

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 the final rules.

A. JUSTIFICATION

1. NECESSITY FOR THE INFORMATION COLLECTION

In Release No. 33-8876,¹ the Commission adopted rule amendments relating to our disclosure and reporting requirements for smaller companies under the Securities Act of 1933 and the 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 and eliminate Regulation S-B and the SB forms. We intend to submit the discontinue notification for Form 10-KSB on March 16, 2009.

2. PURPOSE OF 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. USE OF ELECTRONIC MEDIA

The rule amendments will not change the way data is gathered by the Commission. Form 10-K continues to be filed electronically using the Commission's Electronic Data Gathering and Retrieval ("EDGAR") system.

4. DUPLICATION

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

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

5. METHODS USED TO MINIMIZE BURDEN ON SMALL BUSINESSES

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 amendments require it to use Form 10-K rather than Form 10-KSB for its annual reports, but more issuers will be eligible to provide disclosure scaled for smaller companies in the annual reports they file.

6. DESCRIPTION OF CONSEQUENCES OF LESS FREQUENT COLLECTION

The rule amendments relate to the disclosure required to be filed with the Commission for smaller companies. Annual reporting 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. CONSULTATION 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 RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY

Not applicable.

11. SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATE OF RESPONDENT REPORTING BURDEN

The elimination of Form 10-KSB will cause the number of Form 10-Ks that are filed to increase. We estimate that there were approximately 3,504 Form 10-KSBs filed during the Commission's last fiscal year so there will be a corresponding increase of approximately 3,504 Form 10-Ks filed in future years. Although the amendments

eliminate Form 10-KSB, they maintain the current disclosure requirements for smaller companies contained in Regulation S-B by integrating these requirements into Regulation S-K. Therefore, we estimate that the amount of time and the costs that it would take a smaller company to complete the Form 10-K would be equal to the amount of time and costs it would take the company to complete a Form 10-KSB. We derived the burden hour estimates for the Form 10-K by multiplying the estimated number of responses by the estimated average number of hours each smaller company would spend completing the form. In addition, approximately 1,580 companies previously not eligible to file Form 10-KSB meet the definition of a “smaller reporting company” due to the amendments and therefore will be eligible to provide scaled disclosure in Form 10-K that would be equivalent to the type of disclosure required by Form 10-KSB. Of these 1,580 companies that will be eligible to include scaled disclosure in their Form 10-K reports, we estimate that approximately half, or 790, will choose to provide the scaled disclosure.

We estimate that for Form 10-K, 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of \$400 per hour.² The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. We intend to submit the discontinuation notification for Form 10-KSB on March 16, 2009.

Form 10-K’s filed by smaller reporting companies and the 790 companies eligible to use the scaled disclosure multiply by the hours per Form 10-K:

$$\begin{array}{r} 4,294 \\ \times 1,257.75 \\ \hline 5,400,778.75 \end{array}$$

Form 10-K’s filed by non-smaller reporting companies multiplied by the hours per 10-K:

$$\begin{array}{r} 9,251 \\ \times 1,722.75 \\ \hline 15,937,160.25 \end{array}$$

Estimated total hours for smaller reporting companies and non-smaller reporting companies:

$$\begin{array}{r} 5,400,778.50 \\ +15,937,160.25 \\ \hline 21,337,938.75 \end{array}$$

² 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.

13. ESTIMATE OF TOTAL ANNUALIZED COST BURDEN

Form 10-K's filed by smaller reporting companies and the 790 companies eligible to use the scaled disclosure multiply by the outside hours per Form 10-K multiplied by the per hour cost for outside professionals:

$$\begin{array}{r} 4,294 \\ \times \quad 419.25 \\ \hline 1,800,259.50 \\ \times \quad \$400.00 \\ \hline \$720,103,800 \end{array}$$

Form 10-K's filed by non-smaller reporting companies multiplied by the hours per 10-K multiplied by the per hour cost for outside professionals:

$$\begin{array}{r} 9,251 \\ \times \quad 574.25 \\ \hline 5,312,386.75 \\ \times \quad \$400.00 \\ \hline \$2,124,954,700 \end{array}$$

Estimated cost burden for small reporting companies and non-smaller reporting companies:

$$\begin{array}{r} \$2,124,954,700 \\ +\$ \quad 720,103,800 \\ \hline \$2,845,058,500 \end{array}$$

14. ESTIMATE OF COST TO FEDERAL GOVERNMENT

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

15. EXPLANATION OF CHANGES IN BURDEN

The amendments will consolidate two annual reports (Form 10-K and 10-KSB) into one annual report (Form 10-K). Form 10-KSB is a special annual report filed only by small business issuers. Form 10-KSB requires less disclosure than Form 10-K. The amendments require all issuers, including small issuers, to file Form 10-K, but allow small issuers to provide less disclosure on Form 10-K than larger issuers (the same level of disclosure that they provided in Form 10-KSB). Also, we estimate that 790 companies that weren't eligible to file on Form 10-KSB, but that meet a new definition of "smaller reporting company" included in the amendments, will provide less disclosure on Form 10-K than they previously were required to provide in Form 10-K. Due to the elimination of Form 10-KSB, the amendments will increase

the number of Form 10-K filers and filings by 3,504. The burden hours for Form 10-K will increase by 4,038,517 hours and the cost will increase by \$538,468,900. Overall, though, the result of consolidating Form 10-K and Form 10-KSB and allowing more companies to provide less disclosure (i.e, all companies that meet the new definition of a “smaller reporting company”) is to reduce the annual reporting burden by 2,092,231 hours and the cost by \$378,964,263.

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.