SUPPORTING STATEMENT FOR ADOPTED RULES UNDER THE SECURITIES ACT OF 1933 AND 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. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

The Securities and Exchange Commission ("Commission") has adopted amendments to Rule 506 of Regulation D as required by Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. [1] The rule amendments disqualify securities offerings involving certain "felons and other 'bad actors'" from reliance on Rule 506, a frequently-used exemption from registration requirements for securities offerings. Under the final rule amendments, an offering is disqualified from Rule 506 if the issuer or another covered person, such as a director, executive officer or other control person of the issuer or a financial intermediary, is subject to a relevant sanction (such as a criminal conviction or court or regulatory order) that was imposed after the effective date of the new rules. The final amendments also include a new disclosure requirement, under which the issuer is required to disclose and describe any such sanction that was imposed before the effective date of the new rules (a "pre-existing triggering event"). This disclosure requirement involves a collection of information within the meaning of the Paperwork Reduction Act of 1995.

The disclosure requirement was not included in the Commission's May 25, 2011 rule proposal, but was included in the final rule as a result of comments received from the public on the proposal.[2] Under the proposal, issuers would have been disqualified from reliance on Rule 506 for all relevant triggering events, whether they occurred before or after effectiveness of the rule amendments. In the proposing release, the Commission requested comment on whether it was appropriate for disqualification to be triggered based on pre-existing triggering events and—if the rules were implemented in a way that did not make pre-existing triggering events disqualifying—whether requiring disclosure of such events would preserve important investor protection benefits.[3] Most commenters argued against imposing disqualification for pre-existing triggering events. Several of these supported disclosing such events as a means of providing an important investor protection benefit.[4] The Commission considered these comments in deciding to include a disclosure requirement in the final rule amendments.

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[1] See Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings, Adopting Release No. 33-9415 (July 10, 2013).

[2] See Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings, Proposing Release No. 33-9211 (May 25, 2011) [76 FR 31518 (June 1, 2011)].

[3] See Part II. F.1. of Proposing Release No. 33-9211 (May 25, 2011) (Request for Comment #64).

[4] See comment letters from Lehman & Eilen; Munck Carter; and REISA. http://www.sec.gov/comments/s7-21-11/s72111.shtml

The new "Regulation D Rule 506(e) Felons and Other Bad Actors Disclosure Statement" requirement mandates that issuers in a Rule 506 offering deliver a written statement describing pre-existing triggering events to purchasers a reasonable time prior to sale. The mandatory disclosure statement does not involve submission of a form to the Commission, and is not required to be presented in any particular format, although it must be in writing. As a result of the requirement, investors will be able to ascertain whether the issuer or its covered persons have a "bad actor" history.

The proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995. The title of the collection of information impacted by the amendments is:

- "Regulation D Rule 506(e) Felons and Other Bad Actors Disclosure Statement."

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The purpose of the information collection or disclosure statement is to require Rule 506 issuers to inform investors about any pre-existing triggering events affecting the issuer or any other covered person. The information collection appears in Rule 506(e) and requires the issuer to furnish to each purchaser, a reasonable time prior to sale, a description of any matters that would have triggered disqualification under Rule 506(d)(1) of Regulation D, except that they occurred before the effective date of the rule amendments. The disclosure requirement serves to protect purchasers by ensuring that they receive information regarding any covered persons that were subject to such triggering events.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the adopted amendments will not be provided to the Commission, either electronically or otherwise.

4. DUPLICATION OF INFORMATION

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

5. REDUCING THE BURDEN ON SMALL ENTITIES

The disclosure requirement set forth in Rule 506(e) will apply to all issuers, including small entities. The requirement does not vary depending on the size of the issuer. We believe that many of the issuers in these Rule 506 private offerings are small entities, but we currently do not collect information on total assets of companies and net assets of funds to determine if they are small entities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The purpose of the disclosure requirement is to alert potential Rule 506 securities purchasers about the "bad actor" history of issuers conducting securities offerings as well as the issuer's covered persons. Adopting the rule amendments without the disclosure requirement would weaken the investor protection benefits intended by Section 926 of the Dodd-Frank Act by enabling issuers and other covered persons with a "bad actor" history to avoid disclosing that history to potential investors.

7. SPECIAL CIRCUMSTANCES

None

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

In its adopting release, the Commission has solicited comment on the new "collection of information" requirements and associated paperwork burdens.[5] This new collection of information was not contemplated at the time the proposing release was published, but was adopted in response to comments received from the public on the proposing release.

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 participants through public conferences, meetings and informal exchanges. The Commission considered all comments received on the proposing release prior to publishing the final rule, including the letters cited in footnote 4 that supported a disclosure requirement. Comments received on the proposal are available at http://www.sec.gov/comments/s7-21-11/s72111.shtml. A copy of the adopting release is attached.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. CONFIDENTIALITY

Not applicable.

11. SENSITIVE QUESTIONS

Not applicable.

12/13. ESTIMATES OF HOUR AND COST BURDENS

The PRA burden assigned to the "Regulation D Rule 506(e) Felons and Other Bad Actors Disclosure Statement" would require that a written statement describing past

[5] See Part III of the Adopting Release No. 33-9414 (July 10, 2013).

disqualifying events be furnished by issuers to purchasers in Rule 506 offerings a reasonable time before the sale.

The paperwork burden estimates associated with the adopted amendments to Rule 506(e) of Regulation D include the burdens attributable to conducting an estimated one-hour factual inquiry to determine whether the issuer and its covered persons have had pre-existing triggering events. (We believe that the burden is only one hour because the Rule 506(d) amendments require issuers to conduct a factual inquiry in any case, to determine whether Rule 506 disqualification will apply due to triggering events occurring on or after the effective date of the rule amendments. The incremental burden associated with determining whether there are pre-existing triggering events should be minimal.) After the one-hour factual inquiry, a smaller group of Rule 506 issuers with disqualifying events are estimated to spend ten hours to prepare a disclosure statement describing matters that would have triggered disqualification under Rule 506(d)(1) of Regulation D, except that they occurred before the effective date of the rule amendments. For purposes of the disclosure statement, we expect that this smaller group of Rule 506 issuers with past disqualifying events will retain outside professional firms to spend three hours on disclosure preparation at an average cost of $400 per hour.

We believe that the estimate of the annual hour burden for furnishing the disclosure should be based on an estimate of the number of Form D filings by issuers claiming the Rule 506 exemption per year and then factoring in an 20% increase in Form D filings corresponding to an 20% increase in issuers that would be relying on the new exemption provided by amended rule 506(c)[6]. Based on these assumptions, we expect that 19,908 issuers will conduct a one-hour factual inquiry.[7]

As noted in the Adopting Release, we estimate that on the basis of the factual inquiry, approximately 220[8] Rule 506 issuers will spend ten hours to prepare a disclosure statement describing the matters that would have triggered disqualification under Rule 506(d) had they occurred on or after the effective date of the rule amendments. These 220 Rule 506 issuers are expected to retain outside professional firms to spend three hours on disclosure preparation at an average cost of $400 per hour.

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[6] See Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Adopting Release No. 33-9415, Part V.B. (July 10, 2013).

[7] As noted in Footnote No. 248 of the Adopting Release, our calculations on the number of issuers that will need to conduct a factual inquiry to determine whether a disclosure statement is necessary are estimated based on the number of Form D filings. The 19,908 Rule 506 issuers were estimated from 15,028 issuers claiming the Rule 506 exemption in 2012 on the Form D and 1,250 Rule 506 repeat issuers filing an additional Form D. We calculated there are 15,028 Rule 506 issuers and that some repeat Rule 506 issuers filing additional Form Ds should account for an increase of 1,250 Rule 506 issuers. We estimate that one quarter of 1,250 repeat filers will conduct an additional one-hour of factual inquiry.

[8] As noted in footnote no. 249 of the Adopting Release, staff estimated a lower bound estimate that was later doubled to account for triggering events that occur as a result of criminal convictions and state regulatory action. We are not aware of any database that would allow us to estimate with precision the number of total triggering events.

We did not base our PRA burden estimates for the adopted amendments on any forms or data because we are adopting a new collection of information requirement. As noted earlier, this collection of information is new and will not be filed with the Commission.

We estimate that Rule 506 issuers would be required to conduct a one-hour factual inquiry into past disqualifying events in connection with the issuer and any covered persons. This results in approximately a total of 19,908 total burden hours for the one-time factual inquiry determination. Of the Rule 506 issuers conducting the factual inquiry, we estimate that approximately 220 Rule 506 issuers will determine the disclosure statement must be delivered to their purchasers because they discovered a disqualifying event predating the rule amendments. These 220 Rule 506 issuers will each spend ten hours to prepare a disclosure statement describing matters that would have triggered disqualification under Rule 506(d)(1) of Regulation D had they occurred on or after the effective date of the rule amendments. An estimated 2,200 burden hours are attributed to the 220 Rule 506 issuers with disqualifying events in addition to the 19,908 that already conducted the one-hour of factual inquiry to determine the existence of the past disqualifying event. In sum, the total annual increase in paperwork burden for all affected Rule 506 issuers to comply with our proposed collection of information requirements is estimated to be approximately 22,108 hours of company personnel time.

For purposes of the disclosure statement, we estimate that 220 Rule 506 issuers will retain outside professional firms to spend three hours on disclosure preparation at an average cost of $400 per hour. The dollar cost burden for preparing the disclosure statement is $264,000 (220 Rule 506 issuers x 3 hours ($400 per hour)).

14. COSTS TO FEDERAL GOVERNMENT

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

15. REASON FOR CHANGE IN BURDEN

The burden relates to new Rule 506 disclosure requirements intended to inform Rule 506 private offering purchasers of any past disqualifying events associated with the issuer and its covered persons. This is a new collection of information, so there is no change in burden.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. DISPLAY OF OMB EXPIRATION DATE

Not applicable. The Commission is not seeking approval to omit the expiration date.

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

Not applicable.

B. STATISTICAL METHODS

Not applicable.