

# **SUPPORTING STATEMENT FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION SUBMISSION FOR AMENDMENTS TO REGULATION A**

## **A. JUSTIFICATION**

### **1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY**

The Securities Act of 1933,<sup>1</sup> as amended (the “Securities Act”), generally requires that a registration statement be filed with the Securities and Exchange Commission (the “Commission”) disclosing prescribed information before securities may be offered for sale to the public. While the Securities Act already authorizes the Commission to exempt certain securities and transactions from registration, Section 401 of the Jumpstart Our Business Startups Act<sup>2</sup> added Section 3(b)(2) to the Securities Act, creating a new exemption from registration. The Commission has adopted various rules (collectively, “Regulation A”) establishing a limited offering exemption from the registration requirements of the Securities Act. Regulation A provides an exemption for offerings that satisfy certain conditions, such as filing an offering statement with the Commission, limiting the dollar amount of the offering and, in certain instances, filing ongoing reports with the Commission.

In Securities Act Release No. 33-9741 (the “Adopting Release”), the Commission adopted amendments to Regulation A and Form 1-A, and adopted two tiers of Regulation A offerings with different disclosure requirements.<sup>3</sup> Tier 1, for offerings of \$20 million or less within a 12-month period, requires the filing and qualification of Form 1-A and, within 30 days after the termination or completion of the offering, a Form 1-Z exit report. Tier 2, for offerings up to \$50 million within a 12-month period, requires a Form 1-A filing (with certain additional disclosures), annual and semiannual reports on Forms 1-K and 1-SA respectively, current reports on Form 1-U, and an exit report on Form 1-Z (in most cases) when the issuer is eligible to suspend ongoing reporting. For both tiers, the amendments to Form 1-A alter the disclosure required by the form by eliminating the Model A disclosure format and revising and updating Part I and the Model B disclosure format. Form 1-A also requires audited financial statements for Tier 2 offerings. In response to public comment and to simplify Exchange Act registration in connection with Regulation A offerings, the adopted rules also amend Form 8-A to allow Regulation A issuers to use the form.

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

- “Regulation A (Form 1-A)” (OMB Control No. 3235-0286);

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<sup>1</sup> 15 U.S.C. §77a *et seq.*

<sup>2</sup> Pub. L. No. 112-106, 126 Stat. 306 (2012).

<sup>3</sup> Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A), Release No. 33-9741 (March 25, 2015) [80 FR 21805].

- “Form 1-K” (OMB Control No. 3235-0720);
- “Form 1-SA” (OMB Control No. 3235-0721);
- “Form 1-U” (OMB Control No. 3235-0722);
- “Form 1-Z” (OMB Control No. 3235-0723);
- “Form ID” (OMB Control No. 3235-0328);
- “Form F-X” (OMB Control No. 3235-0379); and
- “Form 8-A” (OMB Control No. 3235-0056).

## **2. PURPOSE AND USE OF THE INFORMATION COLLECTION**

### Amendments Relating to Form 1-A

Form 1-A is an offering statement filed under Regulation A. The information collected is primarily intended to ensure the adequacy of information available to investors, while the purpose of amended Part I of Form 1-A is also to collect empirical data for the Commission. The empirical data will provide a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. Other than the information in Part I, the Commission will use very little of the collected information itself, except on an occasional basis in the enforcement of the securities laws.

### New Forms 1-K, 1-SA, 1-U and 1-Z

The purpose of Forms 1-K, 1-SA and 1-U is to better inform the public about companies that have conducted Tier 2 offerings under Regulation A. Form 1-K would provide audited year-end financial statements and information about the issuer’s business operations, ownership, management, liquidity, capital resources and operations on an annual basis. Part I of Form 1-K also collects information on any offerings under Regulation A that have been terminated or completed unless such information had been previously reported on Form 1-Z. Form 1-SA provides semiannual, interim financial statements and information about the issuer’s liquidity, capital resources and operations after the issuer’s second fiscal quarter. Form 1-U provides information to the public within four business days of fundamental changes in the nature of the issuer’s business and other significant events. The Commission will use very little of the collected information itself, except on an occasional basis in the enforcement of federal securities laws, and on a regular basis with respect to the collection of empirical information in Part I of Form 1-K on offerings that have been terminated or completed.

The purpose of Form 1-Z is to collect empirical data for the Commission on offerings conducted under Regulation A that have been terminated or completed, to indicate to the Commission that issuers that have conducted Tier 2 offerings are suspending their duty to file reports under Regulation A and to provide such information to the investing public.

### **3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY**

Forms 1-A, 1-K, 1-SA, 1-U and 1-Z will be filed electronically using the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR"). Part I of Forms 1-A and 1-K and all of Form 1-Z will be online fillable forms.

### **4. DUPLICATION OF INFORMATION**

The Commission makes every effort to coordinate with other regulatory entities when necessary or appropriate in the public's interest and for the protection of investors and to streamline regulations to enhance the production of capital.

#### Amendments Relating to Form 1-A

We are not aware of any forms or rules that conflict with or substantially duplicate the requirements of Form 1-A.

#### Forms 1-K, 1-SA, 1-U and 1-Z

We are not aware of any forms or rules that conflict with or substantially duplicate the requirements of Forms 1-K, 1-SA, 1-U or 1-Z.

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

Regulation A is an exemption from Securities Act registration relating to small issues and small issuers. Under the adopted amendments, Regulation A continues to provide an exemption to small issuers while allowing them to conduct larger offerings that are exempt from Securities Act registration. We believe that many of the issuers in Regulation A offerings are small entities, but we currently do not collect information on total assets of companies that use Regulation A to determine if they are small entities.

### **6. CONSEQUENCES OF NOT CONDUCTING COLLECTION**

The information required by the adopted amendments to Regulation A are intended to be used by public investors and to ensure the adequacy of information to investors regarding offerings pursuant to that exemption. The information required by Part I of Form 1-A and 1-K and all of Form 1-Z are also designed to collect empirical data for the Commission, which will provide a continuing basis for action by the Commission for amending existing rules and regulations or proposing new ones. The exemption from Securities Act registration made in reliance on the amendments would not be available without these collections of information.

### **7. SPECIAL CIRCUMSTANCES**

Not applicable.

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

The Commission issued Securities Act Release No. 33-9497 (the “Proposing Release”) soliciting comment on the new “collection of information” requirements and associated paperwork burdens.<sup>4</sup> In response to the solicitation for comment in the Proposing Release, issuers, 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 5 C.F.R. 1320.11(f). Comments received on the proposal are available at <http://www.sec.gov/comments/s7-11-13/s71113.shtml>.

## **9. PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

## **10. CONFIDENTIALITY**

Adopted Rule 251(e) (§ 230.251(e)) allows for requests for confidential treatment to be made under existing Rule 406 (§ 230.406) for information required to be filed with the Commission and existing Rule 83 (§ 230.86) for information not required to be filed with the Commission. Adopted Rule 252(d) (§ 230.252(d)) also allows for a draft Form 1-A to be submitted for non-public review by the Commission’s staff. Form 1-A must be filed publicly at least 21 days prior to the offering statement being qualified if the non-public submission option is used. Otherwise, the collections of information required by Regulation A are public documents.

## **11. SENSITIVE QUESTIONS**

No information of a sensitive nature is required under this collection of information. The information collection collects basic Personally Identifiable Information (“PII”) that may include: name; business address; residential address (for sole proprietor only); telephone/cellular/facsimile number; email address; and Tax ID Number (“TIN”). The information collection is covered under the Systems of Records Notice (SORN), which may be found at the following link: <http://www.sec.gov/about/privacy/sorn/secsorn1.pdf>. The Privacy Impact Assessment (“PIA”) is provided as a supplementary document.

## **12/13. BURDEN OF INFORMATION COLLECTION AND COSTS TO RESPONDENTS**

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

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<sup>4</sup> See Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act, Release No. 33-9497 (Dec. 18, 2013) [79 FR 3926].

not derived from a comprehensive or even a representative survey of the costs of Commission rules and forms.<sup>5</sup>

### Adopted Amendments to Form 1-A

Form 1-A is currently estimated to take approximately 608 hours per response to prepare with 30 responses per year. Table 1 illustrates the current total annual compliance burden, in hours and in costs, of the collection of information pursuant to Form 1-A.

**Table 1. Estimated paperwork burden under Form 1-A, pre-amendments relating to Form 1-A**

	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 1-A	30	608	18,240	13,680	4,560	\$1,824,000
Regulation A	0	1	1	1	0	\$0
<b>Total</b>	<b>30</b>	<b>609</b>	<b>18,270</b>	<b>13,703</b>	<b>4,568</b>	<b>\$1,827,200</b>

We believe that the adopted amendments relating to Form 1-A increase the existing paperwork burden of the form by requiring additional information in Form 1-A, predominantly with respect to Tier 2 offerings. For purposes of the Paperwork Reduction Act, we estimate that the total burden to prepare and file adopted Form 1-A, including any amendments to the form, is 750 hours, or a 23% increase from the 608 hours per response currently required. We also estimate that the number of offerings under Regulation A would increase from approximately 30 per year to 250 per year. We estimate that 75% of the 750 hours per response (562.5 hours) is prepared by the issuer for an annual reporting burden of 140,625 hours (562.5 hours per response x 250 responses). We estimate that 25% of the 750 hours per response (187.5 hours) is prepared by outside professionals retained by the issuer. We estimate the cost of these outside professionals to be \$400 per hour for a total cost burden of \$18,750,000 (\$400 per hour x 187.5 hours per response x 250 responses). As mentioned above, we believe that the amendments will not change the one administrative burden hour associated with the review of Regulation A, resulting in an estimated total compliance burden of 751 hours per response and an estimated annual compliance burden of 187,750 hours. Table 2 illustrates the estimated total annual compliance burden, in hours and in costs, of the collection of information pursuant to Form 1-A following these amendments.

<sup>5</sup> The adopted amendments rescind Form 2-A and the filing requirements related to that form. The amendments will not change the one administrative burden hour associated with the review of Regulation A. Also, although changes were made in the Adopting Release to proposed Regulation A and the proposed forms, these changes do not have an impact on the estimated burdens that were submitted prior to adoption of the amendments.

**Table 2. Estimated paperwork burden under Form 1-A, post-amendments relating to Form 1-A**

	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 1-A	250	750	187,500	140,625	46,875	\$18,750,000
Regulation A	0	1	1	1	0	\$0
<b>Total</b>	<b>250</b>	<b>751</b>	<b>187,750</b>	<b>140,813</b>	<b>46,938</b>	<b>\$18,775,200</b>

Forms 1-K, 1-SA, 1-U and 1-Z

For the adopted new collections of information, adopted new Forms 1-K, 1-SA, 1-U and 1-Z, we assume, for purposes of this analysis under the Paperwork Reduction Act, that 75% of all issuers filing a Form 1-A (188 responses) will enter the ongoing reporting regime and therefore be required to file Forms 1-K, 1-SA and 1-U. We also assume that all of the issuers conducting a Tier 1 offering and 50% of the issuers with an ongoing reporting obligation under Tier 2 will be required to file Form 1-Z.

We estimate that the burden of preparing the information required by Form 1-K will be approximately 80% of the estimated burden for Form 1-A (600 hours per response) due to the lack of offering-specific disclosure and an issuer's ability to update disclosure previously provided on Form 1-A. We further estimate that 75% of the 600 hours per response (450 hours) is prepared by the issuer for an annual reporting burden of 84,600 hours (450 hours per response x 188 responses). We estimate that 25% of the 600 hours per response (150 hours) is prepared by outside professionals retained by the issuer. We estimate the cost of these outside professionals to be \$400 per hour for a total cost burden of \$11,280,000 (\$400 per hour x 150 hours per response x 188 responses).

We estimate that the burden of preparing the information required by Form 1-SA will be similar to the compliance burden for issuers filing a Form 10-Q, which has been previously estimated at 187.43 hours per response. Like Form 1-K, the Form 1-SA will be filed annually, but will be filed after the issuer's second fiscal quarter rather than its fiscal year end. Unlike Form 1-K, Form 1-SA does not require the provision of audited financial statements and only requires financial statements for a semiannual period. As such, we estimate that 85% of the 187.43 hours per response (159.32 hours) is prepared by the issuer for an annual reporting burden of 29,952 hours (159.32 hours per response x 188 responses). We estimate that 15% of the 187.43 hours per response (28.11 hours) is prepared by outside professionals retained by the issuer. We estimate the cost of these outside professionals to be \$400 per hour for a total cost burden of \$2,113,872 (\$400 per hour x 28.11 hours per response x 188 responses).

We estimate that the burden of preparing the information required by Form 1-U will be similar to, but less than, the compliance burden for issuers filing a Form 8-K, which is 5.71 hours per response. Since Form 1-U's fewer triggering events make it less burdensome to complete than Form 8-K, we estimate the average burden of preparing Form 1-U as 5 hours per response. We also estimate that on average issuers will be required to file one current report annually, with

some issuers filing none and other issuers filing more than one. As with Form 1-SA, we estimate that 85% of the 5 hours per response (4.25 hours) is prepared by the issuer for an annual reporting burden of 799 hours (4.25 hours per response x 188 responses). We estimate that 15% of the 5 hours per response (0.75 hours) is prepared by outside professionals retained by the issuer. We estimate the cost of these outside professionals to be \$400 per hour for a total cost burden of \$56,400 (\$400 per hour x 0.75 hours per response x 188 responses).

We estimate that all of the issuers conducting Tier 1 offerings (63 responses) and 50% of the issuers with an ongoing reporting obligation (94 responses) under Tier 2 of Regulation A will file a Form 1-Z in the second fiscal year after qualification of the offering statement (157 total responses). All Tier 1 issuers will be required to file a Form 1-Z. Although we believe that the number of issuers eligible to file a Form 1-Z to suspend or terminate ongoing reporting may exceed 94 issuers, we estimate that 50% of the issuers with ongoing reporting obligations will choose not to file a Form 1-Z so as to facilitate continued quotations on the over-the-counter markets and to otherwise enhance the liquidity of their securities. The Form 1-Z is similar to the Form 15 that issuers file to provide notice of termination of the registration of a class of securities under Exchange Act Section 12(g) or to provide notice of the suspension of the duty to file reports required by Exchange Act Sections 13(a) or 15(d). Therefore, we estimate a similar burden of 1.5 hours per response for Form 1-Z, resulting in an aggregate annual reporting burden of 235.5 hours (1.5 hours per response x 157 responses).

**Table 3. Estimated paperwork burden of Forms 1-K, 1-SA, 1-U and 1-Z**

	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 1-K	188	600	112,800	84,600	28,200	\$11,280,000
Form 1-SA	188	187	35,237	29,952	5285	\$2,113,872
Form 1-U	188	5	940	799	141	\$56,400
Form 1-Z	157	1.5	235.5	235.5	0	\$0

Form ID Filing Burden

Form ID is not a new collection of information. It is the application form for access codes to permit filing on EDGAR. Table 4 illustrates the current total annual compliance burden, in hours and in costs, of the collection of information under Form ID.

**Table 4. Current estimated paperwork burden under Form ID**

	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 ID	36,590	0.15	5,489	5,489	0	\$0

The adopted rules would not change Form ID itself, but we anticipate that the number of Form ID filings would increase due to an increase in issuers relying on adopted Regulation A. We estimate that 75% of the issuers who would seek to offer and sell securities in reliance on adopted Regulation A would not have previously filed an electronic submission with the Commission and would, therefore, be required to file a Form ID to receive EDGAR access codes prior to filing a Form 1-A. As noted above, we estimate that approximately 250 issuers per year would seek to offer and sell securities in reliance on adopted Regulation A, which would correspond to approximately 188 additional Form ID filings. As a result, we estimate the additional annual burden would be approximately 28.2 hours (0.15 hours per response x 188 responses).

**Table 5. Estimated paperwork burden under Form ID, post-amendments relating to Regulation A.**

	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 ID	36,778	0.15	5,517	5,517	0	\$0

Form F-X Filing Burden

Form F-X is not a new collection of information. It is used to appoint an agent for service of process by Canadian issuers eligible to use Regulation A, issuers registering securities on Forms F-8 or F-10 under the Securities Act or filing periodic reports on Form 40-F under the Exchange Act, as well as in certain other circumstances.

**Table 6. Current estimated paperwork burden under Form F-X.**

	Number of responses (A)	Burden hours/form (B)	Total burden hours (C)=(A)*(B)	Internal issuer time (D)	External professional time (E)
Form F-X	161	2	322	322	0

The adopted rules would not change Form F-X itself, but would amend the rules to allow for the form to be filed electronically for offerings under Regulation A. Canadian companies are the only type of issuer that would be required to use this form under the adopted rules. We estimate that approximately 2% of the offerings under adopted Regulation A would be conducted by Canadian companies (5 responses) resulting in an annual burden of approximately 10 hours (2 hours per response x 5 responses).<sup>6</sup>

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<sup>6</sup> In this regard, we note that no Canadian issuers filed a Form 1-A in 2013.



**Table 7. Estimated paperwork burden under Form F-X, post-amendments relating to Regulation A.**

	Number of responses (A)	Burden hours/form (B)	Total burden hours (C)=(A)*(B)	Internal issuer time (D)	External professional time (E)
Form F-X	166	2	332	332	0

Form 8-A Filing Burden

Form 8-A is not a new collection of information. It is a registration statement used to register a class of securities under Section 12(b) or Section 12(g) of the Exchange Act. Table 8 illustrates the current total annual compliance burden, in hours and costs of the collection of information under Form 8-A.

**Table 8. Current estimated paperwork burden under Form 8-A.**

	Number of responses (A)	Burden hours/form (B)	Total burden hours (C)=(A)*(B)	Internal issuer time (D)	External professional time (E)
Form 8-A	946	3	2,838	2,838	0

The adopted rules change Form 8-A to allow Regulation A issuers to use the form, but we do not believe that these changes alter the burden hours per response for the form (3 hours). We estimate that approximately 2% of the issuers filing a Form 1-A will also file a Form 8-A to register a class of securities under the Exchange Act (5 responses), resulting in an annual burden of approximately 15 hours (3 hours per response x 5 responses).

**Table 9. Estimated paperwork burden under Form 8-A, post-amendments relating to Regulation A.**

	Number of responses (A)	Burden hours/form (B)	Total burden hours (C)=(A)*(B)	Internal issuer time (D)	External professional time (E)
Form 8-A	951	3	2,853	2,853	0

**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 1-A corresponds to an estimated increase in the existing paperwork burden of the form under the adopted amendments by requiring additional information in Form 1-A, predominantly with respect to Tier 2 offerings. The approximately 250 issuers relying on adopted Regulation A and filing Form 1-A annually would increase the current paperwork burden under Form 1-A from 18,240 hours to 187,500 hours, an increase of 169,260 hours. The adopted amendments to Regulation A do not change the one administrative burden hour associated with reviewing Regulation A, but the approximately 220 additional issuers that we estimate will rely on Regulation A due to the amendments will increase the current annual administrative paperwork burden associated with reviewing Regulation A from 30 hours to 250 hours, an increase of 220 hours. Due to the amendments, we estimate that the total annual paperwork burden under Regulation A and Form 1-A will increase from 18,270 hours to 187,750 hours, an increase of 169,480 hours.

To obtain the EDGAR access codes required to make a filing on EDGAR, including a Form 1-A filing, issuers will need to file a Form ID. The amendments to Regulation A do not change Form ID itself, but we estimate that the approximately 188 issuers relying on amended Regulation A and filing Form ID annually will increase the current paperwork burden under Form ID from 5488.5 hours to 5516.7 hours, an increase of 28.2 hours.

Form F-X is used to appoint an agent for service of process by Canadian issuers eligible to use Regulation A as well as in certain other circumstances. The adopted amendments to Regulation A do not change Form F-X itself, but we estimate that the approximately 5 issuers relying on adopted Regulation A and filing Form F-X annually will increase the current paperwork burden under Form F-X from 322 hours to 332 hours, an increase of 10 hours.

Form 8-A is used to register a class of securities under Section 12 of the Exchange Act. The adopted amendments add language to Form 8-A that allows the form to be used in certain circumstances by Regulation A issuers. Although we do not believe that the amendments result in a change to the existing paperwork burden per response, the estimated 5 issuers relying on amended Regulation A and filing a Form 8-A annually will increase the current paperwork burden under Form 8-A from 2,838 hours to 2,853 hours, an increase of 15 hours.

Forms 1-K, 1-SA, 1-U and 1-Z are new collections 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 the forms. 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 EDGAR application's scheduled version release dates. The OMB control number will be displayed.

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

Not applicable.

**B. STATISTICAL METHODS**

Not applicable.