

## **SUPPORTING STATEMENT FOR 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”) generally 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 on the type and/or number of investors and, as applicable, limitation on the dollar amount.

In addition, Section 4(a)(5) of the Securities Act exempts offers and sales of securities by an issuer solely to one or more accredited investors, provided that the aggregate offering price of the securities offered in the transaction does not exceed \$5 million, there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on behalf of the issuer, and the issuer files a prescribed notice with the Commission.

For all Regulation D offerings and offerings under Section 4(a)(5), 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 (“JOBS 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 and the issuer takes reasonable steps to verify their status as accredited

investors. In Release No. 33-9415,<sup>1</sup> the Commission adopted new paragraph (c) of Rule 506 of Regulation D to implement Section 201(a)(1) of the JOBS Act. In the release, the Commission also adopted 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).

The 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, Form D 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 Data Gathering, Analysis and Retrieval system.

## **4. DUPLICATION OF INFORMATION**

We are not aware of any forms or rules that conflict with or substantially duplicate the requirements of Form D.

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

Regulation D is a comprehensive set of exemptions from Securities Act registration 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**

As stated above, an important purpose of Form D is to collect empirical data, which provides a continuing basis for action by the Commission in terms of amending existing rules and regulations or proposing new ones. In addition, the information in Form D filings has been useful for a number of other purposes, such as serving as a source of information for investors and facilitating the enforcement of the federal securities laws and the enforcement efforts of state securities regulators and the Financial Industry Regulatory Authority.

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<sup>1</sup> Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Release No. 33-9415 (July 10, 2013) [78 FR 44771 (July 24, 2013)].

## **7. SPECIAL CIRCUMSTANCES**

Not applicable.

## **8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY**

The Commission issued a proposing release soliciting comment on the new “collection of information” requirements and associated paperwork burdens.<sup>2</sup> In response to the solicitation for comment in the proposing release, registrants, investors, and other market participants provided comments. In addition, the Commission and staff participated in ongoing dialogue with representatives of various market participants through public conferences, roundtables and meetings. The Commission considered all comments received prior to publishing the final rule as required by 1320.11(f).

One comment was received in response to the Commission’s solicitation of comment on the Paperwork Reduction Act burden hour and cost estimates and the analysis used to derive such estimates. This commenter stated that it believed that the cost estimates in the PRA and economic analysis are too low because they did not include all of the possible compliance costs that would be associated with Rule 506(c). For PRA purposes, we considered only the burden of responding to the collection of information in Form D and did not consider any of the other costs, direct or indirect, of conducting a Rule 506(c) offering.

Comments received on the proposal are available at <http://www.sec.gov/comments/s7-07-12/s70712.shtml>. A copy of the adopting 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.

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<sup>2</sup> See Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Release No. 33-9354 (Aug. 29, 2012) [77 FR 54464 (Sept. 5, 2012)].

Form D takes approximately 4 hours per response to prepare. In 2012, 16,067 companies made 18,187 initial Form D filings.<sup>3</sup> We estimate that 25% of the 4 hours per response (1 hour) is prepared by the issuer for an annual reporting burden of 18,187 hours (1 hour per response x 18,187 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 18,187 responses) for a total cost burden of \$21,824,400. 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)	Internal issuer time (D)	External professional time (E)	Professional costs (F)=(E)*\$400
Form D	18,187	4	72,748	18,187	54,561	\$21,824,400

We estimate that, following the amendment to Form D, the burden for responding to the collection of information in Form D will be substantially the same as before the amendment to Form D because the additional information required in the form is minimal. However, we believe that the adoption of Rule 506(c), which removes the prohibition on the use of general solicitation or general advertising for a subset of Rule 506 offerings provided that certain conditions are met, will increase the number of Form D filings that are made with the Commission.

For purposes of the Paperwork Reduction Act, we estimate that the adoption of Rule 506(c) will result in a 20% increase in Form D filings relying on Rule 506, or approximately 3,637 filings. We also assume that the number of Form D filings will increase by approximately 3,637 following the adoption of Rule 506(c). Based on this increase, we estimate that the annual compliance burden of the collection of information requirements for Form D filings after the adoption of Rule 506(c) will be an aggregate of 21,824 hours of issuer personnel time and \$26,188,800 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 adoption of Rule 506(c).

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<sup>3</sup> We had previously estimated the number of responses to be 25,000, as reflected in OMB's Inventory of Currently Approved Information Collections (available at: <http://www.reginfo.gov/public/do/PRAMain;jsessionid=D37174B5F6F9148DB767D63DF6983A65>), but we are revising this estimate to reflect the number of initial Form D filings made in 2012.

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

	Number of responses (A) <sup>4</sup>	Burden hours/form (B)	Total burden hours (C)=(A)*(B)	Internal issuer time (D)	External professional time (E)	Professional costs (F)=(E)*\$400
Form D	21,824	4	87,296	21,824	65,472	\$26,188,800

**14. COSTS TO FEDERAL GOVERNMENT**

We estimate that the cost of preparing the amendment to Form D is 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 3,637 filings, following the amendment to Rule 506. The table below illustrates the changes in hour and cost burdens from the burden estimates prior to the amendment to Rule 506.<sup>5</sup>

	Current Burden		New Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Cost (D)	Burden Hours (E)	Cost (F)
Form D	18,187	\$21,824,400	21,824	\$26,188,800	3,637	\$4,364,400

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

Not applicable.

**17. APPROVAL TO OMIT 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.

<sup>4</sup> The information in this column is based on the 18,187 initial Form D filings that were made in 2012, plus the additional 3,637 filings we estimate will be filed in the first year after the effectiveness of Rule 506(c).

<sup>5</sup> Columns (A) and (B) represent the current burden estimates. Columns (C) and (D) represent the new burden estimates under the amendment to Rule 506. Columns (E) and (F) represent the program change, which encompasses the change in the burden estimates attributable to the amendment to Rule 506.

## **B. STATISTICAL METHODS**

Not applicable.