

SUPPORTING STATEMENT FOR PROPOSED AMENDMENTS TO REGULATION D, FORM D AND RULE 156

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. Under Section 3(b) of the Securities Act, the Commission is authorized 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. Under Section 4(a)(2) of the Securities Act, transactions by an issuer not involving any public offering are exempt from registration. 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 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.

In Release No. 33-9416, the Commission proposed amendments to Regulation D and Form D, as well as an amendment to Rule 156 under the Securities Act.¹ In regard to the amendments relating to Form D, the Commission proposed to require the advance filing of Form D for a subset of Rule 506 offerings (specifically, offerings conducted in reliance on Rule 506(c) of Regulation D) and to require the filing of a closing amendment to Form D after the termination of all Rule 506 offerings. In addition, the Commission proposed to expand the information requirements of Form D, primarily with respect to Rule 506 offerings, including information on the types of general solicitation used and the methods used to verify the accredited investor status of purchasers in Rule 506(c) offerings.

¹ Amendments to Regulation D, Form D and Rule 156, Release No. 33-9416 (July 10, 2013) [78 FR 44806].

The Commission proposed an amendment to Rule 156 under the Securities Act that would extend the guidance contained in the rule (which pertains to the types of information in investment company sales literature that could be misleading for purposes of the federal securities laws) to the sales literature of private funds.

The Commission also proposed new Rule 510T of Regulation D to require that an issuer conducting an offering in reliance on Rule 506(c) submit to the Commission any written general solicitation materials prepared by or on behalf of the issuer and used in connection with the Rule 506(c) offering. Under the proposed rule, which **would expire two years after the effective date of proposed Rule 510T**, the written general solicitation materials would be required to be submitted to the Commission through an intake page on the Commission’s website no later than the date of first use of such materials in the offering.

Finally, the Commission proposed new Rule 509 of Regulation D to require a number of legends and other disclosures in written general solicitation materials used in Rule 506(c) offerings. Under proposed Rule 509, issuers would be required to include, in a prominent manner, certain statements in these written general solicitation materials, including statements that the securities may only be sold to accredited investors; that the securities are being offered in reliance on an exemption from the registration requirements of the Securities Act; that the Commission has not passed upon the merits of or given its approval to the securities and the terms of the offering; and that investing in securities involves risk. In addition, under proposed Rule 509, issuers that are private funds would be required to include a prominent legend in these materials stating that the securities offered are not subject to the protections of the Investment Company Act and would be required to comply with additional legend and disclosure requirements if these materials include performance data.

The proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles of these requirements are:

- “Form D” (OMB Control No. 3235-0076); and
- “Rule 506(c) General Solicitation Materials,” a proposed new collection of information that consists of the following two subparts:
 - Subpart A – “General Solicitation Materials under Rule 510T,” and
 - Subpart B – “Legends and Other Disclosure under Rule 509.”

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

Proposed Amendments Relating to Form D

An important purpose of Form D 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.

Rule 506(c) General Solicitation Materials

The purpose of the proposed requirement in Rule 510T to submit written general solicitation materials to the Commission is to facilitate the Commission's assessment of market practices through which issuers would solicit potential purchasers of securities offered in reliance on Rule 506(c).

The purpose of the proposed requirement in Rule 509 to include certain legends and disclosures in written general solicitation materials used in Rule 506(c) offerings is to better inform potential investors as to whether they are qualified to participate in Rule 506(c) offerings and certain potential risks that may be associated with such offerings.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

Form D is filed electronically using the Commission's Electronic Data Gathering, Analysis and Retrieval System.

Under proposed Rule 510T, written general solicitation materials used in Rule 506(c) offerings would be submitted to the Commission through an intake page on the Commission's website.

4. DUPLICATION OF INFORMATION

Proposed Amendments Relating to Form D

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

Rule 506(c) General Solicitation Materials

We are not aware of any forms or rules that conflict with or substantially duplicate proposed Rule 510T or proposed Rule 509.

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. The proposed amendments would apply to all issuers, including small entities, and would not vary depending on the size of the issuer. We believe that many of the issuers in Rule 506 offerings are small entities, but we currently do not collect information on total assets of companies and net assets of funds that use Rule 506 to determine if they are small entities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

Proposed Amendments Relating to Form D

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.

Rule 506(c) General Solicitation Materials

Failure to require the submission of written general solicitation materials to the Commission, pursuant to Rule 510T, through an intake page on the Commission's website would make it more difficult for the Commission to assess market practices through which issuers solicit potential purchasers of securities offered in reliance on Rule 506(c).

Failure to require certain legends and disclosures in written general solicitation materials used in a Rule 506(c) offering, pursuant to Rule 509, would provide investors with less information on which to base an investment decision in connection with the Rule 506(c) offering.

7. SPECIAL CIRCUMSTANCES

Not applicable.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission has issued a proposing release soliciting comment on the new "collection of information" requirements and associated paperwork burdens.² A copy of the proposing release is attached. In response to the solicitation for comment in the proposing release, registrants, investors, and other market participants provide comments. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, roundtables and meetings. The Commission will consider all comments received prior to publishing the final rule as required by 1320.11(f). Comments received on the proposal are available at <http://www.sec.gov/comments/s7-06-13/s70613.shtml>.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

² See Release No. 33-9416.

10. CONFIDENTIALITY

Not applicable.

11. SENSITIVE QUESTIONS

Not applicable.

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.

Proposed Amendments Relating to Form D

Form D takes approximately 4 hours per response to prepare. In 2012, 16,067 companies made 18,187 new Form D filings. For purposes of the Paperwork Reduction Act, we estimate that the adoption of Rule 506(c), which became effective on September 23, 2013, will result in a 20% increase in Form D filings relying on Rule 506, resulting in a total of 21,824 Form D filings for the first year in which issuers will make Form D filings after the adoption of Rule 506(c). We estimate that 25% of the 4 hours per response (1 hour) is prepared by the issuer for an annual reporting burden of 21,824 hours (1 hour per response x 21,824 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 21,824 responses) for a total cost burden of \$26,188,800. 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-amendments relating to Form D

	Number of responses (A) ³	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

We believe that the proposed amendments relating to Form D, if adopted, would increase the existing paperwork burden of the form by requiring additional information in Form D, particularly with respect to Rule 506 offerings. In addition, while we do not anticipate that these proposed rule and form amendments will result in an increase in the number of Regulation D

³ The information in this column is based on the 18,187 new Form D filings that were actually made in 2012, plus the additional 3,637 filings we estimate would be filed in the first year after the effective date of Rule 506(c).

offerings, we believe that the paperwork burden of the form would increase as a result of the advance filing requirement for Rule 506(c) offerings and the requirement to file an additional amendment after the termination of Rule 506 offerings. We estimate that the paperwork burden associated with filing the required information on Form D over the span of a particular offering would increase to approximately 6 hours per offering.⁴ We continue to estimate that 25 percent of the burden of preparation is carried by the company internally and that 75 percent of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of \$400 per hour. We estimate that, under the proposed amendments, the annual compliance burden of the Form D collection of information requirements would be an aggregate of 32,736 hours of issuer personnel time and \$39,283,200 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 these amendments.

Table 2. Estimated paperwork burden under Form D, post-amendments relating to Form D

	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	21,824	6	130,944	32,736	98,208	\$39,283,200

Rule 506(c) General Solicitation Materials

In regard to the proposed new collection of information, “Rule 506(c) General Solicitation Materials,” we assume, for purposes of this analysis under the Paperwork Reduction Act, that all Rule 506(c) offerings will involve the use of written general solicitation materials. Although it is not possible to predict the number of future offerings made in reliance on Rule 506(c) with any degree of accuracy, particularly because Rule 506(c) only recently became effective, for purposes of this analysis we estimate that there would be 3,637 Rule 506(c) offerings per year. Based on the estimated number of Rule 506(c) offerings and an estimated burden of two hours per Rule 506(c) offering (as allocated below between Subpart A and Subpart B), we estimate that the total annual compliance burden of this proposed new collection of information requirement for the first year in which issuers would be subject to these requirements would be an aggregate of 7,274 hours of issuer personnel time.

Subpart A – General Solicitation Materials under Rule 510T

In regard to Subpart A of this proposed new collection of information, we estimate that compliance with proposed Rule 510T would result in an estimated burden of one hour per offering under Rule 506(c). As stated above, under proposed new Rule 510T, issuers would be required to submit to the Commission, through an intake page on the Commission’s website, any written general solicitation materials prepared by or on behalf of the issuers and used in

⁴ The estimate of approximately 6 hours per offering is a blended average of the paperwork burden for all offerings for which a Form D is required to be filed, not only offerings under Rule 506.

connection with a Rule 506(c) offering. This estimated one hour burden includes the time it would take to submit written general solicitation materials electronically to the Commission through the Commission’s website. Our burden estimate represents the average burden for all issuers per Rule 506(c) offering. In deriving this estimate, we assume that 100% of the burden of preparation will be carried by the issuer internally, which is reflected as an hourly burden. Table 3 illustrates the estimated total annual compliance burden of this subpart of the proposed new collection of information.

Table 3. Estimated paperwork burden of Subpart A – “General Solicitation Materials under Rule 510T”

	Number of responses (A)	Burden hours/form (B)	Total burden hours (C)=(A)*(B)	Internal issuer time (D)	External professional time (E)
Form D	3,637	1	3,637	3,637	None

Subpart B – Legends and Other Disclosure under Rule 509

In regard to Subpart B of this proposed new collection of information, we estimate that compliance with proposed Rule 509 would result in an estimated burden of one hour per offering under Rule 506(c). This estimated one hour burden includes the time it would take to prepare the applicable statements and disclosures and to include them in the written general solicitation materials for a Rule 506(c) offering. Our burden estimate represents the average burden for all issuers per Rule 506(c) offering. In deriving this estimate, we assume that 100% of the burden of preparation will be carried by the issuer internally, which is reflected as an hourly burden. Table 4 illustrates the estimated total annual compliance burden of this subpart of the proposed new collection of information. Following the inclusion of the applicable statements and disclosures in these written general solicitation materials, issuers would be required to submit the materials to the Commission through an intake page on the Commission’s website pursuant to proposed Rule 510T (see Subpart A above).

Table 4. Estimated paperwork burden of Subpart B – “Legends and Other Disclosure under Rule 509”

	Number of responses (A)	Burden hours/form (B)	Total burden hours (C)=(A)*(B)	Internal issuer time (D)	External professional time (E)
Form D	3,637	1	3,637	3,637	None

14. COSTS TO FEDERAL GOVERNMENT

We estimate that the cost of preparing the amendments would be approximately \$100,000.

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 increase, under the proposed amendments relating to Form D, in the burden associated with filing the required information on Form D over the span of a particular offering. The table below illustrates the changes in hour and cost burdens from the current burden estimates.⁵

	Current Burden		New Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Cost (D)	Burden Hours (E)	Cost (F)
Form D	21,824	\$26,188,800	32,736	\$39,283,200	10,912	\$13,094,400

The burden relating to “Rule 506(c) General Solicitation Materials” is a new collection of information, so there is no change in burden.

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 Form D 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.

⁵ Columns (A) and (B) represent the current burden estimates. Columns (C) and (D) represent the new burden estimates under the proposed amendments relating to Form D. Columns (E) and (F) represent the program change, which encompasses the change in the burden estimates attributable to the proposed amendments relating to Form D.