

SUPPORTING STATEMENT FOR SMALLER REPORTING COMPANY REGULATORY RELIEF AND SIMPLIFICATION

This submission is pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 *et seq.* The original request for approval of the changes described in this Supporting Statement was made at the proposing stage, in connection with Release 33-8819. At OMB's direction we are re-submitting this request in connection with Release No. 33-8876 in which the Commission adopted final rules.

A. Justification

1. Necessity of Information Collection

In Securities Act and Exchange Act Release No. 8876,¹ the Commission adopted 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 amendments extend the benefits of our current optional disclosure and reporting requirements for smaller companies to a much larger group of companies (approximately 1,580 additional companies). They 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 amendments 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 amendments 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 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 extended 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 rule amendments will not change the way data is gathered by the Commission. Form S-1 continues to be filed electronically using the Commission's Electronic Data Gathering and Retrieval ("EDGAR") system.

¹ Release No. 33-8876 (December 19, 2007) [73 FR 934 January 4, 2008].

4. Efforts to Identify Duplication

The rule amendments to our disclosure and reporting requirements for smaller companies 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 rule amendments affect small entities that have securities 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 S-1 rather than Form SB-1 or Form SB-2 to register securities under the Securities Act of 1933 (unless Form S-3 is available), but the issuer still will be eligible to provide disclosure scaled for smaller companies in the Form S-1 it files.

6. Consequences of Less Frequent Collection

The Form S-1 information is required only on occasion when a respondent chooses to make a public offering of its securities. Less frequent collection would frustrate the purpose of the Securities Act.

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

There are 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. The panel assessed the current regulatory system for smaller companies under the federal securities laws and recommended changes to that system. The major rule amendments that the Commission adopted stem from Advisory Committee recommendations.

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

The elimination of Forms SB-1 and SB-2 will cause the number of Form S-1s to increase. We estimate that there were approximately 471 Form S-1s filed annually before the amendments and that there will be an increase of approximately 297 Form S-1s filed in future years, for a total of 768 per year.

Our methodologies for deriving the burden hour and cost estimates presented below represent the average burdens for all issuers, both large and small. For Form S-1, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of \$400 per hour.

768 Form S-1 registration statements
x 237.49 hours per Form S-1 (25% of total burden)
182,392 hours

13. Estimate of Total Annualized Cost Burden

768 Form S-1 registration statements
x 712.47 outside hours per Form S-1
547,177 outside hours
x \$400 per hour for outside professionals
\$218,870,800

14. Cost to the Federal Government

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

15. Explanation of Changes in Burden

The increase in reporting hours of 43,918 and increase in cost of \$52,702,000 is attributable to the fact that all of the burden hours previously reflected for Forms SB-1 and SB-2 are now being included as part of the Form S-1 burden, except to the extent that a former Form SB-1 or SB-2 filer is eligible to use Form S-3. The net effect of the amendments is actually to reduce reporting burdens and costs due to the fact that approximately 1,580 companies now meet the definition of “smaller reporting company” and are newly eligible to provide scaled disclosure in Form S-1 that is equivalent to the type of information previously requested on Forms SB-1 and SB-2.

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.