

SUPPORTING STATEMENT
Form 1-E, Regulation E

A. JUSTIFICATION

1. Necessity for the Information Collection

Regulation E provides a conditional exemption from the registration provisions of the Securities Act for securities of small business investment companies (“SBICs”) and investment companies that elect to be treated as business development companies (“BDCs”). Regulation E was initially adopted in 1958 and made available to SBICs pursuant to Section 3(c) of the Securities Act of 1933 (“Securities Act”) (15 U.S.C. 77a et seq.). Section 3(c) of the Securities Act generally permits the Securities and Exchange Commission (“Commission”) to add to the securities exempted from the Securities Act by Section 3 any class of securities issued by a SBIC. In 1984, pursuant to Section 3(b) of the Securities Act, Regulation E was amended to permit the availability of the exemption to BDCs. Section 3(b) of the Securities Act generally permits the Commission to add any class of securities to the securities exempted from the Securities Act by Section 3.

Regulation E allows the exemption of securities issued by an SBIC which is registered under the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-1 et seq.), or a closed-end investment company that has elected to be regulated as a BDC under the Investment Company Act from registration under the Securities Act, so long as the aggregate offering price of all securities of an issuer that may be sold within a 12-month period does not exceed \$5,000,000, provided that certain other conditions are met. Under rule 604 of Regulation E, companies wishing to obtain the exemption must notify the Commission of their interest in claiming the exemption by filing a notification on Form 1-E (17 CFR 239.200) with the

Commission. Rule 605 of Regulation E requires an issuer seeking a securities registration exemption under Regulation E to provide an offering circular to persons solicited by the issuer and to file the offering circular with the Commission if the offering is in excess of \$100,000.

2. Purpose of the Information Collection

Form 1-E is filed with the Commission by SBICs and BDCs to claim an exemption from registration. The notification must include the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdictions in which the issuer will offer the securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1-E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of offering circular and any underwriting contracts. The notification on Form 1-E requires less information than would be required in a registration statement under the Securities Act and, thus, results in a reduction of costs and savings of time for a qualified issuer engaged in a small offering. In addition to notifying the Commission of an issuer's intent to make a limited offering, Form 1-E assists the staff to determine whether an exemption is available for the issuer.

A company claiming an exemption under Regulation E must also file an offering circular with the Commission as an exhibit to Form 1-E and provide the offering circular to investors. The offering circular must contain information specified in Schedule A or B of Regulation E (17 CFR 230.610a). In general, Schedules A and B of Regulation E require disclosure about the business and investment policies of the issuer, its management, and its financial condition. Because the offering circular requires less information than would normally be furnished to investors in a prospectus, the burden on the issuer is reduced, while at the same time, investors

receive pertinent information. The Commission uses the information provided in the offering circular to determine whether the offering qualifies for exemption.

3. Role of Improved Information Technology

Beginning on January 1, 2009, Form 1-E and the offering circular have been filed electronically on the Commission's electronic filing system, called EDGAR (for Electronic Data Gathering, Analysis and Retrieval), which is designed to automate the filing, processing, and dissemination of all disclosure filings. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets.

4. Efforts to Identify Duplication

Not applicable.

5. Effect on Small Entities

The exemption under Regulation E is intended to relieve small entities of the reporting burden of registering their offering under the Securities Act.

6. Consequences of Less Frequent Collection

Without the information provided in Form 1-E, the Commission would have no notice of the offering and could not determine whether an offering qualified for the exemption. In addition, without the collection of information in the offering circulars, the Commission would not be able to review the content of the offering and would not be able to determine whether the offerings qualified for the exemption.

7. Inconsistencies With Guidelines in 5 CFR 1320.5(d)(2)

Not applicable.

8. Consultation Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry and through public conferences, meetings, and informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon paperwork burdens confronting the industry. The Commission also requested public comment on the collection of information requirements with respect to Form 1-E, Regulation E 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

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act (“PRA”) and are not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

The Commission estimates that issuers file approximately eight notifications on Form 1-E, together with offering circulars, with the Commission annually.¹ Based on the Commission’s

¹ According to Commission records, six issuers filed eight notifications on Form 1-E, together with offering circulars, in 2008.

experience with disclosure documents, we estimate that the burden from compliance with Form 1-E and the offering circular requires approximately 100 hours per filing. The total burden hours for compliance with Form 1-E and the offering circular would be 800 hours in the aggregate (8 responses x 100 hours per response).

13. Estimate of Total Annual Cost Burden

The Commission estimates that the cost of outside services used in preparing and filing Form 1-E, including the offering circular, would be approximately \$44,000 per filing (this cost burden includes services provided by outside counsel, independent certified public accountants, and printers). As explained above, the Commission estimates that eight filings would be made annually. Thus, the total cost burden estimate is \$352,000 (8 responses x \$44,000 per response).

14. Estimate of Cost to the Federal Government

The annual cost of reviewing and processing registration statements, post-effective amendments, proxy statements, shareholder reports, and other filings of investment companies, including notifications on Form 1-E, amounted to approximately \$19.6 million in fiscal year 2008, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. Explanation of Changes in Burden

In the last PRA submission, the Commission estimated 10 responses to the collection of information annually. Based on this estimate, the Commission determined a total annual reporting burden of 1000 hours. Since the prior submission, the Commission estimates that issuers file approximately eight notifications, together with offering circulars, on Form 1-E with the Commission annually. As discussed above, based on a new estimate of eight annual responses, the Commission estimates that the new total annual reporting burden estimate would

be 800 hours per year in the aggregate, a decrease of 200 hours. The decrease of 200 in internal hour burden and is based on a changed estimate of the number of filings issuers make on Form 1-E (from 10 to eight filings). The Commission previously estimated that the current annual cost burden to be \$350,000, which is adjusted to a new estimate of \$352,000. The increase of \$2,000 in the annual cost burden is based on a changed estimate of the number of filings issuers make on Form 1-E (from 10 to eight filings) and an increase in the external cost burden per filing (from \$35,000 to an inflation adjusted \$44,000).

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.