to our previous estimate of 75 registration statements filed annually on Form S-11.
- Our estimated paperwork burden for a Form S-11 represents the average burden for all companies eligible to use the form, including companies eligible to incorporate information by reference. The estimated paperwork burden for a company that cannot incorporate information by reference is 494.25 internal hours and \$593,100 of professional costs. The estimated paperwork burden for a company that can incorporate information by reference is the same as the burden currently imposed by Form S-3, which is 114.75 internal hours and \$137,700 of professional costs. We estimate that 80 of the 100 registration statements on Form S-11 filed annually will be able to incorporate by reference. Based on these assumptions, the weighted average burden for all companies for each Form S-11 would be 190.65 internal hours per registration statement and \$228,800 of professional costs.
- We estimate that the annual decrease in compliance burden resulting exclusively from the amendments, but not the adjustments noted above, will be 30,360 hours (100 registration statements multiplied by 303.6 hours per registration statement, which is the difference between the current burden of 494.25 and the requested burden of 190.65 hours) and \$36,432,000 of professional costs (100 registration statements multiplied by \$364,320 per registration statement, which is difference in cost between the current burden of \$593,100 and the requested burden of \$228,800).
- As noted above, the Commission has adjusted its estimate regarding the number of Forms S-11 to be filed annually by 25 from 75 to 100. We estimate that the annual increase in compliance burden resulting from this adjustment would be 12,356 hours (25 additional registration statements multiplied by 494.25 hours per registration statement) and \$14,828,000 of professional time (25 registration statements multiplied by \$593,100 per registration statement).

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

**Table 1-Increases/ Decreases**

Form	Current Annual Responses	Increased Annual Responses	Proposed Annual Responses	Current Burden Hours	Decrease in Burden Hours	Proposed Burden Hours	Current Professional Costs	Decrease in Professional Costs	Proposed Professional Costs
S-11	75	25 <sup>3</sup>	100	37,069	18,004 <sup>4</sup>	19,065	\$44,484,000	\$21,606,000 <sup>5</sup>	\$22,880,000

14. Estimate Cost to the Federal Government

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

15. Explanation of Program Changes or Adjustments

The change in estimated annual responses on Form S-11 is due to an adjustment to our previous estimate of 75 registration statements filed annually on Form S-11. The program change in the number of burden hours for Form S-11 is due to the amendments that we have adopted allowing certain registrants to incorporate by reference into Form S-11 information from its previously filed Exchange Act reports and documents. As a result of the amendments, less disclosure on Form S-11 will be required. For the reasons noted above, we estimate that the annual decrease in compliance burden resulting exclusively from the amendments, but not the adjustments noted above, will be 30,360 hours and \$36,432,000 of professional costs.

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

<sup>3</sup> 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 75 to 100.

<sup>4</sup> The increase in burden hours includes an increase of 12,356 hours due to a change in the Commission's estimates noted above and a decrease of 30,360 hours related to the present Commission action.

<sup>5</sup> The decrease in professional costs includes an increase of \$14,827,500 due to a change in the Commission's estimates noted above and a decrease of \$36,432,000 related to the present Commission action.

Not applicable.

B. Collection of Information Employing Statistical Methods

Not applicable.