

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission
“Form 2-E and Rule 609”

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 3(c) of the Securities Act of 1933 (“Securities Act”) permits the Securities and Exchange Commission (the “Commission”) to exempt completely or conditionally securities issued by small business investment companies (“SBICs”) from the provisions of the Securities Act.¹ Regulation E under the Securities Act² provides specific exemptions from the registration provisions of the Securities Act for SBICs and business development companies (“BDCs”). Under Regulation E, securities issued by SBICs that are registered under the Investment Company Act of 1940 (“Investment Company Act”)³ and securities issued by certain investment companies that elect to be treated as BDCs under the Investment Company Act are exempt from registration under the Securities Act, provided that certain conditions are met.

Rule 609 under the Securities Act⁴ requires SBICs and BDCs that have engaged in offerings of securities that are exempt from registration pursuant to Regulation E to report semi-annually on Form 2-E⁵ the progress of the offering. The form solicits information such as the dates an offering commenced and was completed (if completed), the number of shares

¹ 15 U.S.C. 77c(c).

² 17 CFR 230.601 to 610a.

³ 15 U.S.C. 80a-1 et seq.

⁴ 17 CFR 230.609.

⁵ 17 CFR 239.201.

sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. Upon completion of the offering and the filing of a final report, no further reports are required under this regulation.

2. Purpose of the Information Collection

The information provided on Form 2-E assists the staff in monitoring the progress of the offering and in determining whether the offering has stayed within the limits set for an offering exempt under Regulation E.

3. Role of Improved Information Technology

The Commission's electronic filing system ("EDGAR") automates the filing, processing, and dissemination of full disclosure filings. The system permits publicly held companies to transmit their filings to the Commission electronically. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets. Form 2-E is required to be filed electronically on EDGAR.⁶ The public may access filings on EDGAR through the Commission's website (<http://www.sec.gov>) or at EDGAR terminals located at the Commission's public reference rooms.

4. Efforts to Identify Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule. The information required by rule 609 and Form 2-E is not generally duplicated elsewhere.

⁶ See rule 101(a)(1)(v) of Regulation S-T (17 CFR 232.101(a)(1)(v)).

5. Effect on Small Entities

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize recordkeeping or reporting requirements affecting small businesses.⁷ Congress enacted the Small Business Investment Act of 1958⁸ in order to stimulate and supplement the flow of capital to small businesses. A primary purpose of the small offering exemption under Regulation E is to provide a simple and relatively inexpensive procedure by which small businesses can raise limited amounts of needed capital.

Offerings under Regulation E require less extensive disclosure than Securities Act registrations. Generally, the less burdensome provisions under Regulation E reflect a commitment by the Commission to facilitate capital formation by SBICs and BDCs while maintaining a level of investor protection traditionally afforded smaller offerings.

6. Consequences of Less Frequent Collection

Reports on Form 2-E must be filed semi-annually during an offering and as a final report at the completion of the offering. Less frequent filing would not allow the Commission to monitor the progress of the offering to ensure that the issuer was not attempting to avoid the normal registration provisions of the securities laws.

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

This collection is not inconsistent with 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

The Commission and staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the SBIC and BDC industry through

⁷ 5 U.S.C. 601 et seq.

⁸ 15 U.S.C. 661 et seq.

public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon paperwork burdens that may confront the industry. The Commission requested public comment on the collection of information requirements in Form 2-E and rule 609 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

No payment or gift to respondents was provided.

10. Assurance of Confidentiality

No assurance of confidentiality was provided.

11. Sensitive Questions

No questions of a sensitive nature are involved.

12. Estimate of Hour Burden

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995⁹ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with rule 609 and Form 2-E is mandatory to qualify for the exemption. Responses to the disclosure requirements will not be kept confidential.

During the calendar year 2010, there was one filing of Form 2-E by one respondent. The Commission has previously estimated that the total annual burden associated with information collection and Form 2-E preparation and submission is four hours per filing. Based on the Commission's experience with disclosure documents generally, the Commission continues to believe that this estimate is appropriate.

⁹ 44 U.S.C. 3501 et seq.

Based on a Commission estimate of four hours and an estimated wage rate of approximately \$320 per hour,¹⁰ the total annual cost to the SBIC and BDC industry of the hour burden for complying with rule 609 and Form 2-E is approximately \$1,280.¹¹

13. Estimate of Total Annual Cost Burden

The Commission currently attributes no external cost burden to rule 609 or Form 2-E.

14. Estimate of Cost to the Federal Government

The annual cost of reviewing and processing disclosure documents, including new registration statements, post-effective amendments, proxy statements, and shareholder reports of investment companies amounted to approximately \$21.3 million in fiscal year 2010, based on the Commission's computation of the value of staff time devoted to this activity and related overhead. It is estimated that each form costs approximately \$5,000.

15. Explanation of Changes in Burden

The decrease in burden hours for complying with rule 609 and Form 2-E is attributable to a decrease in the number of responses from five to one, resulting in a decrease of 16 hours. The Commission continues to estimate that there is no external cost burden associated with this rule and form.

16. Information Collection Planned for Statistical Purposes

The results of any information collected will not be published.

¹⁰ The industry burden is calculated by multiplying the total annual hour burden to comply with rule 609 and Form 2-E by the estimated hourly wage rate of \$320. The estimated wage figure is based on published rates for compliance attorneys, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of \$320. See Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2010.

¹¹ Four hours x \$320 per hour = \$1,280.

17. Approval to not Display Expiration Date

We request authorization to omit the expiration date on the electronic version of the form for design and IT project scheduling reasons. The OMB control number will be displayed.

18. Exceptions to Certification Statement

The Commission is not seeking an exception to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of information will not employ statistical methods.