

SUPPORTING STATEMENT FOR RULE 12h-1(f)

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") was enacted to extend to investors in certain over-the-counter securities the same protections afforded investors in listed securities by providing that the issuers of certain securities traded over-the-counter be subject to the same requirements that applied to issuers of securities listed on an exchange. Further, Section 12(g) extended the disclosure and other Exchange Act safeguards to unlisted securities as a means to prevent fraud.

Under Section 12(g) of the Exchange Act, an issuer that has a class of equity security (other than an exempted security) held of record by 2,000 persons, or 500 persons who are not accredited investors and total assets in excess of \$10 million at the end of its most recently ended fiscal year must register that class of equity security with the Commission, unless there is an available exemption from registration. Stock options, including stock options issued to employees under stock option plans, are a separate class of equity security for purposes of the Exchange Act.

The Commission exercised its authority under Section 12(h) (which allows the Commission to exempt a class of securities by rules and regulations or by exemptive order from the Exchange Act Section 12 registration requirements if it finds, by reason of the number of public investors, amount of trading interest in the securities, the number and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors), Section 23, and Section 36 to adopt Rule 12h-1(f), which provides an exemption for private, non-reporting issuers from Exchange Act Section 12(g) registration for compensatory employee stock options issued under employee stock option plans where certain conditions, including certain information provision conditions, are present.

The exemption requires an issuer to provide information to option holders and holders of shares received on exercise of compensatory employee stock options. This condition requires the issuer to provide to option holders (and holders of shares received on exercise of compensatory employee stock options): (i) the same risk and financial information that would be required to be provided under Securities Act Rule 701 if securities sold in reliance on Securities Act Rule 701 in a 12-month period exceeded \$5 million, with the option holders and holders of shares received on exercise of the compensatory employee stock options always having been provided required financial statements that are not more than 180 days old.

2. Purpose and Use of the Information Collection

The purpose of the information collection is to provide holders of compensatory employee stock options in private, non-reporting issuers that are relying on the exemption from Exchange Act registration of the compensatory employee stock options appropriate disclosure and investor protections under the federal securities laws. The exemption requires private, non-reporting issuers to provide information to option holders and holders of shares received upon exercise of the stock options. The information required ensures that a basic level of information is available to these security holders. If private, non-reporting issuers relying on the exemption from Section 12(g) registration of the compensatory employee stock options are not required to provide this information, option holders and holders of shares received on exercise of options would not necessarily receive important ongoing information about the issuer in which they hold securities.

3. Consideration Given to Information Technology

The information required under Rule 12h-1 is not filed with the Commission. Rule 12h-1(f) permits issuers to provide the required information to the option holders and holders of shares received on exercise of compensatory employee stock options either by: (1) physical or electronic delivery of the information; or (2) notice to the option holders and holders of shares received on exercise of compensatory employee stock options of the availability of the information on a password-protected Internet site and any password needed to access the information.

4. Duplication of Information

The information required by Rule 12h-1(f) is similar to the information that is required under the exemption from registration provided in Securities Act Rule 701. It is likely that an issuer that has 500 or more option holders either already is obligated to provide the same information to option holders due to sales of securities in reliance on Securities Act Rule 701 or already prepares and, as such, provides such information to its shareholders.

5. Reducing the Burden on Small Entities

Generally, small entities do not satisfy the asset threshold of Section 12(g) and therefore the exemption would not be needed by such entities until their asset size increased to more than \$10 million at the end of a fiscal year.

6. Consequences of Not Conducting Collection

The exemption eliminates the requirement to register provided that the conditions, including the information requirements, of the exemption are satisfied. Without the information collection, the information about the private, non-reporting issuer would not be required to be provided to option holders and holders of shares received on exercise of options.

7. Special Circumstances

Not applicable.

8. Consultations with Persons Outside the Agency

Rule 12h-1(f) was proposed for public comment. No public comments were received during the 60-day comment period prior to OMB's review of this submission.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality

Information provided to option holders and holders of shares received on exercise of options pursuant to Rule 12h-1(f) is not filed with the Commission but could be subject to confidentiality or other arrangements between and among relevant parties.

11. Sensitive Questions

Not applicable.

12. Estimate of Respondent Reporting Burden

We estimate that approximately 40 private, non-reporting issuers each year rely on the exemption. We estimate that 25% of 2 hours per response (0.5 hours) is prepared by the issuer for a total annual reporting burden of 20 hours (0.5 hours per response x 40 responses). The burden estimate was based on the time and the cost of preparing and reviewing the information and making the information available to option holders and holders of shares received on exercise of the options. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act. They are not derived from a comprehensive or even a representative survey or study of Commission rules and forms.

13. Estimate of Total Annualized Cost Burden

We estimate that 75% of the 2 hours per response (1.5 outside hours) is prepared by outside counsel. We estimate that it will cost \$400 per hour (\$400 x 1.5 hours per response x 40 responses) for an estimated total cost of \$24,000. The estimated burden is made solely for purposes of the Paperwork Reduction Act. This cost is not derived from a comprehensive or even a representative survey or study of the cost of Commission rules and forms.

14. Costs to Federal Government

No special filing is required to be made with the government under the proposed rule, so no cost is attributed to the review and processing of the information.

15. Reason for Change in Burden

Not applicable.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to Omit OMB Expiration Date

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.