SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

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

In Release No. 33-9723,[1] the Commission proposed amendments to implement Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[2] Section 955 of the Dodd-Frank Act added Section 14(j) to the Securities Exchange Act of 1934 ("Exchange Act"), which directs the Commission to adopt rules requiring registrants to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or director, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities either: (1) granted to the employee or director by the issuer as part of the compensation of the employee or director; or (2) held, directly or indirectly, by the employee or director.

The Commission proposed amendments to require registrants to provide this disclosure. The proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995. The titles of the collections of information impacted by the amendments are:

- "Regulation S-K" (OMB Control No. 3235-0071);
- "Regulation 14A and Schedule 14A" (OMB Control No. 3235-0059);
- "Regulation 14C and Schedule 14C" (OMB Control No. 3235-0057); and
- "Rule 20a-1 under the Investment Company Act of 1940, Solicitation of Proxies, Consents, and Authorizations" (OMB Control No. 3235-0158)

Regulation 14A sets forth the requirements for the dissemination, content and filing of proxy or consent solicitation materials in connection with annual or other meetings of holders of a class of securities registered under Section 12 of the Exchange Act. Regulation 14C sets forth the requirements for the dissemination, content and filing of an information statement in connection with annual or other meetings of holders of a class of securities registered under Section 12 of the Exchange Act when a proxy or consent is not being solicited.

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[1] Disclosure of Hedging by Employees, Officers and Directors, Release No. 33-9723 [80 FR 8485].

[2] Pub. L. No. 111-203, 124 Stat. 1900 (July 21, 2010).

Rule 20a-1 under the Investment Company Act of 1940 states that no person shall solicit or permit the use of his or her name to solicit any proxy, consent, or authorization with respect to any security issued by a registered Fund, except upon compliance with Regulation 14A, Schedule 14A and all other rules and regulations adopted pursuant to Section 14(a) of the Securities Exchange Act of 1934 that would be applicable to such solicitation if it were made in respect of a security registered pursuant to Section 12 of the Exchange Act. An instruction to the rule states that registrants that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited should refer to Section 14(c) of the Exchange Act and the information statement requirements set forth in the rules thereunder.

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The purpose of the amendments is to implement Section 955 of the Dodd-Frank Act, which added Section 14(j) to the Exchange Act. A report issued by the Senate Committee on Banking, Housing, and Urban Affairs stated that Section 14(j) is intended to "allow shareholders to know if executives are allowed to purchase financial instruments to effectively avoid compensation restrictions that they hold stock long-term, so that they will receive their compensation even in the case that their firm does not perform."[3] In this regard, the Commission inferred that the statutory purpose of Section 14(j) is to provide transparency to shareholders, if action is to be taken with respect to the election of directors, about whether employees or directors are permitted to engage in transactions that mitigate or avoid the incentive alignment associated with equity ownership. Neither Section 14(j) nor the proposed amendments would require a company to prohibit hedging transactions or to otherwise adopt practices or a policy addressing hedging by any category of individuals.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the proposed amendments would affect Schedules 14A, Schedules 14C and Rule 20a-1 under the Investment Company Act of 1940, which refers to information required in Schedules 14A and 14C. These forms are filed electronically with the Commission using the Commission's Electronic Data Gathering and Retrieval (EDGAR) system.

4. DUPLICATION OF INFORMATION

In order to reduce potentially duplicative disclosure between proposed Item 407(i) and the existing requirement for CD&A under Item 402(b) of Regulation S-K, the Commission proposed to add an instruction to Item 402(b) providing that a company may satisfy its obligation to disclose material policies on hedging by named executive officers in the CD&A by cross referencing the information disclosed pursuant to proposed Item 407(i) to the extent that the information disclosed there satisfies this CD&A disclosure

[3] See Report of the Senate Committee on Banking, Housing, and Urban Affairs, S. 3217, Report No. 111-176 (Apr. 30, 2010) ("Senate Report 111-176").

requirement. This instruction, like the Item 407(i) disclosure requirement, would apply to the company's proxy or information statement with respect to the election of directors.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The proposed amendments would affect some companies that are small entities that have a class of securities that are registered under Section 12 of the Exchange Act. The Commission estimated that there are approximately 428 issuers that may be considered small entities. The proposed amendments would affect small entities that have a class of securities that is registered under Section 12 of the Exchange Act. An investment company, including a business development company, is considered to be a "small business" if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. The Commission estimated that there are approximately 29 investment companies that would be subject to the proposed amendments that may be considered small entities.

The proposed amendments would require clear and straightforward disclosure of whether employees or directors are permitted to engage in transactions to hedge or offset any decrease in the market value of equity securities granted to them as compensation, or directly or indirectly held by them. Given the straightforward nature of the proposed disclosure, the Commission did not believe that it is necessary to simplify or consolidate the disclosure requirement for small entities. The Commission proposed to use a principles-based approach to identify transactions that would hedge or offset any decrease in the market value of equity securities. Additionally, the amendments did not specify any specific procedures or arrangements a company must develop to comply with the standards, or require a company to have or develop a policy regarding employee and director hedging activities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

Schedule 14A and Schedule 14C set forth the disclosure requirements for proxy and information statements filed by issuers to help investors make informed investment decisions. Less frequent collection of the information required by the proposed amendments would frustrate the statutory intent of Section 14(j) of the Exchange Act because there would not be transparency to shareholders, if action is to be taken with respect to the election of directors, about whether employees or directors are permitted to engage in transactions that mitigate or avoid the incentive alignment associated with equity ownership.

7. SPECIAL CIRCUMSTANCES

None

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission issued a release soliciting comment on the new "collection of information" requirements and associated paperwork burdens.[4] 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 considers all comments received. Comments received on the proposed amendments are available at https://www.sec.gov/comments/s7-01-15/s70115.shtml .

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 these collections of information. The information collections collect basic Personally Identifiable Information (PII) that may include name and job title. However, the agency has determined that the information collections do 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.

12/13. ESTIMATES OF HOUR AND COST BURDENS

The paperwork burden estimates associated with the proposed rules include the burdens attributable to collecting, preparing, reviewing and retaining records.

Schedules 14A and 14C

The Commission proposed to add new Item 407(i) to Regulation S-K.[5] This item would require disclosure of whether employees and directors of the company, or their

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[4] See, Disclosure of Hedging by Employees, Officers and Directors, supra, note 1.

[5] Regulation S-K contains the disclosure requirements for filings under both the Securities Act and the Exchange Act, including the item requirements in Schedules 14A and 14C. The paperwork burden from Regulation S-K is imposed through the forms that are subject to the disclosures in Regulation S-K, and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting

designees, are permitted to hedge or offset any decrease in the market value of equity securities that are granted to them by the company as part of their compensation, or that are held, directly or indirectly, by them. Pursuant to the proposed amendment to Item 7 of Schedule 14A, and for listed closed-end funds, the proposed amendment to Item 22 of Schedule 14A, this new disclosure would be required in proxy or consent solicitation materials with respect to the election of directors, or an information statement in the case of such corporate action authorized by the written consent of security holders.

If adopted, proposed Item 407(i) would require additional disclosure in proxy statements filed on Schedule 14A with respect to the election of directors and information statements filed on Schedule 14C where such corporate action is taken by the written consents or authorizations of security holders, and would thus increase the burden hour and cost estimates for each of those forms. For purposes of the PRA, we estimate the total annual increase in the paperwork burden for all affected issuers to comply with the proposed collection of information requirements, averaged over the first three years, to be approximately 16,540 hours of in-house personnel time and approximately $2,505,300 for the services of outside professionals (see the Table below). These estimates include the time and cost of collecting and analyzing the information, preparing and reviewing disclosure, and filing the documents. In deriving these estimates, we assumed that the information that proposed Item 407(i) would require to be disclosed would be readily available to the management of a company because it only requires disclosure of policies they already have but does not direct them to have a policy or dictate the content of the policy.

Since the first year of compliance with the proposed amendment is likely to be the most burdensome because companies are not likely to have compiled this information in this manner previously, we assumed it would take five total hours per form the first year and two total hours per form in all subsequent years. Based on our assumptions, we estimated that the proposed amendments would increase the burden hour and cost estimates per company by an average of three total hours per year over the first three years the amendments are in effect for each Schedule 14A or Schedule 14C with respect to the election of directors. We recognize that the burdens may vary among individual companies based on a number of factors, including the size and complexity of their organizations, and whether or not they prohibit or restrict hedging transactions by employees, directors and their designees and if they do, the specificity and complexity of such restrictions. The table below shows the three-year average annual compliance burden, in hours and in costs, of the collection of information pursuant to proposed Item 407(i) of Regulation S-K.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a company to prepare and review the proposed disclosure requirements. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the

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duplicative burdens, for administrative convenience we estimate the burdens imposed by Regulation S-K to be a total of one hour.

company internally is reflected in hours. For purposes of the PRA, we estimate that 75% of the burden of preparation of Schedules 14A and 14C is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour. There is no change to the estimated burden of the collections of information under Regulation S-K because the burdens that this regulation imposes are reflected in our burden estimates for Schedule 14A and 14C.

Incremental Paperwork Burden and Costs under the proposed amendments affecting Schedules 14A and 14C – Three Year Average

	Number of Responses (A)	Increase in Burden Hours (B)	Increase in Total Burden Hours (C) (A)*(B)	Internal Company Time (D) (C)*0.75	External Professional Time (E) (C)*0.25	External Professional Costs (F) (E)*$400
Schedule 14A	5,586	3	16, 758	12, 568.5	4189.5	$1,675,800
Schedule 14C	569	3	1,707	1,280.25	426.75	$170,700
Rule 20a-1	1,196	3	3, 588	2,691	897	$358,800

14. COSTS TO FEDERAL GOVERNMENT

We estimate that the cost of preparing the amendments is approximately $100,000.

15. REASON FOR CHANGE IN BURDEN

As explained in further detail in Items 12 and 13 above, the proposed rules in Release No. 33-9723 are mandated by Section 955 of the Dodd-Frank Act.

The changes in burden of Schedule 14A and Schedule 14C relate to enhanced disclosure requirements in Regulation S-K to provide transparency to shareholders, if action is to be taken with respect to the election of directors, about whether employees or directors are permitted to engage in transactions that mitigate or avoid the incentive alignment associated with equity ownership. The change in burdens of Schedule 14A and Schedule 14C corresponds to these proposed disclosure requirements.

The changes in burden of Rule 20a-1 relate to enhanced disclosure requirements in Schedule 14A and Schedule 14C to provide transparency to shareholders, if action is to be taken with respect to the election of directors, about whether employees or directors are permitted to engage in transactions that mitigate or avoid the incentive alignment associated with equity ownership. The change in burden of Rule 20a-1 corresponds to these proposed disclosure requirements

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 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.