

SUPPORTING STATEMENT
FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION
SUBMISSION FOR SECURITIES ACT RULE 433

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

The Commission adopted Rule 433 on July 19, 2005, in Release 33-8591 (“Securities Offering Reform”). The rule was designed to reduce current restrictions on communications that issuers can make to investors during a registered offering of securities. Specifically, it governs the use and filing of a free writing prospectus. Rule 433 applies to any free writing prospectus with respect to the securities of an issuer (except as set forth in Rule 164), that are the subject of a registration statement that has been filed under the Securities Act of 1933. The free writing prospectus can include information that is not included in the registration statement. A free writing prospectus that satisfies the conditions of Rule 433 will be a prospectus under Section 10(b) of the Securities Act and will, for purposes of considering it a prospectus, be deemed to be public, without regard to its method of use or distribution, because it is related to the public offering of securities that are the subject of a filed registration statement. Rule 433 sets forth conditions that issuers must meet to use a free-writing prospectus.

2. Purpose and Use of the Information Collection

The primary purpose of the rule is to relax restrictions on communications that issuers can make to investors during a registered offering of securities.

3. Consideration Given to Information Technology

Rule 433 communications are filed electronically on EDGAR, except under limited conditions set forth in Rule 433(d).

4. Duplication of Information

There are no other filing requirements that duplicate this information.

5. Reducing the Burden on Small Entities

All issuers, including small business issuers, have discretion as to whether or not they want to disseminate written communications in the form of a free-writing prospectus. Furthermore, Rule 433 was adopted in connection with other revisions, all of which were intended to decrease costs and burdens for all issuers, including small business issuers, and enhance communications between issuers and investors.

6. Consequences of Not Conducting Collection

Rule 433 requires filing of written communications only when issuers choose to disseminate them in a free-writing prospectus. Less frequent collection could compromise investor protection.

7. Special Circumstances

Not applicable.

8. Consultations with Persons Outside the Agency

Rule 433 was proposed for public comment. No comments were received on this request during the 60-day comment period prior to OMB's review of this submission.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Estimate of Respondent Reporting Burden

We estimate that that the information is filed by 2,906 companies approximately 5.4026 times a year for a total of approximately 15,700 responses. We derived our burden hour estimates by estimating the average number of hours it would take an issuer to compile the necessary information and data, prepare and review disclosure, file documents and retain records. In connection with rule amendments to the form, we occasionally receive PRA estimates from public commenters about incremental burdens that are used in our burden estimates. We believe that the actual burdens will likely vary among individual issuers based on the nature of their operations. We further estimate that 25% of the collection of information burden is carried by the issuer internally and that 75% of the burden of preparation is carried by outside professionals retained by the company. Based on our estimates, we calculated the total reporting burden to be 5,024 hours (0.32 hours per response x 15,700 responses). For administrative convenience, the

presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest dollar. The estimated burden hours are made solely for the purpose of the Paperwork Reduction Act.

13. Estimate of Total Annualized Cost Burden

We estimated that 75% of the 1.28 hours per response (0.96 hours) is prepared by the issuer's outside counsel. We estimate that Rule 433 compliance will cost \$400 per hour (\$400 x 0.96 hours per response x 15,700 responses) for a total cost of \$6,028,800. We estimate an hourly cost of \$400 for outside legal and accounting services used in connection with public company reporting. This estimate is based on our consultations with registrants and professional firms who regularly assist registrants in preparing and filing disclosure documents with the Commission. Our 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. For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest dollar. The cost estimate is made solely for the purpose of the Paperwork Reduction Act.

14. Costs to Federal Government

The estimated cost to the federal government is \$125,000.

15. Reason for Change in Burden

The increase of 1,834 burden hours and the increase of \$2,201,088 in cost burden is due to an adjustment. The change in burden hours and cost burden is due to an increase in the number of Rule 433 free writing prospectuses filed with the Commission.

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.