

**SUPPORTING STATEMENT FOR THE PAPERWORK REDUCTION ACT  
INFORMATION COLLECTION SUBMISSION FOR FINAL AMENDMENTS TO  
SMALLER REPORTING COMPANY DEFINITION**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, *et seq.*

**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. In addition, the Securities Exchange Act of 1934,<sup>2</sup> as amended (the “Exchange Act”), empowers the Commission to require periodic reporting of information by companies with publicly traded securities. These disclosure requirements are contained in Regulation S-K<sup>3</sup> and Regulation S-X<sup>4</sup> and are imposed through Commission forms and schedules that are subject to the requirements in those regulations.

The Commission’s disclosure system provides accommodations in the form of scaled disclosure requirements for certain categories of smaller registrants, including those qualifying as “smaller reporting companies,” as defined in Securities Act Rule 405,<sup>5</sup> Exchange Act Rule 12b-2,<sup>6</sup> and Item 10(f) of Regulation S-K.<sup>7</sup> Substantively, the three definitions are identical.

On June 28, 2018, in Release No. 33-10513, the Commission adopted amendments to the definition of “smaller reporting company” (“SRC”) to expand the number of registrants that qualify as smaller reporting companies and thereby are eligible to rely on the scaled disclosure requirements. Under the amended definition, SRCs generally include registrants with a public float of less than \$250 million, as compared to the \$75 million threshold under the prior definition. The amended definition also includes registrants with revenues of less than \$100 million in the previous year and either no public float or public float of less than \$700 million. This reflects a change from the revenue test in the prior definition, which allowed companies to provide scaled disclosure only if they had no public float and less than \$50 million in annual revenues.

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<sup>1</sup> 15 USC 77a *et seq.*

<sup>2</sup> 15 USC 78a *et seq.*

<sup>3</sup> 17 CFR 229.10 *et seq.*

<sup>4</sup> 17 CFR 210.1-01 *et seq.*

<sup>5</sup> 17 CFR 230.405.

<sup>6</sup> 17 CFR 240.12b-2.

<sup>7</sup> 17 CFR 229.10(f).

In addition, the Commission adopted amendments to Rule 3-05(b)(2)(iv) of Regulation S-X to align the prior \$50 million revenue threshold in that rule with the new \$100 million revenue threshold in the SRC definition. The amendments to Rule 3-05 decrease the disclosure burden for registrants acquiring other companies by increasing the number of acquired companies for which Rule 3-05(b)(2)(iv) of Regulation S-X permits one less year of financial information to be disclosed.

The amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>8</sup> The titles of the collections of information are:

- (1) “Regulation S-K” (OMB Control No. 3235-0071);
- (2) “Regulation S-X” (OMB Control No. 3235-0009);
- (3) “Regulation C” (OMB Control No. 3235-0074);
- (4) “Regulation 12B” (OMB Control No. 3235-0062);
- (5) “Form 10-K” (OMB Control No. 3235-0063);
- (6) “Form 10-Q” (OMB Control No. 3235-0070);
- (7) “Form 8-K” (OMB Control No. 3235-0060);
- (8) “Regulation 14A and Schedule 14A” (OMB Control No. 3235-0059);
- (9) “Regulation 14C and Schedule 14C” (OMB Control No. 3235-0057);
- (10) “Form 10” (OMB Control No. 3235-0064);
- (11) “Form S-1” (OMB Control No. 3235-0065);
- (12) “Form S-3” (OMB Control No. 3235-0073);
- (13) “Form S-4” (OMB Control No. 3235-0324); and
- (14) “Form S-11” (OMB Control No. 3235-0067).

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

The purpose of the new collection of information is to make scaled disclosure accommodations available to a larger number of registrants in order to reduce compliance costs for those registrants and promote capital formation and while maintaining appropriate investor protections. The amendments should decrease the disclosure requirements for:

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<sup>8</sup> 44 USC 3501 *et seq.*

- some registrants with a calculable public float of more than \$75 million but less than \$250 million;
- some registrants with no public float and revenues of \$50 million or more but less than \$100 million; and
- some registrants with public float of \$250 million or more but less than \$700 million and revenues of less than \$100 million.

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

Reports on Form 10-K, Form 10-Q, and Form 8-K, proxy statements on Schedule 14A, information statements on Schedule 14C, and registration statements on Form 10, Form S-1, Form S-3, Form S-4, and Form S-11, subject to temporary and continuing hardship exemptions available under Regulation S-T,<sup>9</sup> are required to be filed electronically with the Commission using the Commission’s Electronic Data Gathering, Analysis and Retrieval (“EDGAR”) system.

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

The final rules do not duplicate, overlap, or conflict with other federal rules.

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

The amendments increase the thresholds in the SRC definition and Rule 3-05 of Regulation S-X, making scaled disclosure accommodations available to a greater number of registrants. We believe it is likely that virtually all entities that qualify as a “small business” or “small organization” under 17 CFR 230.157 are already encompassed within the current SRC definition and the current revenue threshold in Rule 3-05(b)(2)(iv) of Regulation S-X and will continue to be encompassed within the revised thresholds contained in the final rules. To the extent any small business or small organization is not already encompassed within the current SRC definition and the current revenue threshold in Rule 3-05(b)(2)(iv) of Regulation S-X, we believe it is likely that the revised thresholds contained in the final rules will capture those entities. Accordingly, the amendments may decrease existing collection of information total burden estimates, or not affect them at all, for some reports on Form 10-K, Form 10-Q, and Form 8-K, some proxy statements on Schedule 14A, some information statements on Schedule 14C, and some registration statements on Form 10, Form S-1, Form S-3, Form S-4, and Form S-11, filed by small businesses or small organizations that meet the amended SRC definition.

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

The regulations and forms set forth the disclosure requirements for registration periodic and current reports filed by companies to help investors make informed investment. Not conducting this collection would deprive investors of access to information that is important to their voting and investment decisions.

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<sup>9</sup> 17 CFR 223.201 and 223.202.

## **7. SPECIAL CIRCUMSTANCES**

Not applicable.

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

On June 27, 2016, the Commission issued Release No. 33-10107 proposing amendments to the SRC definition and soliciting comment on the new “collection of information” requirements and the associated paperwork burdens. In response to the solicitation for comment in the proposing release, registrants, investors, and other market participants provided comments. The Commission received one comment relating to our Paperwork Reduction Act analysis. As discussed in Section V.C. of Release No. 33-10513, this commenter stated that the proposed adjustment to the SRC definition is fair and that the details provided as the basis for the cost reduction estimates appear to be thorough and specific. In addition, the Commission and staff participated in ongoing dialogue with representatives of various market participants through public conferences, roundtables, and meetings. All comments received on the proposal are available at <https://www.sec.gov/comments/s7-12-16/s71216.htm>. The Commission considered all comments received prior to publishing the final rules as required by 5 CFR 1320.11(f).

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

Not applicable.

## **10. CONFIDENTIALITY**

The proposed rules do not prevent requests for confidential treatment from being made under the Commission’s existing rules. Otherwise, the collections of information are public documents.

## **11. SENSITIVE QUESTIONS**

Regulation 14C and Schedule 14C, Regulation 14A and Schedule 14A, Form 10-K, Form 10, Form S-1, Form S-11, Form 10-Q, Form S-3, and Form S-4. The information collection collects basic Personally Identifiable Information (PII) that may include a name and job title. However, the agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on January 29, 2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

No information of a sensitive nature, including social security numbers, will be required under Regulation 12B, Regulation S-K, Regulation S-X and Regulation C. These collections of information do 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. AND 13. ESTIMATES OF HOUR AND COST BURDENS

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 not derived from a comprehensive or even a representative survey of the costs of Commission rules and forms. The estimated decreases reflect the estimated decreases for registrants that will be newly eligible as smaller reporting companies under the amended definition. In addition, for quarterly and annual reports and for proxy and information statements, we estimate that 75% of the burden of preparation is carried by the registrant internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average cost of \$400 per hour.<sup>10</sup> For registration statements, we estimate that 25% of the burden of preparation is carried by the registrant internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of \$400 per hour.

The table below shows the estimated decrease in burdens, in hours and in costs, under the amendments for each report or statement affected.<sup>11</sup> For each report or statement, we estimated the number of registrants that will become newly eligible to use scaled disclosure for smaller reporting companies and the burden and cost savings if these registrants use all of the scaled disclosure requirements. However, we assume that a portion of these newly eligible smaller reporting companies either (1) will not elect to rely on all of the available scaled disclosure accommodations or (2) will already qualify as emerging growth companies, which are eligible to rely on certain scaled disclosure requirements for a limited period, including some of the scaled requirements available to smaller reporting companies. Accordingly, we estimate that approximately 80% of these savings will be realized, except in the case of Form 10 and Form S-11, where due to the low number of filers and rounding considerations, we assume that newly eligible registrants would realize the full extent of these savings.

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<sup>10</sup> We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that such costs would be an average of \$400 per hour. This estimate is based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing reports with the Commission.

<sup>11</sup> For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number. The paperwork burdens from Regulation S-K, Regulation S-X, Regulation 12B, and Regulation C are imposed through the forms that are subject to the requirements in these regulations and are reflected in the analysis of those forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to each of Regulation S-K, Regulation S-X, Regulation 12B, and Regulation C.

We estimate that the amendments to Rule 3-05 may decrease the existing paperwork burden for some registrants but not change the total burden estimates for Form 8-K. This reflects our appraisal that few registrants were eligible to rely on the \$50 million threshold in Rule 3-05(b)(2)(iv) and our expectation that the amendments will not significantly change the number of registrants that are eligible to rely on Rule 3-05(b)(2)(iv). This also is consistent with the Commission's estimate of the impact on the compliance burden for Form 8-K when it revised Rule 3-05 of Regulation S-X in 2007 to increase the threshold in Rule 3-05(b)(iv) from \$25 million to \$50 million.

**Table 1A. Decreased Paperwork Burden under the Final Rules: Burden Hours**

	Estimated No. of Newly Eligible SRCs (A)	Full Election		Likely Total Decrease in Burden Hours (D)=(C)*80% <sup>12</sup>
		Decrease in Burden Hours per Affected Response (B)	Total Decrease in Burden Hours (C)=(A)*(B)	
Form 10-K	966	521.80	504,063	403,250
Form 10-Q	966	38.33	37,027	29,621
Schedule 14A	802	.75	602	481
Schedule 14C	18	.75	15	11
Form 10	1	9.30	9	9
Form S-1	25	7.25	181	145
Form S-3	190	.25	48	38
Form S-4	35	7.25	254	203
Form S-11	2	7.25	15	15

**Table 1B. Decreased Paperwork Burden under the Final Rules: Professional Costs**

	Estimated No. of Newly Eligible SRCs (A)	Full Election		Likely Total Decrease in Professional Costs (D)=(C)*80% <sup>13</sup>
		Decrease in Professional Costs per Affected Response (B)	Total Decrease in Professional Costs (C)=(A)*(B)	
Form 10-K	966	\$69,660	\$67,291,651	\$53,833,321
Form 10-Q	966	\$5,112	\$4,938,192	\$3,950,554
Schedule 14A	802	\$100	\$80,200	\$64,160
Schedule 14C	18	\$100	\$1,800	\$1,440
Form 10	1	\$11,163	\$11,163	\$11,163
Form S-1	25	\$8,700	\$217,500	\$174,000
Form S-3	190	\$300	\$57,000	\$45,600
Form S-4	35	\$8,700	\$304,500	\$243,600
Form S-11	2	\$8,700	\$17,400	\$17,400

**Form 10-K**

We estimate that approximately 966 additional registrants will satisfy the revised definition of a SRC and become eligible to use scaled disclosure in their annual reports on Form 10-K. These registrants could experience burden and cost savings under the final rules. We estimate that, if all of these registrants used all of the scaled disclosure requirements, they would save an estimated 504,063 burden hours and an aggregate cost of \$67,291,651.

Based on our assumption that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 403,250 internal burden hours and costs of \$53,833,321 for Form 10-K.

<sup>12</sup> Except with respect to Form 10 and Form S-11, as described above.

<sup>13</sup> Except with respect to Form 10 and Form S-11, as described above.

## **Form 10-Q**

We assume that the same approximately 966 registrants will become newly eligible to use scaled disclosure for purposes of their quarterly reports. We estimate that if all of these registrants used all of the scaled SRC requirements, they would save 37,027 burden hours and an aggregate cost of \$4,938,192.

Assuming that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 29,621 internal burden hours and costs of \$3,950,554 for Form 10-Q.

## **Schedule 14A**

We estimate that registrants newly eligible to use scaled disclosure will file approximately 802 definitive proxy statements on Schedule 14A per year. We estimate that if all of these registrants used all of the scaled SRC requirements, they would save 602 burden hours and an aggregate cost of \$80,200.

Assuming that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 481 internal burden hours and costs of \$64,160 for Schedule 14A.

## **Schedule 14C**

We estimate that registrants newly eligible to use scaled disclosure will file approximately 18 definitive information statements on Schedule 14C per year. We estimate that if all of these registrants used all of the scaled SRC requirements, they would save 15 burden hours and an aggregate cost of \$1,800.

Assuming that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease in burden of 11 internal burden hours and costs of \$1,440 for Schedule 14C.

## **Form 10**

We estimate that registrants newly eligible to use scaled disclosure will file one registration statements on Form 10 per year. Assuming that this registrant uses all of the scaled SRC requirements, we estimate an aggregate decrease of nine internal burden hours and cost of \$11,163 for Form 10. Due to the low number of Form 10 filers and rounding considerations, we assume that all newly eligible registrants filing Form 10 will begin to use scaled disclosure and therefore realize the full extent of burden and cost savings.

### **Form S-1**

We estimate that registrants newly eligible to use scaled disclosure will file approximately 25 registration statements on Form S-1 per year. We estimate that if all of these registrants use all of the scaled SRC requirements, they would save 181 burden hours and an aggregate cost of \$217,500.

Assuming that 80% of these newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 145 internal burden hours and costs of \$174,000 for Form S-1.

### **Form S-3**

We estimate that registrants newly eligible to use scaled disclosure will file approximately 190 registration statements on Form S-3 per year. We estimate that if all of these registrants use all of the scaled SRC requirements, they would save 48 burden hours and an aggregate cost of \$57,000.

Assuming that 80% of the newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 38 internal burden hours and costs of \$ 45,600 for Form S-3.

### **Form S-4**

We estimate that registrants newly eligible to use scaled disclosure will file approximately 35 registration statements on Form S-4 per year. We estimate that if all of these registrants use all of the scaled SRC requirements, they would save 254 burden hours and an aggregate cost of \$304,500.

Assuming that 80% of newly eligible registrants will begin to use scaled disclosure, we estimate an aggregate decrease of 203 internal burden hours and costs of \$243,600 for Form S-4.

### **Form S-11**

We estimate that registrants newly eligible to use scaled disclosure will file approximately two registration statements on Form S-11 per year. Assuming that both of these registrants use all of the scaled SRC requirements, we estimate an aggregate decrease of 15 burden hours and cost of \$17,400 for Form S-11.

Due to the low number of Form S-11 filers and rounding considerations, we assume that both of the newly eligible registrants filing Form S-11 will begin to use scaled disclosure and realize the full extent of burden and cost savings.

## **14. COSTS TO FEDERAL GOVERNMENT**

The estimated cost of preparing the final rules was approximately \$150,000.



## **15. REASON FOR CHANGE IN BURDEN**

The estimated changes in burdens for certain forms changed significantly from the estimated changes at the time the rules were proposed due to (1) substantive differences between the proposed and final rules made in response to public comment; (2) changes in the filing years used to estimate the number of affected filings – more recent filing year numbers were used at the adopting stage to have more current estimates than used at the proposing stage; and (3) changes in the average burdens for such forms due to unrelated rule and form changes that occurred between proposal and adoption of these rules.

A significant change was made to the final rules that caused an additional category of registrants to meet the revised definition of a “smaller reporting company.” Specifically, in response to commenters’ suggestions, the final rules define companies with a public float over \$250 million, but under \$700 million, and less than \$100 million in annual revenues. This effect of that change is that an estimated 161 additional companies qualify as smaller reporting companies over the proposed estimate and are eligible to take advantage of the scaled disclosure requirements.

The estimated total number of respondents and estimated number of annual responses for the information collections described in this supporting statement did not change as a result of the amendments. The amendments affected only smaller reporting companies, a subset of the respondents. We estimate that the newly eligible smaller reporting companies will still make the same number of responses but will incur a decreased number of burden hours associated with the scaled disclosure requirements. Table 2 below illustrates the changes to the total annual compliance burden of the collection of information in hours and cost, respectively. The total estimated burdens were calculated by deducting the incremental burden savings from the existing burdens. Then, the requested burdens and costs per response were calculated by dividing the requested burden estimates by the number of annual responses, which is not expected to change as a result of the amendments.

**Table 2A. Calculation of Burden Hours per Response**

	Annual Responses (A)	Current Burden Hours (B)	Decrease in Burden Hours (C)	Proposed Burden Hours (D)=(B)-(C)	Proposed Burden Hours per Response (E)=(D)/(A)
Form 10-K	8,137	14,620,594	403,250	14,217,344	1,747.2464
Form 10-Q	22,907	3,271,578	29,621	3,241,957	141.5269
Schedule 14A	5,586	546,814	481	546,333	97.8039
Schedule 14C	569	55,881	11	55,870	98.1898
Form 10	216	11,783	9	11,774	54.5092
Form S-1	901	151,143	145	150,998	167.5893
Form S-3	1,657	196,968	38	196,930	118.8473
Form S-4	551	565,282	203	565,079	1,025.5517
Form S-11	64	12,529	15	12,514	195.5312

**Table 2B. Calculation of Costs per Response**

	Annual Responses (A)	Current Cost (B)	Decrease in Costs (C)	Proposed Cost (D)=(B)-(C)	Proposed Cost per Response (E)=(D)/(A)
Form 10-K	8,137	\$1,950,114,190	\$53,833,321	\$1,896,280,869	\$233,044
Form 10-Q	22,907	\$436,240,908	\$3,950,554	\$432,290,354	\$18,872
Schedule 14A	5,586	\$72,908,472	\$64,160	\$72,844,312	\$13,041
Schedule 14C	569	\$7,451,624	\$1,440	\$7,450,184	\$13,093
Form 10	216	\$14,140,051	\$11,163	\$14,128,888	\$65,412
Form S-1	901	\$181,371,300	\$174,000	\$181,197,300	\$201,107
Form S-3	1,657	\$236,367,636	\$45,600	\$236,322,036	\$142,620
Form S-4	551	\$678,338,304	\$243,600	\$678,094,704	\$1,230,662
Form S-11	64	\$15,034,368	\$17,400	\$15,016,968	\$234,640

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

Not applicable.

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

We request authorization to omit the expiration date on the electronic version of the form. 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.