

**SUPPORTING STATEMENT**  
**Form 2-E and Rule 609**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

In 1958, Congress enacted the Small Business Investment Act of 1958 (“SBIA”) (15 U.S.C. 661 et seq.) to stimulate and supplement the flow of private equity capital and long-term loan funds that small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization.<sup>1</sup> Pursuant to Section 307(a) of the SBIA, Congress amended the Securities Act of 1933 (15 U.S.C. 77a et seq.) (“Securities Act”) by adding Section 3(c) (15 U.S.C. 77c(c)), empowering the Securities and Exchange Commission to exempt completely or conditionally securities issued by small business investment companies (“SBICs”) from the provisions of the Securities Act.<sup>2</sup> Regulation E, a series of rules that provide specific exemptions from the registration provisions of the Securities Act for SBICs, was adopted pursuant to Section 3(c).<sup>3</sup> Regulation E was later amended to, among other things, raise the offering ceiling

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<sup>1</sup> Section 102 of the SBIA (15 U.S.C. 661 (1958)).

<sup>2</sup> Section 3(c) provides that the “Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors.”

<sup>3</sup> Securities Act Release No. 4005 (Dec. 17, 1958) (23 FR 10483 (Dec. 30, 1958)).

for the exemption and allow business development companies (“BDCs”) to use the exemption.<sup>4</sup>

Under Regulation E securities issued by SBICs<sup>5</sup> that are registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) (“1940 Act”) and securities issued by certain investment companies that elect to be treated as BDCs under the 1940 Act are exempt from registration under the Securities Act, provided that certain conditions are met. In general, Regulation E requires that the aggregate offering price of the securities not exceed \$5,000,000; that an offering circular containing information about the issuer be furnished to investors along with or prior to a written offer, confirmation of sale, or payment for the securities (whichever comes first); and that the SBIC or BDC file with the Commission copies of both the offering circular and a notification on Form 1-E under the Securities Act.<sup>6</sup> Once an SBIC or BDC has commenced an offering under Regulation E, rule 609 (17 CFR 230.609) requires the filing, semi-annually, on Form 2-E under the Securities Act of reports containing the information called for by that form. The form calls for, among other things, the dates the

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<sup>4</sup> Securities Act Release No. 6546 (Aug. 30, 1984) (49 FR 35342 (Sep. 7, 1984)). As used in Regulation E, “the term business development company means any closed-end investment company which meets the definitional requirements of section 2(a)(48) (A) and (B) of the Investment Company Act of 1940 ([15 U.S.C. 80a-2\(a\)\(48\)](#)).” Rule 602(a) (17 CFR 230.602).

<sup>5</sup> As used in Regulation E, “the term small business investment company means any company which is licensed as a small business investment company under the Small Business Investment Act of 1958 or which has received the preliminary approval of the Small Business Administration and has been notified by the Administration that it may submit a license application.” *Id.*

<sup>6</sup> 17 CFR 230.603 to 605. No offering circular need be filed or used if, among other things, the aggregate offering price of the securities is less than \$100,000 and copies of a statement setting forth information required to be included in an offering circular (other than financial statements) is filed as an exhibit to the notification. 17 CFR 230.606(a).

offering commenced and was completed (if completed), the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. Upon completion of the offering and the filing of a final report, no further reports are required under this regulation.

## **2. Purpose of the Information Collection**

The information provided on Form 2-E assists the staff in monitoring the progress of the offering and in determining whether the offering has stayed within the limits set for an offering exempt under Regulation E.

## **3. Role of Improved Information Technology**

The Commission's electronic filing system ("EDGAR") automates the filing, processing, and dissemination of full disclosure filings. The system permits publicly held companies to transmit their filings to the Commission electronically. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets. Form 2-E is required to be filed electronically on EDGAR.<sup>7</sup>

## **4. Efforts to Identify Duplication**

There is no other rule that requires production to the Commission of the same information.

## **5. Effect on Small Entities**

Congress enacted the SBIA in order to stimulate and supplement the flow of capital to small businesses. As discussed above, a primary purpose of the small offering exemption under Regulation E is to provide a simple and relatively inexpensive procedure by which small businesses can raise limited amounts of needed capital.

<sup>7</sup> See rule 101(a)(1)(v) of Regulation S-T (17 CFR 232.101(a)(1)(v)).

Offerings under Regulation E require less extensive disclosure than Securities Act registrations. Generally, the less burdensome provisions under Regulation E reflect a commitment by the Commission to facilitate capital formation by SBICs and BDCs while maintaining a level of investor protection traditionally afforded smaller offerings.

#### **6. Consequences of Less Frequent Collection**

Form 2-E must be filed semi-annually during an offering and as a final report at the completion of the offering. Less frequent filing would not allow the Commission to monitor the progress of the limited offering to ensure that the issuer was not attempting to avoid the normal registration provisions of the securities laws.

#### **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

Rule 609 requires an issuer to file four copies of Form 2-E with the Commission. However, Form 2-E is required to be filed electronically on EDGAR<sup>8</sup> and rule 309(b) of Regulation S-T (17 CFR 232.309(b)) provides that an electronic format document, submitted in the prescribed manner, satisfies the requirement that more than one copy of such document be filed with the Commission. Accordingly, the rule is not inconsistent with guidelines in 5 CFR 1320.5(d).

#### **8. Consultation Outside the Agency**

Comments are generally received from registrants, trade associations, the legal and accounting professions, and other interested parties. In addition, the Commission and the staff of the Division of Investment Management regularly participate in public conferences, meetings, and informal exchanges with members of the SBIC and BDC industry. These forums provide the Commission and staff with the means to ascertain

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<sup>8</sup> See supra note Error: Reference source not found and accompanying text.

and act upon paperwork burdens affecting SBICs and BDCs. Prior to their adoption, Form 2-E and rule 609 were proposed for public comment. The rule and Form were adopted after consideration by the Commission of all views and comments received. The Commission requested public comment on the collection of information requirements in Form 2-E and rule 609 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

**9. Payment or Gift to Respondents**

Not applicable.

**10. Assurance of Confidentiality**

Not applicable.

**11. Sensitive Questions**

Not applicable.

**12. Estimate of Hour Burden**

During the calendar year 2008, there were five filings of Form 2-E by three respondents. The Commission estimates, based on its experience with disclosure documents generally and Form 2-E in particular, and based on informal contacts with the investment company industry, that the total annual burden associated with information collection and Form 2-E preparation and submission is four hours per filing or 20 hours for all respondents.

Based on an estimated hourly wage rate of \$270 for Compliance Attorneys,<sup>9</sup> the total annual cost to the SBIC and BDC industry of the hour burden is approximately \$5,400. These estimates are made solely for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

**13. Estimate of Total Annual Cost Burden**

The rule is not estimated to impose any burdens other than those discussed in item 12 above.

**14. Estimate of Cost to the Federal Government**

The annual operation cost of reviewing and processing all new registration statements, post-effective amendments, proxy statements, and shareholder reports of investment companies amounted to approximately \$20.8 million in fiscal year 2007, based on our computation of the value of staff time devoted to this activity and related overhead.

**15. Explanation of Changes in Burden**

The burden changed from 144 hours to 20 hours because the number of respondents decreased from 24 to three and the total annual responses changed from 36 to five. There has not been a program change but a change in the number of respondents and the number of responses.

**16. Information Collection Planned for Statistical Purposes**

Not applicable.

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<sup>9</sup> The \$270/hour figure for a Compliance Attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2008, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

**17. Approval to not Display Expiration Date**

Not applicable.

**18. Exceptions to Certification Requirement**

Not applicable.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.