

**SUPPORTING STATEMENT FOR THE PAPERWORK REDUCTION ACT
INFORMATION COLLECTION SUBMISSION FOR FINAL AMENDMENTS TO
RULE 504 OF REGULATION D**

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

The Securities Act of 1933 (the “Securities Act”) 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 the Securities Act. The rules (Rules 504, 505, and 506) provide exemptions for offerings that satisfy certain conditions, such as limitations in the type and/or number of investors and, as applicable, limitation in dollar amount.

In Release No. 33-10238,¹ the Commission adopted amendments to Rule 504 of Regulation D to increase the aggregate amount of securities that may be offered and sold in any twelve-month period from \$1 million to \$5 million and disqualify certain bad actors from participation in Rule 504 offerings. In light of these amendments to Rule 504, the Commission also adopted final rules repealing Rule 505 of Regulation D.

The amendments to Rule 504 of Regulation D contain “collection of information” requirements within the meaning of the PRA. There are two titles for the collection of information requirements contemplated by the amendments. The first title is: “Form D” (OMB Control No.

¹ Exemptions To Facilitate Intrastate and Regional Securities Offerings, Release No. 33-10238 (Oct. 26, 2016) [81 FR 83494] (Nov. 21, 2016) (“Adopting Release”).

3235-0076), an existing collection of information.² The second title is: “Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement,” (OMB Control No. 3235-0746), a new collection of information. Although the amendments to Rule 504 do not alter the information requirements set forth in Form D, the amendments are expected to increase the number of new Form D filings made pursuant to Regulation D. We do not believe this increase will be materially offset by a decrease in the number of Form D filings that are made with the Commission attributable to the repeal of Rule 505 of Regulation D. Additionally, the mandatory bad actor disclosure provisions that will be required under Rule 504 will contain “collection of information” requirements within the meaning of the PRA.

For all Regulation D offerings, 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.

The amendments to Rule 504 will disqualify issuers from reliance on Rule 504 if such issuer would be subject to disqualification under Rule 506(d) of Regulation D.³ Consistent with the requirements of Rule 506(e), we will require that the issuer in a Rule 504 offering furnish to each purchaser, a reasonable time prior to sale, a written description of any matters that occurred before effectiveness of any amendments to the rule that may be adopted and within the time periods described in the list of disqualification events set forth in Rule 506(d)(1) of Regulation D,⁴ in regard to the issuer or any other “covered person” associated with the offering. For purposes of the mandatory disclosure provision described in the instruction to Rule 504(b)(3), as amended,⁵ issuers will be required to ascertain whether any disclosures are required in respect of covered persons involved in their offerings, prepare any required disclosures and furnish them to purchasers.

The Commission adopted the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement under the Securities Act. The Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement that will be required to be furnished to investors does not involve submission of a form filed with the Commission and is not required to be presented in any particular format, although it must be in writing. The hours and costs associated with preparing and furnishing the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement to investors in the offering constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

² Form D was adopted pursuant to Sections 2(a)(15), 3(b), 4(a)(2), 19(a) and 19(c)(3) of the Securities Act (15 U.S.C. 77b(a)(15), 77c(b), 77d(a)(2), 77s(a) and 77s(c)(3)).

³ See Rule 504(b)(3) [xx CFR xx]; see also 17 CFR 230.506(d).

⁴ 17 CFR 230.506(d)(1).

⁵ See Instruction to Rule 504(b)(3).

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

An important purpose of the Form D 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.

The disclosure or paperwork burden imposed on issuers appears in an instruction to Rule 504(b)(3), as amended, and pertains to events that occurred before effectiveness of the final rules but which would have triggered disqualification had they occurred after effectiveness. Issuers relying on Rule 504, as amended, will be required to furnish disclosure of any relevant past events that would have triggered disqualification under Rule 504(b)(3) that relate to the issuer or any other covered person. If there are any such events, a disclosure statement will be required to be furnished, a reasonable time before sale, to all purchasers in the offering. The disclosure requirement will serve to protect purchasers by ensuring that they receive information regarding any covered persons that were subject to such disqualifying events.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

Form D is filed using the Commission's electronic filing system.

The collection of information requirements for the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement will not be provided to the Commission, either electronically or otherwise.

4. DUPLICATION OF INFORMATION

There is no public source for the information provided on Form D.

We are not aware of any rules that conflict with or substantially duplicate the amendments to Rule 504.

5. REDUCING THE BURDEN ON SMALL ENTITIES

Regulation D is a comprehensive set of exemptions from 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.

Consistent with the disclosure requirements in Rule 506(e), the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement will apply to all issuers, including small entities. The requirement will not vary depending on the size of the issuer. We believe that many of the issuers in these Rule 504 private offerings are small entities, but we currently do not collect information on total assets of companies and net assets of funds to determine if they are small entities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The purpose of collecting Form D information is to provide the Commission with information to observe use of the Regulation D exemption.

The purpose of the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement is to alert potential investors about the “bad actor” history of issuers conducting securities offerings as well as the issuer’s covered persons. Adopting the amendments to Rule 504 without the disclosure requirement would weaken the investor protection benefits intended by the disqualification provisions of Rule 506(d) by enabling issuers and other covered persons with a “bad actor” history to avoid disclosing that history to potential investors.

7. SPECIAL CIRCUMSTANCES

No special circumstances at this time.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission issued a release soliciting comment on the “collection of information” requirement and associated paperwork burdens.⁶ Comments on the Commission’s releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. The Commission considered all comments received. Comments received on the proposal are available at <http://www.sec.gov/comments/s7-22-15/s72215.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 under the collection of information requirements contemplated by the amendments. The information collection for Form D Notice of sales filed by issuers of securities under Regulation D collects basic Personally Identifiable Information (PII) that may include name, business address, and residential address (for sole proprietor only), telephone/cellular/facsimile number, email address, and Tax ID Number (TIN). The information collection is covered under the System of Records Notices (SORN), which may

⁶ Exemptions To Facilitate Intrastate and Regional Securities Offerings, Release No. 33-9973 (Oct. 30, 2015) [80 FR 69786] (Nov. 10, 2015) (“Proposed Release”).

be found at the following link: <http://www.sec.gov/about/privacy/sorn/secsorn6.pdf>. The Privacy Impact Assessment (PIA) is provided as a supplemental document.

The information collection for the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement collects basic Personally Identifiable Information (PII) that may include name, business address, and residential address (for sole proprietor only), telephone/cellular/facsimile number, email address, and Tax ID Number (TIN). The Privacy Impact Assessment (PIA) is provided as a supplemental document.

12/13. ESTIMATES OF HOUR AND COST BURDENS

The estimated burden hours and cost burden are made solely for the purposes of the PRA 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.

Form D (OMB Control No. 3235-0076)

Form D takes approximately 4 hours per response to prepare and is filed by approximately 25,900 issuers annually. We estimate that 25% of the 4 hours per response (1 hour) is prepared by the issuer for an annual reporting burden of 25,900 hours (1 hour per response x 25,900 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 25,900 responses) for a total cost burden of \$31,080,000. 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 504

	Number of responses (A) ⁷	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	25,900	4	103,600	25,900	77,700	\$31,080,000

As we are not altering the information requirements of Form D, our amendments will not affect the paperwork burden of the form, and the burden for responding to the collection of information in Form D will be the same as before the amendments to Form D. However, we estimate that our amendments to increase the aggregate amount of securities that may be offered and sold in any 12-month period in reliance on Rule 504 will increase the number of

⁷ Although the number of responses for Form D is reported as 21,686 in the OMB’s Inventory of Currently Approved Information Collections, available at <http://www.reginfo.gov/public/do/PRAMain.jsessionid=D37174B5F6F9148DB767D63DF6983A65>, we have prepared a new estimate based on the historical trend of the annual number of new Form D filings. Based on an average increase of approximately 1,515 new Form D filings per year over the past six years, we believe that the average number of new Form D filings in each of the next three years will be approximately 25,884, or 25,900 rounded to the nearest hundredth.

Form D filings that are made with the Commission. We do not believe this increase will be materially offset by a decrease in the number of Form D filings that are made with the Commission attributable to our repeal of Rule 505 of Regulation D.

For purposes of the PRA, we estimate that the amendments to Rule 504 would result in a 20% increase in new Form D filings relying on the Rule 504 exemption,⁸ or approximately 100 filings per year, based on the number of new Form D filings reporting reliance on Rules 504 and 505 in 2015.⁹ The annual number of new Form D filings rose from 13,764 in 2009 to 22,854 in 2015, an average increase of approximately 1,515 Form D filings per year, or approximately 9%. Assuming the number of Form D filings continues to increase by 1,515 filings per year for each of the next three years, the average number of Form D filings in each of the next three years would be approximately 25,900. Accordingly, with the adoption of these amendments to Rule 504, we estimate there would be approximately 26,000 new Form D filings per year for each of the next three years (i.e., 25,900 plus 100).

Based on this increase, we estimate that the annual compliance burden of the collection of information requirements for issuers making Form D filings after Rule 504 is amended would be an aggregate 26,000 hours of issuer personnel time and \$31,200,000 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 amendments to Rule 504.

Table 2. Estimated paperwork burden under Form D, post-amendment to Rule 504

	Number of responses (A) ¹⁰	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	26,000	4	104,000	26,000	78,000	\$31,200,000

Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement (a New

⁸ We based this estimate on the impact of a 1997 rule change to Rule 144(d) [17 CFR 230.144(d)] on the market for Regulation D offerings. In this rule change, the Commission amended Rule 144(d) under the Securities Act to reduce the holding period for restricted securities from two years to one year, thereby increasing the attractiveness of Regulation D offerings to investors and to issuers which resulted in a 20% increase in the number of new Form D filings in each of the three subsequent years. See Adopting Release, at text accompanying n. 505.

⁹ We estimate the number of new Form D filings attributable to the amendments over the next three years, as follows: 698 new Form D filings in 2015 relying on either Rules 504 or 505, less 10 new Form D filings made by reporting issuers under Rule 505 in 2015, multiplied by 20%, equals 138. Rounding 138 to the nearest hundredth provides an estimate of 100 new Form D filings attributable to the amendments.

¹⁰ The information in this column is not based on the number of responses for Form D of 21,686, as reported in the OMB's Inventory of Currently Approved Information Collections, but rather on a new estimate of the average number of new Form D filings in each of the next three years. We prepared this estimate based on the historical trend of the annual number of new Form D filings. See note 7 above. Based on an average increase of approximately 1,515 new Form D filings per year over the past six years, we estimate that the number of new Form D filings after the amendment to Rule 504 would be the average number of new Form D filings we estimate in each of the next three years of 25,900, plus the additional 100 filings we estimate would be filed as a result of the amendment to Rule 504.

Collection of Information)

We anticipate that the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement will result in an incremental increase in the burdens and costs for issuers that rely on the Rule 504 exemption by requiring these issuers to conduct factual inquiries into the backgrounds of covered persons with regard to events that occurred before effectiveness of the final bad actor disqualification provisions. For purposes of the PRA, we estimate the total annual increase in paperwork burden for all affected Rule 504 issuers to comply with our new collection of information requirements would be approximately 880 hours of company personnel time and approximately \$9,600 for the services of outside professionals. These estimates include the incremental time and cost of conducting a factual inquiry to determine whether the Rule 504 issuers have any covered persons with past disqualifying events. The estimates also include the cost of preparing a disclosure statement that issuers will be required to furnish to each purchaser a reasonable time prior to sale.

In deriving our estimates, consistent with those assumptions used in the PRA analysis for the Rule 506 bad actor disqualification provisions,¹¹ we assume that:

- Approximately 800 issuers¹² relying on Rule 504 of Regulation D will spend on average one additional hour to conduct a factual inquiry to determine whether any covered persons had a disqualifying event that occurred before the effective date of the amendments; and
- On the basis of the factual inquiry, approximately eight issuers (or approximately 1%) will spend ten hours to prepare a disclosure statement describing matters that would have triggered disqualification under Rule 504(b)(3) of Regulation D had they occurred on or after the effective date of the amendments; and
- For purposes of the Rule 504(b)(3) disclosure statement, approximately eight issuers will retain outside professional firms to spend three hours on disclosure preparation at an average cost of \$400 per hour.

The increase in burdens and costs associated with conducting a factual inquiry for the disclosure statement requirement should be minimal given that issuers are likely to conduct simultaneously a similar factual inquiry for purposes of determining disqualification from Rule 504.

¹¹ See SEC Rel. No. 33-9414 (July 10, 2013).

¹² Based on staff analysis of Form D filings, there were 519 new Form D filings reporting reliance on Rule 504 and 179 new Form D filings reporting reliance on Rule 505 in 2015. Of the 179 new Form D filings reporting reliance on Rule 505 in 2015, 10 new Form D filings were made by reporting issuers under the Exchange Act and 169 new Form D filings were made by non-reporting issuers under the Exchange Act. For purposes of the PRA estimates, and based on the data provided for Rule 504 and Rule 505 offerings in 2015, we assume that approximately 800 issuers would file a Form D indicating reliance on Rule 504 after the effectiveness of the amendments to Rule 504 (calculated as follows: 519 new Rule 504 filings and 169 new Rule 505 filings by non-reporting issuers in 2015, rounded to the nearest hundredth, or 700 new Form D filings, plus 100 additional new Form D filings attributable to the amendments to Rule 504). This figure includes non-reporting issuers under the Exchange Act that, before adoption of amendments to Rule 504, would have conducted offerings pursuant to Rule 505, but that after adoption of the amendments to Rule 504 and repeal of Rule 505 will likely conduct their offerings pursuant to Rule 504.

14. COSTS TO FEDERAL GOVERNMENT

We estimate that the cost of preparing the amendments will be approximately \$150,000.

15. REASON FOR CHANGE IN BURDEN

Form D (OMB Control No. 3235-0076)

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 the number of Form D filings relying on Rule 504, or approximately 100 filings, under the amendments to Rule 504. The table below illustrates the changes in hour and cost burdens from the burden estimates currently approved by OMB.¹³

	Current Burden		New Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Cost (D)	Burden Hours (E)	Cost (F)
Form D	21,686	\$26,023,200	26,000	\$31,200,000	4,314	\$5,176,800

Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement (a New Collection of Information)

As explained in further detail in Items 12 and 13 above, the burden relates to new Rule 504(b)(3) disclosure requirements intended to inform Rule 504 offering purchasers of any past disqualifying events associated with the issuer and its covered persons. This is a new collection of information, so there is no change in burden.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collection is not used for statistical purposes.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

We request authorization to omit the expiration date on the electronic version of the Form D Notice of sales filed by issuers of securities under Regulation D. 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.

In regard to the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement, since this requirement does not involve submission of a form filed with the Commission

¹³ Columns (A) and (B) represent the most recent burden estimates submitted to OMB. Columns (C) and (D) represent the new burden estimates under the amendments. Columns (E) and (F) represent the program change, which encompasses the change in the burden estimates attributable to the amendments.

and is not required to be presented in any particular format, although it must be in writing, 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.