

**SUPPORTING STATEMENT
for the Paperwork Reduction Act
Information Collection Submission
“Rule 10A-1”**

A. Justification

1. Necessity of Information Collection

Title III of the Private Securities Litigation Reform Act of 1995, Public Law No. 104-67, enacted on December 22, 1995, amended the Securities Exchange Act of 1934 (the “Exchange Act”) to add section 10A, 15 U.S.C. § 78j-1. This section requires, among other things, that a registrant notify the Commission within one business day after the board of directors of the registrant is informed by the auditor of its financial statements that the auditor reasonably expects to resign the audit engagement or to modify its audit report due to an unremediated illegal act,¹ committed by the registrant, that has a material effect on the registrant’s financial statements. If the registrant does not notify the Commission within that period, then the auditor, within the next business day, must resign the engagement or furnish a copy of the “illegal acts report” that it gave to the board (or documentation of any oral report) directly to the Commission.

Rule 10A-1 under the Exchange Act implements the reporting requirements in section 10A. If Rule 10A-1 is not extended, registrants and auditors will not know whether to file the notice or report on a public disclosure form or in a confidential letter, which office should receive the notice or report, what type of communication, if any, should accompany the notice or report, or how the notice or report affects other reporting obligations of the registrant and the auditor.

Reporting, recordkeeping, and other compliance requirements imposed by the rule, beyond those mandated by section 10A of the Exchange Act, Regulation S-X² and current auditing standards of the Public Company Accounting Oversight Board, are de minimis.

The notice filed by the registrant under Rule 10A-1 is based on the report the board of directors receives from its auditor. The notice is relatively short, consisting of an identification of the registrant and the auditor, the date that the auditor made its report to the board of directors, and a summary of the auditor’s report. This information is readily available to the registrant without additional information gathering or recordkeeping.

The report to be filed by the auditor under Rule 10A-1 consists only of the report it made to the board of directors in accordance with section 10A and any necessary identifying information. The rule, therefore, adds little, if any, reporting or recordkeeping burden. Further, the auditor may deliver the report to the Commission’s Office of the Chief Accountant (“OCA”) in the means most cost-effective to the auditor, provided only that the report is received within the time period prescribed in the statute.

2. Purposes and Use of the Information Collection

¹ Section 10A(f) defines the term “illegal act” to mean “an act or omission that violates any law, or any rule or regulation having the force of law.”

² 17 CFR 210.

Rule 10A-1 is based on the premise that the notice and reports under section 10A of the Exchange Act provide the Commission with an early warning of illegal acts by registrants, thereby assisting the Commission in performing its enforcement responsibilities. The failure to collect this information would deprive the Commission of this valuable source of information.³

Section 10A notices and reports also improve the quality of public disclosures. Although the section 10A notices and reports are nonpublic, it is unlikely that registrants or auditors will make public disclosures that are inconsistent with the nonpublic reports. Moreover, the reporting requirements in section 10A give auditors additional leverage to prompt management to correct illegal acts and make appropriate adjustments to their public financial statements.

3. Consideration Given to Information Technology

Rule 10A-1 permits delivery to OCA of the notice or report required by section 10A in any manner. The staff has provided guidance indicating that it prefers any notice submitted pursuant to Rule 10A-1 be delivered by email to the address 10Aletters@sec.gov.⁴

4. Efforts to Identify Duplication

As noted above, the rule is based on the premise that the notices and reports under section 10A are to assist the Commission in performing its enforcement responsibilities. Similar information may be included in subsequent public disclosures (e.g., under Item 4.01 or 4.02 of Form 8-K).

The Commission's public disclosure requirements existed before section 10A was enacted. Congress adopted section 10A, in part, to expedite notice to the Commission of information that subsequently would be included in the more deliberately crafted public disclosures. This in turn facilitates more expeditious Commission investigations of registrants' illegal acts. Thus, section 10A reports can be seen as not duplicative of public disclosure requirements.

To the extent that section 10A reports are duplicative of later, public reports, it is important to note that the information contained in confidential section 10A reports and notices forms the basis for, and is consistent with, the information provided in the registrant's later public disclosures. Accordingly, any duplication should not result in significant additional recordkeeping or reporting burdens on registrants.

5. Effect on Small Entities

Rule 10A-1 impacts small entities in the same manner as other registrants. The rule, however, requires the minimum amount of additional information that is necessary to implement

³ In this sense, the section 10A notices and reports differ from most other SEC forms and rules, the principal purpose of which is to make information available to the securities markets. Whereas the SEC generally uses very little of the collected information itself, which differs significantly from most other federal information collections that are primarily for the use and benefit of the collecting agency, the section 10A notices and reports are provided primarily for the benefit of the SEC and its enforcement function.

⁴ See Guidance on Submission of Notices to the Office of the Chief Accountant (<http://www.sec.gov/about/offices/oca/10a1notices.htm>).

the statutory reporting requirement. It would be difficult to further simplify, consolidate, or adjust compliance standards and continue to fulfill the statutory purpose for section 10A notices and reports. Such attempts would not yield significant, if any, resource savings for small entities.

6. Consequences of Less Frequent Collection

Not applicable.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Rule 10A-1 provides that the section 10A notices and reports delivered to OCA are deemed to be non-public to the same extent and for the same period of time as the Commission's investigative records used for law enforcement purposes. Such treatment does not impede unnecessarily the sharing of this information with other law enforcement agencies in appropriate circumstances.

8. Consultations Outside the Agency

Prior to submission for OMB review, Rule 10A-1 was proposed for public comment. [No comments were received on this request during the 60-day period prior to OMB's review.]

The basic provisions in section 10A were included in several bills introduced in Congress before their ultimate adoption as Title III to the Private Securities Litigation Reform Act of 1995. Congressional hearings regarding these bills elicited information regarding the costs and benefits of the reporting provisions in those bills, as well as the availability of the data, the time frame for delivering the information to the Commission, and so forth. As noted above, the provisions and procedures in Rule 10A-1 are considered to be the minimum necessary to implement the statute.

In addition, the Commission staff meets periodically with the staffs of the Financial Accounting Standards Board, various committees of the American Institute of Certified Public Accountants, and the Public Company Accounting Oversight Board to discuss matters of mutual interest, including financial reporting matters. The Commission staff also periodically meets with representatives of the public, including investors, registrants, auditors, and members of the business community, to discuss, among other things, the Commission's reporting and disclosure requirements.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality

Rule 10A-1(c) provides that notices and reports furnished to OCA in accordance with section 10A of the Exchange Act and Rule 10A-1 are non-public and exempt from disclosure pursuant to the Freedom of Information Act to the same extent and for the same period of time

that the Commission's investigative records are non-public and exempt from disclosure under, among other provisions, 5 U.S.C. 552(b)(7).

The basis for this treatment stems from the fact that the notices and reports are provided to the Commission staff for law enforcement purposes and, accordingly, are treated the same as any other document the Commission may receive during an enforcement investigation.

11. Sensitive Questions

Not applicable.

12. Burden of Information Collection

As noted above, the section 10A reporting requirements are applicable to each registrant under the Exchange Act that receives a report from the auditor of its financial statements that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The report is filed by the registrant, or by the registrant's auditor if the registrant fails to fulfill its reporting obligation. Satisfaction of these conditions precedent to the reporting requirement in section 10A historically has been rare. On average, over the 22 years the reporting requirement has been in place, approximately five reports per year have been filed.

When the reporting requirements in the statute are triggered, additional recordkeeping or reporting burdens for registrants and auditors under Rule 10A-1 are de minimis. Costs to registrants may include converting the information in the auditor's report to the board of directors into a notice that conforms to Rule 10A-1 and delivering that notice to OCA. Costs for the auditor may include assuring that the report to the board of directors identifies the registrant and delivering that report to OCA.

As a result of the high reporting threshold in section 10A, it is estimated that five notices and reports will be filed in accordance with Rule 10A-1 each year. It also is estimated that no registrant will provide such a notice, and that no auditor will deliver such a report regarding a particular registrant, more than once. Due to the minimum information required by Rule 10A-1 beyond that mandated by the statute, and the limited time that registrants and auditors have under section 10A to furnish their notices and reports to OCA, no more than one hour burden should result from compliance with Rule 10A-1 for each response. It is estimated, therefore, that the aggregate annual burden from compliance with Rule 10A-1 should be five hours.

13. Costs to Respondents

Because the statute (not Rule 10A-1) requires performance of the procedures that generate the information that is included in any notice or report provided to OCA, the fact that the statute (not Rule 10A-1) requires the placement of that information into a written report (or documentation of an oral report) by the auditor, the fact that the statute (not Rule 10A-1) requires that the notices and reports are to be provided to the Commission, the respective statutory one

day time periods for delivering the notices and reports to the Commission, and the minimal additional information requirements imposed by Rule 10A-1, it results in neither registrants nor auditors incurring any additional capital, start-up, operation, or maintenance costs.

14. Cost to the Federal Government

Annualized cost to the federal government is negligible.

15. Changes in Burden

Not applicable.

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Explanation as to Why the Expiration Date Will Not be Displayed

The Commission seeks approval not to display the expiration date for OMB approval of the information collection. Because Rule 10A-1 implements the specific reporting requirements in section 10A of the Exchange Act, the collection of information under Rule 10A-1 is a continuous and permanent one, and assigning an expiration date would confuse registrants and their auditors. It may mislead registrants or auditors into believing that the reporting requirement mandated by the statute, rather than the procedures for providing that information to the Commission as set forth in the rule, may expire.

Since the reporting requirement will be continuous and permanent, display of the expiration date would be an inefficient use of agency resources given that the Commission would have to reprint the General Rules and Regulations under the Securities Exchange Act of 1934 each time it receives reauthorization of the control number.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

This collection does not involve statistical methods.