

**SUPPORTING STATEMENT FOR THE PAPERWORK REDUCTION ACT  
INFORMATION COLLECTION SUBMISSION FOR FINAL AMENDMENTS TO  
RULES 147 AND 147A**

**A. JUSTIFICATION**

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

On October 26, 2016, the Securities and Exchange Commission (the “Commission”) adopted Securities Act Rule 147A and amendments to Securities Act Rules 147 and 504 to facilitate intrastate and regional securities offerings.<sup>1</sup> Rule 147A and the amendments to Rule 147 modernize the existing intrastate offering exemption from the registration requirements for securities offerings. The final rules will be effective 150 days after publication in the Federal Register.

Rule 147 and new Rule 147A contain “collection of information” requirements within the meaning of the PRA. Specifically, Rules 147(f)(1)(iii) and 147A(f)(1)(iii) each contain a provision requiring issuers relying on the rules to “obtain a written representation from each purchaser as to his or her residence.” In response to comments received in the Proposing Release, the Commission decided not to eliminate the existing requirement and is adopting an identical requirement in new Rule 147A(f)(1)(iii) under the Securities Act.

Both Rule 147(f)(1)(iii) and new Rule 147A(f)(1)(iii) will require the issuer to obtain from the purchaser a written representation as to the purchaser’s residency. The representation is not required to be presented in any particular format, although it must be in writing. Representations obtained by the issuer are not required to be kept confidential, and there is no mandatory retention period.

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

In order to qualify for the exemptions under Rule 147 or Rule 147A, the purchaser in the offering must be a resident of the same state or territory in which the issuer is resident. Under the rules, an issuer will satisfy this requirement by either the existence of the fact that the purchaser is a resident of the applicable state or territory, or by establishing that the issuer has a reasonable belief that the purchaser of the securities in the offering is a resident of such state or territory.

In addition, issuers will be required to obtain a written representation from each purchaser as to his or her residence. While the formal representation of residency by itself is not sufficient to establish a reasonable belief that such purchasers are in-state residents, the representation requirement, together with the reasonable belief standard, may result in better compliance with the final rules.

The rules contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles for the collections of information are:

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<sup>1</sup> Exemptions to Facilitate Intrastate and Regional Securities Offerings, Release No. 33-10238 (Oct. 26, 2016) [81 FR 83494].

- “Rule 147(f)(1)(iii) Written Representation as to Purchaser Residency” and
- “Rule 147A(f)(1)(iii) Written Representation as to Purchaser Residency.”

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

The collection of information requirements under the adopted rules will not be provided to the Commission, either electronically or otherwise.

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

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

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

Overall, the adopted rules are designed to streamline and modernize the intrastate offering exemption for all issuers, both large and small. The written representation requirement contained in Rule 147(f)(1)(iii) and new Rule 147A(f)(1)(iii) will apply to all issuers, including small entities. While the Commission does not collect data on the number and size of Rule 147 offerings or the type of issuers currently relying on the Rule 147 safe harbor, the nature of the eligibility requirements and other restrictions of the rule lead us to believe that the adopted rules will be used by U.S. incorporated entities that are likely small businesses seeking to raise small amounts of capital locally without incurring the costs of registering with the Commission.

In connection with amended Rule 147 and new Rule 147A, we do not think it feasible or appropriate to establish different compliance or reporting requirements or timetables for small entities. The final rules are designed to facilitate access to capital for both large and small issuers, but particularly smaller issuers who may satisfy their financing needs by limiting the sales of their securities only to residents of the state or territory in which the issuers are resident. The written representation requirement contained in Rule 147(f)(1)(iii) and new Rule 147A(f)(1)(iii) was designed with the limited resources of smaller issuers in mind.

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

The purpose of the written representation requirement contained in Rule 147(f)(1)(iii) and new Rule 147A(f)(1)(iii) is to require all issuers conducting these intrastate offerings to obtain a consistent piece of evidence of each purchaser’s residency. Obtaining a written representation from a purchaser of in-state residency status will not, without more, be sufficient to establish a reasonable belief that such purchaser is an in-state resident.

In addition to the written representation, other facts and circumstances could include, but will not be limited to, for example, a pre-existing relationship between the issuer and the prospective purchaser that provides the issuer with sufficient knowledge about the prospective purchaser’s principal residence or principal place of business so as to enable the issuer to have a reasonable basis to believe that the prospective purchaser is an in-state resident. An issuer may

also consider other facts and circumstances when establishing the residency of a prospective purchaser, such as evidence of the home address of the prospective purchaser, as documented by a recently dated utility bill, pay-stub, information contained in state or federal tax returns, any documentation issued by a federal, state, or local government authority, such as a driver's license or identification card, or a public or private database that the issuer has determined is reasonably reliable, including credit bureau databases, directory listings, and public records.

**7. SPECIAL CIRCUMSTANCES**

No special circumstances at this time.

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

The Commission issued an adopting release soliciting comment on the "collection of information" requirements and associated paperwork burdens.<sup>2</sup> The collections of information were not contemplated at the time the proposing release was published, but were included in the final rules in response to comments received from the public on the proposing release.

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 on the proposing release prior to publishing the final rule. Comments received on the proposing release are available at <https://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 this collection of information. The information collection for the written representation requirement contained in Rule 147(f)(1)(iii) and new Rule 147A(f)(1)(iii) collects basic Personally Identifiable Information (PII) that may include name, business address, and residential address.

**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

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<sup>2</sup> *Id.*

comprehensive or even a representative survey of the costs of Commission rules and forms.

We anticipate that the requirement for issuers to obtain a written representation from each purchaser as to his or her residence, as required under Rule 147(f)(1)(iii) and Rule 147A(f)(1)(iii), could result in somewhat higher compliance costs for issuers to meet these requirements in order to sell securities in an exempt intrastate offering. For purposes of the PRA, for each of Rule 147 and Rule 147A, we estimate that the total annual paperwork burden for all affected issuers arising from this collection of information requirement will be approximately 175 hours of issuer (company) personnel time and approximately \$70,000 for the services of outside professionals.

Similarly, we anticipate that the written representation required by purchasers, including the obligation to determinate the state or territory of their residence, as required under Rule 147(f)(1)(iii) and Rule 147A(f)(1)(iii), will result in a burden incurred by purchasers in order to purchase securities in an exempt intrastate offering. For purposes of the PRA, for each of Rule 147 and Rule 147A, we estimate that the total annual paperwork burden for all affected purchasers arising from these collections of information requirements will be approximately 1,750 hours of purchaser time and no cost incurred for the services of outside professionals.

In deriving our estimates, we assume that:

- Approximately 700 issuers<sup>3</sup> will conduct a Rule 147 and Rule 147A offering each year, respectively, and each issuer will spend an average of fifteen minutes to obtain and collect the written representation from each purchaser in the offering as to his or her state or territory of residence, resulting in 175 issuer burden hours (annual) for each exemption;
- Each of the approximately 700 issuers will retain outside professional firms to spend an average of fifteen minutes helping the issuer comply with this requirement to obtain and collect the written statement of residency from each purchaser in the offering at an average cost of \$400 per hour, resulting in a cost of \$100 per issuer and an aggregate of \$70,000 (annual) for issuers for each exemption;
- Each Rule 147 and Rule 147A offering will have an average of approximately 10 purchasers of securities, resulting in approximately 7,000 purchasers per year for each exemption; and
- Each purchaser in a Rule 147 and Rule 147A offering will spend an average of approximately fifteen minutes preparing a written statement of residency to provide to the issuer and will incur no cost for the services of outside professionals to satisfy this requirement, resulting in an aggregate of 2.5 hours of purchaser time per offering and purchaser burden hours of 1,750 (annual) for each exemption.

Since Rule 147 does not require the issuer to file any type of notice form with the Commission, it is difficult to determine accurately the number of Rule 147 offerings conducted annually or estimate the annual number of offerings that will be made in reliance on the updated rule and the new Rule 147A exemption. As a result, we are using the number of offerings made in

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<sup>3</sup> We rely upon the number of offerings under Rules 504 and 505 of Regulation D for the year ended December 31, 2015 as a proxy for the average annual number of offerings under Rule 147 and new Rule 147A. 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. See Figure 1 in Section V.A.1, above. For purposes of these PRA estimates, we estimate that an average of 700 issuers will conduct a Rule 147 and new Rule 147A offering each year, respectively.

reliance on the exemptions in Rules 504 and 505 of Regulation D for the year ended December 31, 2015 as a proxy to estimate the average annual number of Rule 147 offerings, given that both Rule 147 and Rules 504 and 505 provide exemptions to Securities Act registration designed to facilitate smaller issuers raising seed capital. Given that Rule 147A is very similar to Rule 147, as amended, we are using this same methodology and estimate for the number of offerings under newly adopted Rule 147A.

In deriving our estimates, we recognize that these burdens and costs will likely vary among issuers based on the size of their offerings and the number of purchasers acquiring securities in their offerings and between natural person and legal entity purchasers. We believe that some will experience burdens and costs in excess of these estimated averages and others may experience less than these estimated average burdens and costs.

#### **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**

Rule 147:

This collection of information is contained in the final rule amendments to Rule 147. The Commission has not previously sought OMB approval of a collection of information for Rule 147. For purposes of the PRA, we estimate that the total annual paperwork burden for all affected issuers arising from the collection of information requirement in Rule 147 will be approximately 175 hours of issuer (company) personnel time and approximately \$70,000 for the services of outside professionals. In addition, we estimate that the total annual paperwork burden for all affected purchasers arising from the collection of information requirement in Rule 147 will be approximately 1,750 hours of purchaser time and no cost incurred for the services of outside professionals.

Rule 147A:

This is a new collection of information. For purposes of the PRA, we estimate that the total annual paperwork burden for all affected issuers arising from the collection of information requirement in Rule 147A will be approximately 175 hours of issuer (company) personnel time and approximately \$70,000 for the services of outside professionals. In addition, we estimate that the total annual paperwork burden for all affected purchasers arising from this collection of information requirement in Rule 147A will be approximately 1,750 hours of purchaser time and no cost incurred for the services of outside professionals.

#### **16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES**

The information collections are not used for statistical purposes.

**17. APPROVAL TO OMIT OMB EXPIRATION DATE**

The Commission is not seeking approval to omit the expiration date for OMB approval.

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

Not applicable.

**B. STATISTICAL METHODS**

Not applicable.