

SUPPORTING STATEMENT FOR PROPOSED AMENDMENTS TO RULE 163 UNDER THE SECURITIES ACT OF 1933

This submission, pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq., consists of this supporting statement and the Release No. 33-9098 (Dec. 18, 2009).

A. JUSTIFICATION

1. NECESSITY FOR THE INFORMATION COLLECTION

In Release No. 33-9098, the Securities and Exchange Commission proposed amendments to Securities Act Rule 163 that contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The title for the collection of information is:

“Rule 163” (OMB Control No. 3235-0619).

This collection of information is necessary for the Commission to carry out the provisions of the Securities Act of 1933. We are proposing amendments to Rule 163 to facilitate capital formation by “well-known seasoned issuers”¹ through the removal of certain impediments to issuer communications with broader groups of potential investors while still maintaining a high level of investor protection.

2. PURPOSE OF THE INFORMATION COLLECTION

The proposed amendments to Rule 163 would enhance communications between well-known seasoned issuers and potential investors regarding the issuers’ offerings of securities by permitting well-known seasoned issuers to authorize an offering participant that is an underwriter or dealer to act as its agent or representative.

The proposed amendments would impose the following filing obligation in connection with offerings registered under the Securities Act to the extent that a well-known seasoned issuer or an authorized offering participant uses the proposed amended rule:

- the filing of any free writing prospectus² used by a well-known seasoned issuer, or an authorized offering participant on behalf of the issuer, if and when a registration

¹ A “well-known seasoned issuer” is an issuer that meets the registrant requirements of Form S-3 or Form F-3; has at least \$700 million in worldwide market value of outstanding voting and non-voting common equity held by non-affiliates (or has issued, for cash, within the last three years at least \$1 billion aggregate principal amount of non-convertible securities through primary offerings registered under the Securities Act); and is not an “ineligible issuer,” as defined in our rules.

² “Free writing prospectuses” are written communications that constitute offers to sell or solicitations of offers to buy securities and are not, among other things, prospectuses satisfying the requirements of Securities Act Section 10(a) or prospectuses satisfying the rules permitting the use of preliminary or summary prospectuses or prospectuses subject to completion.

statement (or a post-effective amendment to an automatic shelf registration statement) is filed for the securities offered pursuant to the proposed amended rule.

In addition, one of the conditions of the proposed amendments to Rule 163(c) is the identification of any authorized underwriters or dealers that made communications in reliance on the rule in the prospectus contained in the registration statement (or post-effective amendment to an automatic shelf registration statement) filed for the offered securities. This proposed condition does not impose a new disclosure requirement because an authorized underwriter or dealer that made a communication on behalf of a well-known seasoned issuer in reliance on the proposed amended rule would generally be an underwriter or dealer for the offering related to that communication and would, therefore, already be required to be identified under Item 508 of Regulation S-K, regardless of the proposed condition.

Well-known seasoned issuers would not be required to engage offering participants to make authorized communications under the proposed amended rule. The information collection requirements described above therefore would apply only to well-known seasoned issuers and authorized offering participants that choose to rely on the proposed amended rule.

3. USE OF ELECTRONIC MEDIA

Free writing prospectuses used in reliance on the proposed amended Rule 163 would be filed electronically with the Commission using the Commission's Electronic Data Gathering and Retrieval (EDGAR) system. Securities Act registration statements on Form S-1 or Form S-3 (and post-effective amendments to automatic shelf registration statements on Form S-3) also would be filed electronically with the Commission using EDGAR.

4. DUPLICATION

The Commission believes that there are no rules that conflict with, or completely duplicate, the proposed rule amendments.

5. METHODS USED TO MINIMIZE BURDEN ON SMALL BUSINESSES

Rule 163 is, by its terms, available only to well-known seasoned issuers. Few, if any, small businesses can meet the \$700 million non-affiliate equity market capitalization threshold or the \$1 billion non-convertible securities issuance threshold needed to be considered a well-known seasoned issuer. Therefore, the proposed amendments to Rule 163 would have no effect on the burden on small businesses.

6. DESCRIPTION OF CONSEQUENCES OF LESS FREQUENT COLLECTION

Less frequent collection would mean that current information may not be available to investors and may potentially decrease investor confidence in the full and fair disclosure system that is the hallmark of the U.S. capital markets.

7. EXPLANATION OF SPECIAL CIRCUMSTANCES

Not applicable.

8. CONSULTATION OUTSIDE THE AGENCY

The Commission has issued a release soliciting comment on the new “collection of information” requirements and the associated paperwork burdens. A copy of this release is attached. Comments on Commission releases are generally received from registrants, investors and other market participants. In addition, the Commission and staff of the Divisions of Corporation Finance participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. The Commission will consider all comments received.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY

Not applicable.

11. SENSITIVE QUESTIONS

Not applicable.

12. and 13. ESTIMATES OF HOUR AND COST BURDEN

The paperwork burden estimates associated with the proposed amendments include the time and the cost of preparing and reviewing disclosure, filing documents or otherwise publicizing information, and retaining records. The proposed amendments will not increase the incremental burden hours per response.

For the free writing prospectus requirement, as was the case when we proposed Rule 163, we estimate that 25% of the burden of preparation is carried by the issuer internally and 75% of the burden is carried by outside professionals retained by the issuer at an average cost of \$400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours.

Table 1 illustrates the incremental annual compliance burden of the collection of information in hours and in cost for the proposed amendments to Rule 163.

Table 1: Calculation of Incremental PRA Burden Estimates

	Annual Responses	Hours/Form	Incremental Burden	25% Issuer	75% Professional Hours	\$400 Professional Cost
		(B)	(C)=(A)*(B)	(D)=(C)*0.25	(E)=(C)*0.75	(F)=(E)*\$400

	(A)					
Rule 163	53	0.25	13.25	3.3	9.95	\$3,980

Table 2 illustrates the total annual compliance burden of the proposed collection of information in hours and cost for the proposed amendments to Rule 163. The burden was calculated by adding the incremental burdens to the existing burdens.

Table 2: Estimates of Hour and Cost Burdens

	Annual Responses	Current Hours/Form	Incremental Hours/Form	Total Burden Hours/Form	Total Burden Hours	Company ³	Professional (Rounded) ⁴	Professional Cost
	(A)	(B)	(C)	(D)=(B)+(C)	(E)=(D)*(A)	(F)	(G)	(H)=(G)*\$400
Rule 163	106	0.25	0	0.25	26.5	6.6	19.9	\$7,960

14. ESTIMATE OF COST TO FEDERAL GOVERNMENT

The estimated cost of preparing the proposed amendments is approximately \$50,000.

15. EXPLANATION OF CHANGES IN BURDEN

The proposed amendments to Rule 163(c) would allow underwriters or dealers, under certain circumstances, to act as agents or representatives of well-known seasoned issuers for purposes of the rule. Rule 163(c) currently may be causing unnecessary impediments to the ability of well-known seasoned issuers to communicate with a broader group of potential investors about offerings of the issuers' securities by preventing underwriters or dealers from acting on behalf of such issuers. Further, it also may be impeding potentially useful discourse with prospective investors regarding the possibility and terms of securities offerings by the issuers. We believe that the proposed amendments would enable well-known seasoned issuers to better gauge the level of interest in the market for an offering and explore possible terms for such an offering before filing a registration statement (or a post-effective amendment to an already filed automatic shelf registration statement) covering the offered securities while retaining for investors important rights and remedies under the Securities Act.

The fact that many well-known seasoned issuers do not have automatic shelf registration statements on file (or do not have the securities they propose to offer already included in their filed registration statements), along with our proposal to permit underwriters or dealers to make communications pursuant to Rule 163, may result in greater use of the rule by issuers and potentially greater numbers of free writing prospectuses filed pursuant to the rule. However, since some communications made by underwriters or dealers in reliance on Rule 163 would be

³ This column is calculated by multiplying column (E) by either 25% or 75%, depending on our determination (discussed in text above) of the proportion of the burden that is borne in-house by company personnel, or borne as the cost of outside professionals.

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oral rather than written, and since an oral communication that is an offer need not be filed with the Commission as a free writing prospectus, the potential increase might be small. As a result of these two counteracting effects, we estimate that the number of free writing prospectuses would double from our estimate at the time that Rule 163 was proposed. More specifically, we estimate that the incremental increase in the number of free writing prospectuses that may be filed pursuant to the proposed amended rule and number of incremental burden hours would be 53 free writing prospectuses and 13.25 hours per year, resulting in issuer personnel time of 3.3 hours and a cost of approximately \$3,980 for the services of outside professionals

Table 3 below illustrates the changes in cost and hour burdens from the burden estimates currently approved by OMB. Columns (A) and (B) represent the total hour and cost burden estimates for the proposed amendments. Columns (C) and (D) represent the previous burden estimates most recently submitted to OMB. Columns (E) and (F) represent the change in burden from the previous estimates. Columns (G) and (H) represent the incremental hour and cost burden as a result of the proposed amendments. Columns (I) and (J) represent any adjustment, which encompasses any change in burden that is not attributable to the amendments.

Table 3: Explanation of Changes in Burden

	Requested Burden		Current Burden		Change in Burden		Program Change		Adjustment ⁵	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Cost (D)	Burden Hours (E)=(A)-(C)	Cost (F)=(B)-(D)	Burden Hours (G)	Cost (H)	Burden Hours (I)	Cost (J)
Rule 163	6.6	\$7,960	3	\$3,816	4	\$4,144	4	\$3,980	1	\$164

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.

⁵ The adjustment is an administrative adjustment in how the Commission calculated the current hours per response estimate.