

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission**  
**“Rule 607 under Regulation E”**

**A. JUSTIFICATION**

**1. Information Collection Necessity**

Regulation E (17 CFR 230.601 - 230.610a) exempts from registration under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (“Securities Act”) securities of small business investment companies (“SBICs”) that are registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) (“Investment Company Act”) and closed-end investment companies that elect to be regulated as business development companies (“BDCs”) under the Investment Company Act, so long as the aggregate offering price of all securities of the issuer that may be sold within a 12-month period does not exceed \$5,000,000 and certain other conditions are met. Regulation E was initially adopted in 1958 and made available to SBICs pursuant to Section 3(c) of the Securities Act. Section 3(c) of the Securities Act generally permits the Securities and Exchange Commission (“Commission”) to add to the securities exempted from the Securities Act by Section 3 any class of securities issued by a SBIC. In 1984, pursuant to Section 3(b) of the Securities Act, Regulation E was amended to permit the availability of the exemption to BDCs. Section 3(b) of the Securities Act generally permits the Commission to add any class of securities to the securities exempted from the Securities Act by Section 3.

Rule 607 under Regulation E (17 CFR 230.607) entitled, “Sales material to be filed,” requires sales material used in connection with securities offerings under Regulation E to be filed with the Commission at least five days (excluding weekends and holidays) prior to its use.<sup>1</sup>

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<sup>1</sup> Sales material includes advertisements, articles or other communications to be published in newspapers, magazines, or other periodicals; radio and television scripts; and letters,

## **2. Information Collection Purpose**

Commission staff reviews sales material filed pursuant to Rule 607 for materially misleading statements and omissions. The requirements of rule 607 are designed to protect investors from the use of false or misleading sales material in connection with Regulation E offerings.

## **3. Consideration Given to Information Technology**

The Commission's electronic filing system (Electronic Data Gathering, Analysis and Retrieval or "EDGAR") is designed to automate the filing, processing, and dissemination of disclosure filings. The system permits publicly held companies to transmit filings to the Commission electronically. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets. Sales material filed pursuant to rule 607 is required to be filed with the Commission electronically on EDGAR. (17 CFR 232.101(a)(1)(v)). The public may access filings on EDGAR through the Commission's Internet Web site (<http://www.sec.gov>) or at EDGAR terminals located at the Commission's public reference rooms.

## **4. Duplication**

The Commission periodically evaluates collection of information requirements for duplication, and reevaluates them whenever it proposes a rule or form, or a change in either. The reporting requirements of rule 607 are not duplicated elsewhere.

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circulars or other written communications proposed to be sent given or otherwise communicated to more than ten persons.

## **5. Effect on Small Entities**

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 protecting investors.

## **6. Consequences of Less Frequent Collection**

Without this information collection requirement, the Commission would not be able to effectively monitor the content of sales material used in connection with offerings under Regulation E, limiting the Commission's ability to protect investors from false or misleading advertisements.

## **7. Inconsistencies With Guidelines in 5 CFR 1320.5(d)(2)**

Not applicable.

## **8. Consultation Outside the Agency**

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through 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 confronting the industry. The Commission requested public comment on the collection of information requirements in rule 607 under Regulation E 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**

Not applicable.

**10. Confidentiality**

Not applicable.

**11. Sensitive Questions**

Not applicable.

**12. Estimate of Time Burden**

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

Respondents to this collection of information include SBICs and BDCs making an offering of securities pursuant to Regulation E. Each respondent's reporting burden under rule 607 relates to the burden associated with filing its sales material electronically, which is negligible. Although there have been no filings made under this rule, we are requesting one annual response and an annual burden of one hour for administrative purposes.

**13. Total Annual Cost Burden**

We estimate that rule 607 does not impose any cost burdens.

**14. Federal Government Cost**

The annual cost of reviewing and processing new registration statements, post-effective amendments, proxy statements, and shareholder reports of investment companies amounted to approximately \$20.5 million in fiscal year 2011, based on the Commission's computation of the value of staff time devoted to this activity and related overhead. Because no filings under rule 607 were made in 2011, none of these 2011 costs were attributable to review of rule 607 filings.

**15. Changes in Burden**

This information collection imposes no hour or cost burdens; however, we are requesting a one hour burden for administrative purposes. This does not result in a change to the existing burden.

**16. Information Collection Planned for Statistical Purposes**

Not applicable.

**17. Approval to Omit OMB Expiration Date**

We request authorization to omit the expiration date on the electronic version of the information collection. Including the expiration date on the electronic version will result in increased costs, because the need to make changes to the form may not follow the EDGAR application's scheduled version release dates.. The OMB control number will be displayed.

**18. Exceptions to Certification Statement**

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.