

## **SUPPORTING STATEMENT FOR PROPOSED SHORT-TERM BORROWINGS DISCLOSURE RULES**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq., and consists of this supporting statement and Release No. 33-9143 (September 17, 2010).

### **A. JUSTIFICATION**

#### **1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY**

In Securities Act Release 33-9143,<sup>1</sup> the Securities and Exchange Commission (the “Commission”) proposed amendments to the Item 303<sup>2</sup> of Regulation S-K,<sup>3</sup> and Forms 8-K,<sup>4</sup> and 20-F<sup>5</sup> under the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>6</sup> to enhance the disclosure that companies provide about short-term borrowings in order to provide more useful disclosure to investors about liquidity and short-term financings and to enhance investor understanding of issuers’ liquidity.

Securities Act Release 33-9143 proposes amendments that would affect certain regulations, schedules and forms adopted under the Securities Act of 1933 (the “Securities Act”),<sup>7</sup> the Exchange Act and the Investment Company Act of 1940 (the “Investment Company Act”) that contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. These regulations, schedules and forms set forth the disclosure requirements for periodic and current reports, registration statements, and proxy and information statements filed with the Commission by companies to help investors make informed investment decisions in registered offerings and secondary market transactions and informed decisions in voting their securities. Thus, these collections of information are necessary for the Commission to carry out the provisions of the Securities Act, Exchange Act and Investment Company Act. The titles for the collection of information are:

- (1) “Regulation S-K” (OMB Control No. 3235-0071);<sup>8</sup>

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<sup>1</sup> Release No. 33-9143 (Sept. 17, 2010) [75 FR 59866](“Proposing Release”)

<sup>2</sup> 17 CFR 229.303.

<sup>3</sup> 17 CFR 229.10 et al.

<sup>4</sup> 17 CFR 249.308.

<sup>5</sup> 17 CFR 249.220f.

<sup>6</sup> 15 U.S.C. §78a et seq.

<sup>7</sup> 15 U.S.C. §77a – 77mm.

<sup>8</sup> The paperwork burden from Regulation S-K and the Industry Guides is imposed through the forms that are subject to the disclosures in Regulation S-K and the Industry Guides and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience, we estimate the burdens imposed by each of

- (2) “Form 10-K” (OMB Control No. 3235-0063);
- (3) “Form 10-Q” (OMB Control No. 3235-0070);
- (4) “Form 8-K” (OMB Control No. 3235-0060);<sup>(8)</sup>
- (5) “Form 20-F” (OMB Control No. 3235-0288);
- (6) “Form 10” (OMB Control No. 3235-0064);
- (7) “Form S-1” (OMB Control No. 3235-0065);
- (8) “Form F-1” (OMB Control No. 3235-0258);
- (9) “Form S-4” (OMB Control No. 3235-0324);
- (10) “Form F-4” (OMB Control No. 3235-0325);
- (11) “Proxy Statements – Regulation 14A (Commission Rules 14a-1 through 14a-15) and Schedule 14A” (OMB Control No. 3235-0059);
- (12) “Information Statements – Regulation 14C (Commission Rules 14c-1 through 14c-7) and Schedule 14C” (OMB Control No. 3235-0057); and
- (13) “Form N-2” (OMB Control No. 3235-0026).

## **2. PURPOSE AND USE OF THE INFORMATION COLLECTION**

The purpose of the information collection in the proposed amendments is to enhance the disclosure that companies provide about short-term borrowings in order to provide more useful disclosure to investors about liquidity and short-term financings and to enhance investor understanding of a company’s liquidity profile. Specifically, the amendments would require a public company that is required to provide disclosure under Item 303 of Regulation S-K to provide a comprehensive explanation of its short-term borrowings, including quantitative and qualitative information. This would codify the substantive disclosures called for by Item VII of Industry Guide 3,<sup>9</sup> which is currently only applicable to bank holding companies. The proposed amendments are intended to enhance disclosure in MD&A relating to registrants’ liquidity profile by highlighting and expanding disclosure requirements for short-term borrowings. The proposed amendments to Form 8-K, which would conform the disclosure requirements in the Form to refer to the proposed amendments to Regulation S-K, are intended to continue to provide real-time disclosure in connection with these topics. These amendments are being proposed to increase transparency in the presentation of registrants’ borrowing and funding activities and exposure to liquidity risks in connection with that activity. This increased transparency in areas of increasing importance to investors is intended to maintain investor confidence in the full and fair disclosure required of all registrants.

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Regulation S-K and the Industry Guides to be a total of one hour. The proposed amendments to Form 8-K will not result in an increase in burden hours nor an increase in the cost burden for services of outside professionals for filings of Form 8-K.

<sup>9</sup> 17 CFR 229.801, Item VII.

### **3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY**

All of the above forms are filed electronically with the Commission using the Commission's Electronic Data Gathering and Retrieval (EDGAR) system.

### **4. DUPLICATION OF INFORMATION**

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

The proposed new requirements for short-term borrowings disclosures would provide specific, additional information that would be complementary to existing MD&A disclosure requirements. As noted above, bank holding companies are subject to the provisions of Item VII of Guide 3, which call for disclosure on an annual basis of some of the information covered by the new requirements. As discussed in the Proposing Release, if the proposed rule is adopted, the Commission would authorize its staff to amend Guide 3 to eliminate Item VII in its entirety.<sup>10</sup>

### **5. REDUCING THE BURDEN ON SMALL ENTITIES**

The proposed amendments would apply to all companies, including small entities, that are required to provide MD&A disclosure or disclosure pursuant to Items 2.03 and 2.04 of Form 8-K. The disclosure standards do not vary based on the size of the issuer, except that smaller reporting companies would benefit from the proposed exclusion from expanded interim reporting of short-term borrowings and would provide two years of annual data rather than three.

The data underlying the proposed short-term borrowings disclosure should be available from a company's books and records and tracked with existing internal controls without a significant incremental burden imposed on small entities, except to the extent that it doesn't track the data on a monthly basis, as proposed in the rule. Thus, the collection and calculation of short-term borrowing data in the form proposed may have a cost impact on registrants (including small entities) that do not currently maintain information technology systems for the collection of the required data.

### **6. CONSEQUENCES OF NOT CONDUCTING COLLECTION**

The regulations, forms and schedules set forth the disclosure requirements for periodic and current 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 investment and voting decisions.

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<sup>10</sup> See Proposing Release, *supra* note 1, at 59868 n.21.

**7. SPECIAL CIRCUMSTANCES**

Not applicable.

**8. CONSULTATIONS WITH PERSONS 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/s7-22-10/s72210.shtml>.

**9. PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. CONFIDENTIALITY**

The information in each of the collections of information discussed above is made publicly available.

**11. SENSITIVE QUESTIONS**

Not applicable.

**12/13. ESTIMATES OF HOUR AND COST BURDEN**

The paperwork burden estimates associated with the proposal include the burdens attributable to preparing and reporting information to the Commission and retaining records, but do not include the burden associated with using such information for other purposes. These estimates represent the average burden for all companies, both large and small. As discussed in the Proposing Release, the time required to prepare the proposed disclosures could vary significantly depending on, among other factors, the nature of the registrant’s business, its capital structure, its existing internal controls and disclosure controls systems and its existing risk management systems.<sup>11</sup> In addition, the estimates do not distinguish between registrants that are bank holding companies and other registrants. Although bank holding companies and other companies that currently provide Guide 3 disclosure would already collect and disclose on an annual basis some of the information covered by the new requirements, the new requirements are not identical

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<sup>11</sup> See Proposing Release *supra* note 1, at 59880 and 59884-59885.

to the provisions of Guide 3. Accordingly, for purposes of the estimates, we assume that bank holding companies would have the same burden as other registrants, although they might not actually incur additional expenses for those portions of the new requirements that are the same as the existing provisions of Guide 3.

We derived the estimates by estimating the total amount of time it would take a company to implement systems to capture the data, implement related disclosure controls and procedures, prepare and review the disclosure pursuant to the proposed short-term borrowings requirements. As discussed in the Proposing Release, we first estimated the total amount of time it would take a company to prepare and review the proposed disclosure for each form, using the estimates for comparable disclosure requirements as a starting point. Because we believe that the proposed rules would impose an increased burden on companies in connection with the implementation of data gathering systems and the implementation of related disclosure controls and procedures as compared to those comparable disclosure requirements, we added hours to those estimates, to reflect our best estimate of the additional time needed to implement the new systems. The burdens have been calculated by multiplying the estimated number of annual responses we believe will be generated by the estimated average number of hours each entity will spend complying with the requirements of the rules.

For each estimate, we calculate that a portion of the burden will be carried by the company internally, and the other portion will be carried by outside professionals retained by the company. The portion of the burden carried by the company internally is reflected in hours, while the portion of the burden carried by outside professionals retained by the company is reflected as a cost. For Exchange Act reports (other than Form 20-F) and proxy and information 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 company at an average cost of \$400 per hour.<sup>12</sup> For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of \$400 per hour.

Tables 1 and 2 below illustrate the incremental annual compliance burden of the collection of information in hours and in cost under the proposed amendments for annual reports, proxy and information statements, quarterly reports and current reports on Form 8-K under the Exchange Act (Table 1) and for registration statements under the Securities Act and Exchange Act (Table 2).

There is no change to the estimated burden of the collection of information under Regulation S-K because the burdens that Regulation S-K imposes are reflected in our revised estimates for the forms. We also estimate that the amendments to the definition

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<sup>12</sup> For Form 20-F, we estimate that 25% of the burden is carried by the company and 75% by outside professionals because we assume that foreign private issuers rely more heavily on outside counsel for preparation of the Form.

of “direct financial obligation” for purposes of disclosure requirements in Items 2.03 and 2.04 of Form 8-K would not increase existing disclosure burdens for filings of Form 8-K. We assume that the proposed change in the definition would not substantially change the existing scope of the disclosure requirement, and, therefore, the proposed amendments would not increase the number of Form 8-K filings nor add incremental costs and burdens to the existing disclosure burden under Form 8-K.

**Table 1: Calculation of Incremental Burden Estimates for Annual Reports, Quarterly reports and Proxy and Information Statements**

	Annual Responses	Incremental Burden Hours/Form <sup>(4)</sup>	Total Incremental Burden Hours	75% Company	25% Professional	Professional Costs
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.75	(E)=(C)*0.25	(F)=(E)*\$400
10-K	13,545	40	541,800	<b>406,350</b>	135,450	<b>\$54,180,000</b>
20-F	942	30	28,260	<b>7,065<sup>(5)</sup></b>	21,195 <sup>(5)</sup>	<b>\$8,478,000</b>
10-Q	28,842 <sup>(1)</sup>	20	574,840	<b>431,130</b>	143,710	<b>\$57,484,000</b>
SCH 14A	365 <sup>(2)</sup>	30	10,950	<b>8,212.5</b>	2,737.5	<b>\$1,095,000</b>
SCH 14C	34 <sup>(3)</sup>	30	1,020	<b>765</b>	255	<b>\$102,000</b>

<sup>(1)</sup> The proposed amendments will impact only the Forms 10-Q that are filed by registrants that are not smaller reporting companies. Accordingly, for purposes of estimating the incremental burden and cost for Form 10-Q, we reduced the total number of annual responses for Form 10-Q (32,462 filings) by the number of filings that we estimate are attributable to smaller reporting companies (1,240 smaller reporting companies *times* 3 Form 10-Q filings per year = 3,720) to equal our estimate of the number of annual responses filed by all other companies (32,462 *minus* 3,720 = 28,842 filings).

<sup>(2)</sup> We believe that only a minimal number of Schedules 14A will need to include the proposed disclosure (rather than incorporating it by reference from a periodic report). Accordingly, for purposes of estimating the incremental burden and cost for Schedule 14A, we reduced the total number of annual responses for Schedule 14A (7,300 filings) to a number equal to 5% of the total number of annual responses (365 filings).

<sup>(3)</sup> We believe that only a minimal number of Schedules 14C will need to include the proposed disclosure (rather than incorporating it by reference from a period report). Accordingly, for purposes of estimating the incremental burden and cost for Schedule 14C, we reduced the total number of annual responses for Schedule 14C (680 filings) to a number equal to 5% of the total number of annual responses (34 filings).

<sup>(4)</sup> The proposed amendments to Form 8-K will not result in an increase in burden hours nor an increase in the cost burden for services of outside professionals for filings of Form 8-K. Accordingly, no PRA submission is being made with respect to Form 8-K in connection with the Proposing Release.

<sup>(5)</sup> For purposes of Form 20-F, we have assumed that 75% of the burden is carried by outside professionals, and 25% of the burden is carried by the company, because we assume that foreign private issuers rely more heavily on outside counsel for preparation of the form.

**Table 2: Calculation of Incremental Burden Estimates for Registration Statements**

	Annual Responses	Incremental Burden Hours/Form	Total Incremental Burden Hours	25% Company	75% Professional	Professional Costs
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.25	(E)=(C)*0.75	(F)=(E)*\$400
S-1 <sup>(1)</sup>	768	35	26,880	<b>6,720</b>	20,160	<b>\$8,064,000</b>
F-1	42	35	1,470	<b>367.5</b>	1,102.5	<b>\$441,000</b>
S-4	619	35	21,665	<b>5416.25</b>	16,248.75	<b>\$6,499,500</b>
F-4	68	35	2,380	<b>595</b>	1,785	<b>\$714,000</b>
10	238	35	8,330	<b>2,082.5</b>	6,247.5	<b>\$2,499,000</b>
N-2	29 <sup>(2)</sup>	35	1,015	<b>253.75</b>	761.25	<b>\$304,500</b>

<sup>(1)</sup> Due to a change in the approved estimates for Form S-1, the estimated program change has been recalculated and differs from the amounts set forth in the Proposing Release. The approved estimate of annual responses has been reduced from 1,168 to 768. The estimated time burden and cost burden attributable to the program change have been adjusted accordingly. Note that the original estimate of incremental burden hours per Form S-1 associated with the program change (35 hours) has not been changed.

<sup>(2)</sup> The proposed amendments will impact only the Forms N-2 that are filed by business development companies. Accordingly, for purposes of estimating the incremental burden and cost for Form N-2, we reduced the total number of annual responses for Form N-2 (205 filings) to equal our estimate of the number of annual responses filed by business development companies (29 filings, which is the number of Forms N-2 filed in 2009 by business development companies).

Tables 3A and 3B below illustrate the changes to the total annual compliance burden of the collection of information in hours and cost per response, respectively. The total estimated burdens were calculated by adding the incremental burdens to the existing burdens. Then, the requested burdens and costs per response<sup>13</sup> were calculated by dividing the requested burden estimates by the number of annual responses. As indicated in the tables, we do not anticipate a change in the estimated number of annual responses as a result of the proposed amendments, and accordingly, the number of annual responses used in the calculation equals the estimates of annual responses currently approved by OMB.

<sup>13</sup> As reflected in the footnotes to Tables 1 and 2, the increase in burden hours and costs for Form 10-Q, Schedules 14A and C and Form N-2 will impact only (1) Forms 10-Q that are filed by companies that are not smaller reporting companies, (2) Schedules 14A and 14C that are filed by companies that are required to include MD&A in that filing, and (3) Forms N-2 that are filed by companies that are business development companies. Tables 3A and 3B below distribute the incremental burden and cost estimates for the forms submitted by those filers across the total number of annual responses (submitted by all companies) to estimate the hour burden and cost per response.

**Table 3A: Calculation of Hours Per Response**

Form <sup>(1)</sup>	Existing Annual Responses	Increase (Decrease) in Annual Responses	Current Burden Hours	Program Change: Increase (Decrease) in Burden Hours	Requested Burden Hours	Requested Burden per Response
	(A)		(B)	(C)	(D) = (B) + (C)	(E) = (D)/(A)
10-K	13,545	—	21,363,548	406,350	21,769,898.00	1607.227611
20-F	942	—	622,907	7,065	629,972.00	668.7600
10-Q	32,462	—	4,559,793	431,130	4,990,923.00	153.746626
14A	7,300	—	703,636	8,212.50	711,848.50	97.51349
14C	680	—	65,764	765	66,529.00	97.83676
S-1 <sup>(2)</sup>	768	—	186,414	6,720	193,134.00	251.4765625
F-1	42	—	18,975	367.50	19,342.50	460.53571429
S-4	619	—	634,425	5416.25	639,841.25	1033.6688
F-4	68	—	24,769	595	25,364.00	373
10	238	—	12,805	2,082.50	14,887.50	62.552521
N-2	205	—	87,097	253.75	87,350.75	426.101219

<sup>(1)</sup> The proposed amendments to Form 8-K will not result in an increase in burden hours nor an increase in the cost burden for services of outside professionals for filings of Form 8-K. Accordingly, no PRA submission is being made with respect to Form 8-K in connection with the Proposing Release.

<sup>(2)</sup> As discussed in Note 1 to Table 2 above, due to a change in the approved estimates for Form S-1, the estimated program change has been recalculated and differs from the amounts set forth in the Proposing Release. Note that the original estimate of incremental burden hours per Form S-1 associated with the program change (35 hours) has not been changed.

**Table 3B: Calculation of Cost Per Response**

Form <sup>(1)</sup>	Existing Annual Responses	Increase (Decrease) in Annual Responses	Current Cost Burden	Program Change: Increase (Decrease) in Cost Burden	Requested Cost Burden	Proposed Cost per Response
	(A)		(B)	(C)	(D) = (B) + (C)	(E) = (D)/(A)
10-K	13,545	—	\$2,848,473,000	\$54,180,000	\$2,902,653,000	\$214,297.00996
20-F	942	—	\$743,089,980	\$8,478,000	\$751,567,980	\$797,842.8662
10-Q	32,462	—	\$607,972,400	\$57,484,000	\$665,456,400	\$20,499.5502433
14A	7,300	—	\$84,204,277	\$1,095,000	\$85,299,277	\$11,684.832465
14C	680	—	\$7,816,549	\$102,000	\$7,918,549	\$11,644.925
S-1 <sup>(2)</sup>	768	—	\$223,697,200	\$8,064,000	\$231,761,200	\$301,772.395833
F-1	42	—	\$22,757,400	\$441,000	\$23,198,400	\$552,342.8571
S-4	619	—	\$761,311,401	\$6,499,500	\$767,810,901	\$1,240,405.33279
F-4	68	—	\$29,721,800	\$714,000	\$30,435,800	\$447,585.294
10	238	—	\$15,368,000	\$2,499,000	\$17,867,000	\$75,071.42857
N-2	205	—	\$4,287,200	\$304,500	\$4,591,700	\$22,398.536585

<sup>(1)</sup> The proposed amendments to Form 8-K will not result in an increase in burden hours nor an increase in the cost burden for services of outside professionals for filings of Form 8-K. Accordingly, no PRA submission is being made with respect to Form 8-K in connection with the Proposing Release.

<sup>(2)</sup> As discussed in Note 1 to Table 2 above, due to a change in the approved estimates for Form S-1, the estimated program change has been recalculated and differs from the amounts set forth in the Proposing Release. Note that the original estimate of incremental burden hours per Form S-1 associated with the program change (35 hours) has not been changed.



#### 14. COSTS TO FEDERAL GOVERNMENT

We estimate costs to the federal government will be approximately \$50,000.

#### 15. REASON FOR CHANGE IN BURDEN

We anticipate that the proposed new requirements will increase the burdens and costs by requiring public companies to provide annual and quarterly disclosure of the total, average and maximum amounts of short-term borrowings outstanding during the period, together with a narrative discussion and analysis of those short-term borrowings.

Table 4 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 4: Change in Burden From Current Estimates**

	Current Burden		Change in Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Costs (D)	Burden Hours (E)	Cost (F)
10-K	21,363,548	\$2,848,473,000	21,769,898.00	\$2,902,653,000	406,350	\$54,180,000
20-F	622,907	\$743,089,980	629,972.00	\$751,567,980	7,065	\$8,478,000
10-Q	4,559,793	\$607,972,400	4,990,923.00	\$665,456,400	431,130	\$57,484,000
8-K	493,436	\$65,791,500	493,436.00	\$65,791,500	—	—
14A	703,636	\$84,204,277	711,848.50	\$85,299,277	8,212.50	\$1,095,000
14C	65,764	\$7,816,549	66,529.00	\$7,918,549	765	\$102,000
S-1 <sup>(1)</sup>	186,414	\$223,697,200	193,134.00	\$231,761,200	6,720	\$8,064,000
F-1	18,975	\$22,757,400	19,342.50	\$23,198,400	367.50	\$441,000
S-4	634,425	\$761,311,401	639,841.25	\$767,810,901	5416.25	\$6,499,500
F-4	24,769	\$29,721,800	25,364.00	\$30,435,800	595	\$714,000
10	12,805	\$15,368,000	14,887.50	\$17,867,000	2,082.50	\$2,499,000
N-2	87,097	\$4,287,200	87,350.75	\$4,591,700	253.75	\$304,500

<sup>(1)</sup> As discussed in Note 1 to Table 2 above, due to a change in the approved estimates for Form S-1, the estimated program change has been recalculated and differs from the amounts set forth in the Proposing Release. Note that the original estimate of incremental burden hours per Form S-1 associated with the program change (35 hours) has not been changed.

#### 16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

Not applicable.

#### 17. DISPLAY OF OMB APPROVAL DATE

Not applicable.

**18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION  
ACT SUBMISSIONS**

Not applicable.

**B. STATISTICAL METHODS**

Not applicable.