

SUPPORTING STATEMENT FOR PROPOSED AMENDMENT TO FORM D

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. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

The Securities Act of 1933 (the “Securities Act”) requires that a registration statement be filed with the Securities and Exchange Commission disclosing prescribed information before securities may be offered for sale to the public. The securities cannot be sold to the public until the registration statement becomes effective. In addition, prospective investors must be furnished a prospectus containing the most significant information in the registration statement. Congress, however, recognized that there are certain situations where there is no practical need for registration or where the public benefits derived from registration are too remote. Accordingly, a number of exemptions to the registration requirements are contained in the Securities Act. The exemptions that small businesses most typically rely on are those provided by Sections 3(b) and 4(a)(2).

The Commission is authorized under Section 3(b) of the Securities Act to exempt securities from registration if it finds that registration for these securities is not necessary in the public interest or for the protection of investors because of the small amount involved or the limited character of the public offering. Section 4(a)(2) of the Securities Act exempts transactions by an issuer not involving any public offering. Pursuant to this authority, the Commission has adopted various rules (collectively “Regulation D”) establishing several small issues or limited offering exemptions from the registration requirements of Securities Act. The rules (Rules 504, 505, and 506) provide exemptions for offerings that satisfy certain conditions, such as limitations in the type and/or number of investors and, as applicable, limitation in dollar amount.

For all Regulation D offerings, Form D must be filed with the Commission no later than 15 days after the first sale of securities in the offering. The Form D is a simple notice that provides certain information about the issuer and the offering.

Section 201(a)(1) of the Jumpstart Our Business Startups Act directs the Commission to amend Rule 506 of Regulation D to permit general solicitation or general advertising in offerings made under Rule 506, provided that all purchasers of the securities are accredited investors. In Release No. 33-9354,¹ the Commission proposed new Rule 506(c) of Regulation D to implement Section 201(a)(1). In the release, the Commission also proposed an amendment to Form D to add a separate check box for issuers to indicate whether they are claiming an exemption under Rule 506(c).

¹ Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Release No. 33-9354 (Sept. 5, 2012) [77 FR 54464].

The proposed amendment to Form D contains a “collection of information” requirement within the meaning of the Paperwork Reduction Act of 1995. The title for the collection of information is:

“Form D” (OMB Control No. 3235-0076).

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

An important purpose of the notice is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. Further, the Form allows the Commission to elicit information necessary in assessing the effectiveness of Regulation D and Section 4(a)(5) as capital-raising devices for small businesses.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

Form D is filed using the Commission’s electronic filing system.

4. DUPLICATION OF INFORMATION

There is no public source for the information provided on Form D.

5. REDUCING THE BURDEN ON SMALL ENTITIES

Regulation D is a comprehensive set of exemptions from registrations relating to small issues and small issuers. Regulation D was designed to simplify and clarify existing exemptions and to expand their availability to small issuers.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The purpose of collecting Form D information is to provide small businesses with an avenue to offer and sell securities without incurring the costs and burdens traditionally associated with full registration under the Securities Act. As a result, this provides the public with the necessary information to make sound investment decisions when planning their financial futures.

7. SPECIAL CIRCUMSTANCES

No special circumstances at this time.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission issued a release soliciting comment on the “collection of information” requirement and associated paperwork burdens.² Comments on the Commission’s releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in an ongoing dialogue with representatives of various market

² See Release No. 33-9354.

participants through public conferences, meetings and informal exchanges. The Commission will consider all comments received. Comments received on the proposal are available at <http://www.sec.gov/comments/s7-07-12/s70712.shtml>. A copy of the proposing release is attached.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. CONFIDENTIALITY

Not applicable.

11. SENSITIVE QUESTIONS

No information of a sensitive nature is required.

12/13. ESTIMATES OF HOUR AND COST BURDENS

The estimated burden hours and cost burden are made solely for the purposes of the Paperwork Reduction Act and represent the average burden for all issuers. The cost burden is not derived from a comprehensive or even a representative survey of the costs of Commission rules and forms.

Form D takes approximately 4 hours per response to prepare and is filed by 25,000 issuers annually. We estimate that 25% of the 4 hours per response (1 hour) is prepared by the issuer for an annual reporting burden of 25,000 hours (1 hour per response x 25,000 responses). We estimate that 75% of the 4 hours per response (3 hours) is prepared by outside professionals retained by the issuer. We estimate the cost of these outside professionals to be \$400 per hour (\$400 per hour x 3 hours per response x 25,000 responses) for a total cost burden of \$30,000,000. Table 1 illustrates the current total annual compliance burden, in hours and in costs, of the collection of information pursuant to Form D.

Table 1. Estimated paperwork burden under Form D, pre-amendment to Rule 506

	Number of responses (A)	Burden hours/form (B)	Total burden hours (C)=(A)*(B)	25% Internal issuer time (D)=(C)*.25	75% External professional time (E)=(C)*.75	Professional costs (F)=(E)*\$400
Form D	25,000	4	100,000	25,000	75,000	\$30,000,000

We estimate that, under the proposed amendment to Form D, the burden for responding to the collection of information in Form D would be substantially the same as before the proposed amendment to Form D because the additional information required in the form is minimal. However, we believe that the proposed amendment to Rule 506, which would remove the current prohibition on the use of general solicitation or general advertising in Rule 506

offerings provided that certain conditions are met, would increase the number of Form D filings that are made with the Commission.

For purposes of the Paperwork Reduction Act, we estimate that the proposed amendment to Rule 506 would result in a 20% increase in Form D filings relying on the Rule 506 exemption, or approximately 5,000 filings, based on the number of responses as reported in the OMB’s Inventory of Currently Approved Information Collections. We also assume that the number of Form D filings would increase by approximately 5,000 in each year following the adoption of the rule. Based on this increase, we estimate that the annual compliance burden of the collection of information requirements for issuers making Form D filings after Rule 506 is amended would be an aggregate 30,000 hours of issuer personnel time and \$36,000,000 for the services of outside professionals per year. Table 2 illustrates the estimated total annual compliance burden, in hours and in costs, of the collection of information pursuant to Form D following the amendment to Rule 506.

Table 2. Estimated paperwork burden under Form D, post-amendment to Rule 506

	Number of responses (A)	Burden hours/form (B)	Total burden hours (C)=(A)*(B)	25% Internal issuer time (D)=(C)*.25	75% External professional time (E)=(C)*.75	Professional costs (F)=(E)*\$400
Form D	30,000	4	120,000	30,000	90,000	\$36,000,000

14. COSTS TO FEDERAL GOVERNMENT

We estimate that the cost of preparing the amendments will be approximately \$50,000.

15. REASON FOR CHANGE IN BURDEN

As explained in further detail in Items 12 and 13 above, the change in burden for Form D corresponds to an estimated 20% increase in Form D filings, or approximately 5,000 filings, under the proposed amendment to Rule 506. The table below illustrates the changes in hour and cost burdens from the burden estimates currently approved by OMB.³

	Current Burden		New Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Cost (D)	Burden Hours (E)	Cost (F)
Form D	25,000	\$30,000,000	30,000	\$36,000,000	5,000	\$6,000,000

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collection is not used for statistical purposes.

³ 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.

17. **APPROVAL TO OMIT OMB EXPIRATION DATE**

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

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

Not applicable.

B. STATISTICAL METHODS

Not applicable.