

**SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE  
SECURITIES ACT OF 1933,  
SECURITIES EXCHANGE ACT OF 1934  
DODD-FRANK WALL STREET REFORM AND  
CONSUMER PROTECTION ACT**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq.

**A. JUSTIFICATION**

**1. NECESSITY OF INFORMATION COLLECTION**

In Release No. 33-9153,<sup>1</sup> the Securities and Exchange Commission (the “Commission”) proposed amendments to certain rules and form requirements to implement Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“the Act”) relating to shareholder approval of executive compensation (“say-on-pay”), the frequency of say-on-pay and disclosure and shareholder approval of golden parachute compensation. The proposals are designed to implement the requirements of Section 951.

The proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles for the collections of information contained by the proposed amendments are:

- “Regulation 14A and Schedule 14A” (OMB Control No. 3235-0059);
- “Regulation 14C and Schedule 14C” (OMB Control No. 3235-0057);
- “Form 10-K” (OMB Control No. 3235-0063);
- “Form 10-Q” (OMB Control No. 3235-0070);
- “Form 10” (OMB Control No. 3235-0064);
- “Regulation S-K” (OMB Control No. 3235-0071)<sup>2</sup>;
- “Schedule 14D-9” (OMB Control No. 3235-0102);
- “Schedule 13E-3” (OMB Control No. 3235-0007);

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<sup>1</sup> Shareholder Approval of Executive Compensation and Golden Parachute Compensation, Release No. 33-9153 (October 18, 2010) [75 FR 66590].

<sup>2</sup> The paperwork burden from Regulation S-K is imposed through the forms that are subject to the disclosures in S-K and is reflected in the analysis of those forms.

- “Schedule TO” (OMB Control No. 3235-0515);
- “Form S-1” (OMB Control No. 3235-0065);
- “Form S-4” (OMB Control No. 3235-0324);
- “Form S-11” (OMB Control No. 3235-0067);
- “Form F-4” (OMB Control No. 3235-0325); and
- “Form N-2” (OMB Control No. 3235-0026).

## **2. PURPOSE FOR THE INFORMATION COLLECTION**

The purpose of the proposed collections of information is to implement the disclosure requirements of Section 951 of the Act to provide for shareholder say-on-pay vote, a shareholder vote on the frequency of say-on-pay votes, enhanced disclosure of golden parachute compensation arrangements in connection with mergers and similar transactions and a separate shareholder vote on golden parachute compensation in certain circumstances.

## **3. ROLE OF IMPROVED TECHNOLOGY AND OBSTACLES TO REDUCING BURDEN**

The collection of information requirements of the amendments will be set forth in Forms 10, 10-Q, 10-K, S-1, S-4, S-11, F-4, and N-2; and Schedules 14A, 14C, 13E-3, TO and 14D-9. These forms and schedules are filed electronically with the Commission using the Commission’s Electronic Data Gathering, Analysis and Retrieval system.

## **4. DUPLICATION**

We are not aware of any rules that conflict with or substantially duplicate the proposed rules.

## **5. METHODS USED TO MINIMIZE BURDEN ON SMALL BUSINESSES**

We anticipate that the amendments will increase the burdens and costs for companies that would be subject to the proposed amendments. Some of the amendments, however, will be required in some, but not all, of the above documents, and will not apply to smaller reporting companies. For these reasons, the amendments should not have a significant economic impact on small entities.

## **6. DESCRIPTION OF CONSEQUENCES OF LESS FREQUENT COLLECTION**

The regulations, forms and schedules set forth the disclosure requirements for periodic reports, registration statements, and proxy and information statements filed by companies to help investors make informed investment and voting decisions. Less frequent collection would deprive investors of access to information that is important to their voting and investment decisions.

**7. EXPLANATION OF SPECIAL CIRCUMSTANCES/INCONSISTENCIES WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Not applicable.

**8. CONSULTATION OUTSIDE THE AGENCY**

The Commission has issued a proposing release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the proposing release is attached. In response to the solicitation for comment in the proposing release, registrants, investors, and other market participants provide comments. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, roundtables and meetings. The Commission will consider all comments received prior to publishing the final rule as required by 1320.11(f). The public can review comments at <http://www.sec.gov/comments/s7-31-10/s73110.shtml>.

**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 BURDEN COSTS**

We anticipate that the proposed disclosure amendments would increase the burdens and costs for companies that would be subject to the proposed amendments. New Section 14A of the Exchange Act, as created by Section 951 of the Act, has already increased the burdens and costs for issuers by requiring separate shareholder votes on executive compensation and the frequency of shareholder votes on executive compensation. Section 14A also requires additional disclosure of golden parachute arrangements in proxy solicitations to approve merger transactions and a separate shareholder vote to approve such

arrangements in certain circumstances. Our proposed amendments address the Act's requirements in the context of disclosure under the federal proxy rules, Regulation S-K and related forms and schedules, thereby creating only an incremental increase in the burdens and costs for such issuers. The proposed amendments will specify how issuers are to comply with Section 14A of the Exchange Act and require new disclosure with respect to comparable transactions.

We estimate the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals to be approximately 25,192 hours of company personnel time and a cost of approximately \$8,141,200 for the services of outside professionals. These estimates include the time and the cost of data gathering systems and disclosure controls and procedures, the time and cost of preparing and reviewing disclosure by in-house and outside counsel and executive officers, and the time and cost of filing documents and retaining records. In deriving our estimates, we recognize that the burdens will likely vary among individual companies based on a number of factors, including the size and complexity of their organizations, and the nature of their operations. We believe that some companies will experience costs in excess of this average in the first year of compliance with proposals and some companies may experience less than the average costs.

We derived the above estimates by estimating the average number of hours it would take an issuer to prepare and review the proposed disclosure requirements. These estimates represent the average burden for all companies, both large and small. Our estimates have been adjusted to reflect the fact that some of the proposed amendments would be required in some but not all of the above listed documents depending upon the circumstances, and would not apply to all companies.

With respect to reporting companies, the disclosure required by new Item 402(t) of Regulation S-K would be required in merger proxy and information statements, Forms S-4 and F-4, Schedule 13E-3 and certain tender offer documents and solicitation/recommendation statements. As proposed, the disclosure required by new Item 402(t) may also be included in annual meeting proxy statements on a voluntary basis.

The disclosure required by our amendments to Item 402(b) of Regulation S-K would be required in proxy and information statements as well as Forms 10, 10-K, S-1, S-4, S-11, and N-2. The proposed amendments to CD&A would not be applicable to smaller reporting companies because under current CD&A reporting requirements these companies are not required to provide CD&A in their Commission filings. Based on the number of proxy filings that were received in the 2009 fiscal year, we estimate that approximately 1,200 domestic companies are smaller reporting companies that have a public float of less than \$75 million.

Our annual burden estimates are also based on other assumptions. First, we assumed that the burden hours of the proposed amendments would be comparable to the burden hours related to similar disclosure requirements under current reporting requirements, such as the

disclosure required by Item 402(j). Second, we assumed that substantially all of the burdens associated with the proposed amendments to Rule 14a-21 and Item 24 would be associated with Schedule 14A as this would be the primary disclosure document in which these items would be prepared and presented. In the case of our proposed amendments to Item 402(b) and Item 402(t) of Regulation S-K, we have assumed the burdens associated with the proposed amendments would be associated with various disclosure documents as these items will be included in a number of forms and statements. For each reporting company, we estimate that the proposed amendments would impose on average the following incremental burden hours:

- 2 hours for the proposed amendments to CD&A
- 1 hour for the proposed amendments to Item 24 of Schedule 14A
- 1 hour for the proposed amendments to Form 10-K
- 1 hour for the proposed amendments to Form 10-Q
- 20 hours for new Item 402(t) of Regulation S-K

1. Annual Meeting Proxy Statements

For purposes of the PRA, in the case of reporting companies, we estimate the annual incremental paperwork burden for proxy statements under the proposed amendments would be approximately 1 hour per form for companies that are smaller reporting companies, and 3 hours per form for companies that are non-accelerated filers (and not smaller reporting companies), accelerated filers, or large accelerated filers.<sup>3</sup> The estimated burden is smaller for smaller reporting companies as such issuers are not required to include a CD&A.

2. Exchange Act Periodic Reports

For purposes of the PRA, we estimate the annual incremental paperwork burden for Form 10-K under the proposed amendments would be approximately 1 hour per form.<sup>4</sup> We estimate the annual incremental paperwork burden for Form 10-Q under the proposed amendments would be approximately 1 hour per form. Our estimates below also account for the fact that each issuer would only be required to include additional disclosure in either the Form 10-K or one of the quarterly Form 10-Q filings each year.

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<sup>3</sup> Our estimate for annual proxy statements is based upon an estimated burden over a six-year period during which the shareholder advisory votes required by Section 14A(a) would not occur annually. We used a six-year period because issuers will conduct at least two shareholder advisory votes on executive compensation and at least one shareholder advisory vote on the frequency of such votes in this time period. We then estimated an average annual burden based on the average burden over the six-year period.

<sup>4</sup> We have assumed that the annual incremental paperwork burden under the proposed amendments to Item 402(b) of Regulation S-K would be included in the annual meeting proxy statement so that the annual incremental paperwork burden for the Form 10-K relates only to the proposed amendments to Item 9A.

### 3. Securities Act Registration Statements and Exchange Act Registration Statements

For purposes of the PRA, in the case of reporting companies, we estimate the annual incremental paperwork burden for Securities Act and Exchange Act registration statements under the proposed amendments would be approximately 2 hours per form, which represents the additional burden associated with our proposed amendments to CD&A. In making our estimates, we note that the additional burdens in CD&A would only apply to issuers who have conducted a prior shareholder advisory vote and would not apply, for example, to issuers making an initial filing on Form S-1 or Form S-11.

### 4. Merger Proxies, Tender Offer Documents and Schedule 13E-3

For purposes of the PRA, in the case of reporting companies, we estimate the annual incremental paperwork burden for merger proxy statements, registration statements on Form S-4 and F-4 to be 21 hours per form, as these forms would be required to include additional disclosures under Item 24 of Schedule 14A and Item 402(t) of Regulation S-K. We estimate the annual incremental paperwork burden for merger information statements, tender offer documents and tender offer solicitation/recommendation statements and Schedules 13E-3 to be 20 hours per form, as these forms would not be required to include additional disclosure under Item 24 of Schedule 14A.

The tables below illustrate the total annual compliance burden of the collection of information in hours and in cost under the proposed amendments for annual reports; quarterly reports; proxy and information statements; Form 10; registration statements on Forms S-1, S-4, F-4, S-11, and N-2; and Regulation S-K.<sup>5</sup> The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take an issuer to prepare and review the proposed disclosure requirements. For the Exchange Act reports on Form 10-K and Form 10-Q, and the proxy statements we estimate that 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 issuer at an average cost of \$400 per hour. The registration statements on Forms S-1, S-4, F-4, S-11, and N-2, and the Exchange Act registration statement on Form 10, we estimate that 25% of the burden of preparation is carried by the issuer internally and that 75% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of \$400 per hour. There is no change to the estimated burden of the collections of information under Regulation S-K because the burdens that this regulation imposes are reflected in our revised estimated for the forms. 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.

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<sup>5</sup> Figures in both tables have been rounded to the nearest whole number.

Table 1. Incremental Paperwork Burden under the proposed amendments for annual reports; quarterly reports; proxy and information statements:

	Number of Responses <sup>6</sup> (A)	Incremental Burden Hours/Form (B)	Total Incremental Burden Hours (C)=(A)*(B)	75% Company (D)=(C)*0.75	25% Professional (E)=(C)*0.25	Professional Costs (F)=(E)*\$400
10-K <sup>7</sup>	1,803	1	1,803	1,352	451	\$180,400
10-Q	5,409	1	5,409	4,057	1,352	\$540,800
Form 10 <sup>8</sup>	9	2	18	4	14	\$5,600
DEF 14A <sup>9</sup>	7,212					
Accel. Filers	6,112	3	18,336	13,752	4,584	\$1,833,600
SRC Filers	1,100	1	1,100	825	275	\$110,000
DEF 14C	582					
Accel. Filers	482	2	964	723	241	\$96,400
SRC Filers	100	0	0	0	0	\$0
Reg. S-K	N/A	N/A	N/A	N/A	N/A	N/A
Total			27,630	20,713		\$2,766,800

Table 2. Incremental Paperwork Burden under the proposed amendments for registration Statements, merger proxy and information statements, tender offer documents and Schedules 13E-3:

	Number of	Incremental	Total	25%	75%	Professional
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<sup>6</sup> The number of responses reflected in the table equals the actual number of forms and schedules filed with the Commission during the 2009 calendar year, adjusted to reflect the estimated number of forms and schedules that would be required to include additional disclosure under our rules as proposed. As explained below in notes 6 through 8, we have reduced the number of estimated filings to reflect that the additional disclosure requirements as proposed would only apply to a smaller number of the forms filed.

<sup>7</sup> We calculated the burden hours for Forms 10-K and 10-Q based on the number of proxy statements filed with the Commission during the 2009 calendar year. We assumed that there would be an aggregate equal number of Forms 10-K and 10-Q to disclose the issuer's plans with respect to the frequency vote as the number of proxy statements and further assumed that 75% of issuers would disclose this information on Form 10-Q and 25% would disclose this information on Form 10-K.

<sup>8</sup> The burden allocation for Form 10 uses a 25% internal to 75% outside professional allocation. We have reduced the number of estimated Form 10 filings to reflect that approximately 95% of these forms would not require additional disclosure, as new disclosure required under Item 402 as proposed would only relate to issuers in spin-off transactions that are disclosing compensation of public parent companies that have conducted a prior shareholder vote on executive compensation.

<sup>9</sup> The estimates for Schedule 14A and Schedule 14C are separated to reflect our estimate of the burden hours and costs related to the proposed amendments to CD&A which would be applicable to companies that are large accelerated filers, accelerated filers, and non-accelerated filers (that are not smaller reporting companies), but would not be applicable to smaller reporting companies.

	Responses <sup>10</sup> (A)	Burden Hours/Form (B)	Incremental Burden Hours (C)=(A)*(B)	Company (D)=(C)*0.25	Professional (E)=(C)*0.75	Costs (F)=(E)*\$400
Form S-1 <sup>11</sup>	485	2	970	243	727	\$290,800
Form S-11	22	2	44	11	33	\$13,200
Form S-4 <sup>12</sup>	499	21	10,479	2,620	7,859	\$3,143,600
Form F-4	27	21	567	142	425	\$170,000
DEFM 14A	137	21	2,877	719	2,158	\$863,200
DEFM 14C <sup>13</sup>	14	20	280	70	210	\$84,000
Schedule TO-T <sup>14</sup>	50	20	1,000	250	750	\$300,000
Schedule 14D-9	77	20	1,540	385	1,155	\$462,000
Schedule 13E-3	5	20	100	25	75	\$30,000
Form N-2 <sup>15</sup>	29	2	58	14	44	\$17,600
Reg. S-K	N/A	N/A	N/A	N/A	N/A	N/A
Total			17,915	4,479		\$5,374,400

#### 14. ESTIMATE OF COST TO FEDERAL GOVERNMENT

<sup>10</sup> The number of responses reflected in the table equals the actual number of forms and schedules filed with the Commission during the 2009 calendar year, adjusted to reflect the estimated number of forms and schedules that would be required to include additional disclosure under our rules as proposed. As explained below in notes 10 through 14, we have reduced the number of estimated filings to reflect that the additional disclosure requirements as proposed would only apply to a smaller number of the forms filed.

<sup>11</sup> We have reduced the number of estimated Form S-1 and Form S-11 filings to reflect that approximately 60% of these forms would not require additional disclosure, as new disclosure required under Item 402 as proposed would only relate to issuers who are already public companies and have conducted a prior shareholder vote on executive compensation.

<sup>12</sup> We have reduced the number of estimated Form S-4 and Form F-4 filings to reflect an approximate 75% of these forms which will not relate to mergers or similar transactions but will be other transactions (e.g., holding company formations and financings) to which the amended rules would not apply.

<sup>13</sup> We have reduced the number of estimated DEFM14C filings to reflect an approximate 15% of these forms, which will not relate to merger transactions but will involve dissolutions and similar transactions.

<sup>14</sup> We have reduced the number of estimated Schedules TO-T, 14D-9 and 13E-3 to reflect the approximate number of these filings to which the proposed rules would apply, based on the total number of filings from calendar year 2009. We have substantially reduced the number of Schedules 13E-3 to avoid double counting, as the majority of these forms are filed in conjunction with a DEF14A. In addition, we have reduced the number of Schedule TO-T filings as we anticipate that some bidders would incorporate by reference disclosure in Schedule 14D-9 and not incur an additional disclosure burden.

<sup>15</sup> We have reduced the number of estimated Form N-2 filings to reflect that 29 filings were made by business development companies during calendar year 2009, because only business development companies would be subject to the proposed disclosure required under Item 402 on Form N-2.



We estimate that the cost of preparing the amendments will be approximately \$100,000.

## 15. EXPLANATION OF CHANGES IN BURDEN

We anticipate that the amendments will increase the burdens and costs for U.S. companies. The amendments will increase existing burdens by requiring companies to make additional disclosures of the following:

- the shareholder say-on-pay votes and frequency and the general effect of such votes, such as whether the vote is non-binding;
- whether and, if so, how companies have taken into account the results of shareholder advisory votes on executive compensation;
- decision regarding how frequently it will conduct say-on-pay votes in light of the results of the shareholder vote on frequency; and
- disclosure of golden parachute compensation arrangements in connection with mergers, acquisitions, tender offers and going-private transactions.

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 most recent burden estimates submitted to OMB. Columns (C) and (D) represent the new burden estimates under the proposed amendments. Columns (E) and (F) represent the program change, which encompasses the change in the burden estimates attributable to the proposed amendments.

Table 3:<sup>16</sup>

	Current Burden		Change in Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Costs (D)	Burden Hours (E)	Cost (F)
Rule 13e-3 (Schedule 13E-3)	20,588	\$24,705,000	20,688	\$24,735,000	100	\$30,000
Regulation 14A (Schedule 14A)	688,340	\$81,397,477	710,653	\$84,204,277	22,313	\$2,806,800
Regulation 14C (Schedule 14C)	64,971	\$7,636,149	66,215	\$7,816,549	1,244	\$180,400
Form 10-K	21,363,548	\$2,848,473,000	21,365,351	\$2,848,653,400	1,803	\$180,400
Form 10-Q	4,559,793	\$607,972,400	4,565,202	\$608,513,200	5,409	\$540,800
Form 10	12,801	\$15,362,400	12,819	\$15,368,000	18	\$5,600

<sup>16</sup> Figures in Table 3 have been rounded to the nearest whole number.

	Current Burden		Change in Burden		Program Change	
Form S-1	186,414	\$223,697,200	187,384	\$223,988,000	970	\$290,800
Form S-11	19,465	\$23,360,000	19,509	\$23,373,200	44	\$13,200
Schedule 14D-9	38,700	\$46,440,000	40,240	\$46,902,000	1,540	\$462,000
Form S-4	631,805	\$758,167,801	642,284	\$761,311,401	10,479	\$3,143,600
Schedule TO	54,375	\$21,750,000	55,375	\$22,050,000	1,000	\$300,000
Form F-4	24,627	\$29,551,800	25,194	\$29,721,800	567	\$170,000
Form N-2	87,083	\$4,269,600	87,141	\$4,287,200	58	\$17,600

**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.