

SUPPORTING STATEMENT FOR PROPOSED PAY RATIO DISCLOSURE RULES

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq., and consists of this supporting statement and Release No. 33-9452 (September 18, 2013).

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

In Securities Act Release 33-9452,¹ the Securities and Exchange Commission (the “Commission”) proposed amendments to the Item 402² of Regulation S-K³ and Form 8-K⁴ under the Securities Exchange Act of 1934 (the “Exchange Act”)⁵ to satisfy the requirements of Section 953(b) of the Dodd-Frank Act, which directs the Commission to amend Item 402 of Regulation S-K to add the pay ratio disclosure requirements specified by that provision.

Securities Act Release 33-9452 proposes amendments that would affect certain regulations, schedules and forms adopted under the Securities Act of 1933 (the “Securities Act”),⁶ the Exchange Act and the Investment Company Act of 1940 (the “Investment Company Act”) that contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. These regulations, schedules, and forms set forth the disclosure requirements for periodic and current reports, registration statements, and proxy and information statements filed with the Commission by companies to help investors make informed investment decisions in registered offerings and secondary market transactions and informed decisions in voting their securities. Thus, these collections of information are necessary for the Commission to carry out the provisions of the Securities Act, Exchange Act, and Investment Company Act. The titles for the collection of information are:

- (1) “Regulation S-K” (OMB Control No. 3235-0071);⁷
- (2) “Form 10-K” (OMB Control No. 3235-0063);

¹ Release No. 33-9452 (Sept. 18, 2013) [78 FR 70443].

² 17 CFR 229.402.

³ 17 CFR 229.10 et al.

⁴ 17 CFR 249.308.

⁵ 15 U.S.C. §78a et seq.

⁶ 15 U.S.C. §77a – 77mm.

⁷ The paperwork burden from Regulation S-K is imposed through the forms that are subject to the disclosures in Regulation S-K and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience, we estimate the burdens imposed by Regulation S-K to be a total of one hour.

- (3) “Regulation 14A and Schedule 14A” (OMB Control No. 3235-0059);
- (4) “Regulation 14C and Schedule 14C” (OMB Control No. 3235-0057);
- (5) “Form 8-K” (OMB Control No. 3235-0060);
- (6) “Form S-1” (OMB Control No. 3235-0065);
- (7) “Form S-4” (OMB Control No. 3235-0324);
- (8) “Form S-11” (OMB Control No. 3235-0067)
- (9) “Form 10” (OMB Control No. 3235-0064); and
- (10) “Form N-2” (OMB Control No. 3235-0026).

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The purpose of the information collection in the proposed amendments is to satisfy the legislative mandate in Section 953(b). Specifically, the amendments would require registrants to disclose:

- the median of the annual total compensation of all employees of the registrant (excluding the principal executive officer),
- the annual total compensation of the registrant’s principal executive officer, and
- the ratio between these two amounts.

For this purpose, Section 953(b) specifies that total compensation is to be determined in accordance with Item 402(c)(2)(x). Item 402 already requires registrants to disclose the annual total compensation of the principal executive officer in accordance with Item 402(c)(2)(x). The median of the annual total compensation of all employees and the ratio would be new, incremental disclosure burdens and would require affected registrants to collect compensation information for employees that is not currently required to be disclosed. Investors and other market participants interested in executive compensation disclosure have indicated that the proposed disclosure would be useful in informing investment and voting decisions, particularly for say-on-pay votes and in director elections. In this regard, pay ratio information could be used by shareholders for purposes of evaluating the actions of the board of directors in fulfilling its responsibilities to the company and its shareholders. Pay ratio information could also be used to enhance an investor’s understanding of a registrant’s compensation practices applicable to non-executive employees relative to the named executive officers.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

All of the above forms are filed electronically with the Commission using the Commission’s Electronic Data Gathering and Retrieval (EDGAR) system.

4. DUPLICATION OF INFORMATION

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

The proposed new requirements for pay ratio disclosures would provide specific, additional information that would be complementary to existing executive compensation disclosure requirements.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The proposed amendments would not apply to smaller reporting companies or to emerging growth companies.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The regulations, forms and schedules set forth the disclosure requirements for periodic and current reports, registration statements, and proxy and information statements filed by companies to help investors make informed investment and voting decisions. Less frequent collection would deprive investors of access to information that is important to their investment and voting decisions.

7. SPECIAL CIRCUMSTANCES

None.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission has issued a release soliciting comment on the new “collection of information” requirements and the associated paperwork burdens. A copy of this release is attached. Comments on Commission releases are generally received from registrants, investors and other market participants. In addition, the Commission and its staff participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. The Commission will consider all comments received prior to publishing the final rule.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. CONFIDENTIALITY

The information in each of the collections of information discussed above is made publicly available.

11. SENSITIVE QUESTIONS

Not applicable.

12/13. ESTIMATES OF HOUR AND COST BURDENS

The paperwork burden estimates associated with the proposal include the burdens attributable to preparing and reporting information to the Commission and retaining records, but do not include the burden associated with using such information for other purposes. As described in the Proposing Release, we understand from commenters that the costs of compliance will likely vary among individual companies based on a number of factors, including the size and complexity of their organizations, the nature of their operations, the nature of their workforce, the location of their operations, and, significantly, the extent that their existing payroll systems collect the information necessary to identify the median of the annual total compensation of their employees (including whether a single, centralized computer system covers all employees of the registrant and whether the company's benefits and cash compensation records reside in the same system). Because the proposed requirements would allow registrants some flexibility in identifying the median and the annual total compensation of employees, the actual burden could be lower if the methodology used is able to reduce the effort needed to collect the data or if the registrant is able to use information that it uses for other purposes. The actual burdens will likely vary significantly among individual companies based on these factors.⁸ These estimates reflect average burdens, and, therefore, some companies may experience costs in excess of our estimates and some companies may experience costs that are lower than our estimates.

We derived the estimates by estimating the total amount of time it would take a company prepare and submit the proposed disclosure. As discussed in the Proposing Release, we first estimated the total amount of time it would take a company to prepare and review the proposed disclosure, using the estimates for comparable disclosure requirements as a starting point.

For each estimate, we calculate that a portion of the burden will be carried by the company internally, and the other portion will be carried by outside professionals retained by the company. The portion of the burden carried by the company internally is reflected in hours, while the portion of the burden carried by outside professionals retained by the company is reflected as a cost. The burdens have been calculated by multiplying the estimated number of annual responses we believe will be generated by the estimated average number of hours each entity will spend complying with the requirements of the rules.

⁸ The Proposing Release also notes that companies could address these factors in a variety of ways. For example, some companies might perform the data collection and consolidation manually, while others may incur the cost of implementing an information technology solution for collecting the data. In addition, some companies might outsource some of the burden hours to consultants or third party payroll management providers, which could increase the costs to the registrant while decreasing the burden hours of company personnel.

For Exchange Act reports, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of \$400 per hour.

Table 1 below illustrates the incremental annual compliance burden of the collection of information in hours and in cost under the proposed amendments for annual reports and current reports on Form 8-K under the Exchange Act (Table 1). There is no change to the estimated burden of the collection of information under Schedule 14A and 14C, or Forms S-1, S-4, S-11, or N-2 because we have assumed that the burden relating to the proposed disclosure requirements would be associated primarily with Form 10-K. In addition, there is no change to the estimated burden of the collection of information under Form 10 because we have assumed that all new registrants would take advantage of the proposed transition period. There is no change to the estimated burden of the collection of information under Regulation S-K because the burdens that Regulation S-K imposes are reflected in our revised estimates for the forms.

Table 1: Calculation of Incremental Paperwork Reduction Act Burden Estimates for Annual Reports and Form 8-K

	Annual Responses	Incremental Burden Hours/Form	Total Incremental Burden Hours	75% Company	25% Professional	Professional Costs
	(A)	(B)	(C)=(A)*(B)	(D)=(C)*0.75	(E)=(C)*0.25	(F)=(E)*\$400
10-K	3,830 ⁽¹⁾	190	727,700	545,775	181,925	\$72,770,000
8-K	22 ⁽²⁾	1 ⁽³⁾	22	16.5	5.5	\$2,200

⁽¹⁾ The increase in burden hours and costs for Form 10-K, will impact only Forms 10-K that are filed by companies that are not smaller reporting companies, emerging growth companies, asset backed securities issuers or wholly-owned subsidiary registrants. Based on a review of EDGAR filings in calendar year 2011, we estimate that of the approximately 8,870 annual reports filed in that year, approximately 3,830 annual reports are filed by registrants that would be subject to the proposed disclosure requirements.

Based on a review of EDGAR filings in 2011, approximately 3,750 annual reports were filed by smaller reporting companies, approximately 290 were filed by ABS issuers and approximately 100 were filed by wholly-owned subsidiaries of other registrants. We have also reduced the total number of Form 10-K filings by 900 to reflect the approximate number of emerging growth companies that have identified themselves as such in their EDGAR filings as of May 2013.

⁽²⁾ The increase in burden hours and costs for Form 8-K will impact only those Forms 8-K that are filed pursuant to Item 5.02(f) of Form 8-K and that relate to disclosure of PEO compensation. Based on a review of EDGAR filings for calendar years 2011 and 2012, we estimate that approximately 29 Forms 8-K are filed pursuant to Item 5.02(f) annually and approximately 75% of these relate to disclosure of PEO compensation. As a result, we estimate that 22 of the Forms 8-K filed in a given year would be required to include the proposed disclosure.

⁽³⁾ We estimate that the burden for adding the pay ratio disclosure to that Form 8-K filing would be one hour per registrant (0.75 hours of internal personnel time and a cost of approximately \$100 for professional services). We have assumed that the burden relating to the proposed pay ratio requirements would remain associated with the registrant's proxy or information statement or annual report, and, therefore, our PRA estimates for Form 8-K reflect that burden.

Tables 2A and 2B below illustrate the changes to the total annual compliance burden of the collection of information in hours and cost, respectively. The total estimated burdens were calculated by adding the incremental burdens to the existing burdens. The proposed burdens and costs per response⁹ were calculated by dividing the total proposed estimates by the current number of annual responses.

Table 2A: Estimates of Hour Burden

Form	Existing Annual Responses (A)	Increase (Decrease) in Annual Responses	Current Burden Hours	Increase (Decrease) in Burden Hours	Proposed Burden Hours (B)	Proposed Burden per Response (C) = (B)/(A)
10-K	14,296	—	21,430,988	545,775	21,976,763	1537.266578063794
8-K	118,387	—	507,665	16.5	507,681.5	4.288321352851

Table 2B: Estimates of Cost Burden

Form	Existing Annual Responses (A)	Increase (Decrease) in Annual Responses	Current Cost Burden	Increase (Decrease) in Cost Burden	Proposed Cost Burden (B)	Proposed Cost per Response (C) = (B)/(A)
10-K	14,296	—	\$2,857,465,000	\$72,770,000	\$2,930,235,000	\$204,968.8724118635
8-K	118,387	—	\$67,688,700	\$2,200	\$67,690,900	\$571.7764619426119

14. COSTS TO FEDERAL GOVERNMENT

We estimate costs to the federal government will be approximately \$50,000.

15. REASON FOR CHANGE IN BURDEN

See discussion in Items 12/13 for a discussion of the estimated changes in burden.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

Not applicable.

⁹ As reflected in the footnotes to Table 1, the increase in burden hours and costs for Form 10-K and 8-K will not impact all Forms 10-K and 8-K. Tables 2A and 2B distribute the incremental burden and cost estimates for the forms submitted by those filers across the total number of annual responses (submitted by all companies) to estimate the hour burden and cost per response.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

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

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSION

Not applicable.

B. STATISTICAL METHODS

Not applicable.