

**SUPPORTING STATEMENT FOR AMENDMENTS ADOPTED 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. 33-10593,¹ the Commission adopted amendments to implement Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² The amendments require a company to describe any practices or policies it has adopted regarding the ability of its employees (including officers) or directors to purchase financial instruments, or otherwise engage in transactions, that hedge or offset, or are designed to hedge or offset, any decrease in the market value of equity securities granted as compensation, or held directly or indirectly by the employee or director. Companies that do not qualify as “smaller reporting companies” or “emerging growth companies” (each as defined in 17 CFR 240.12b-2) must comply with these disclosure requirements for proxy and information statements with respect to the election of directors during fiscal years beginning on or after July 1, 2019. Companies that qualify as “smaller reporting companies” (“SRCs”) or “emerging growth companies” (“EGCs”) must comply with these disclosure requirements for proxy and information statements with respect to the election of directors during fiscal years beginning on or after July 1, 2020.

The 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); and
- “Regulation 14C and Schedule 14C” (OMB Control No. 3235-0057).

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

¹ Disclosure of Hedging by Employees, Officers and Directors, Release No. 33-10593 (Dec. 20, 2018) [84 FR 2402]. The amendments were proposed in Release No. 33-9723 (Feb. 9, 2015) [80 FR 8485] (Proposing Release).

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

class of securities registered under Section 12 of the Exchange Act when a proxy or consent is not being solicited.

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 may engage in transactions that reduce or avoid the incentive alignment associated with equity ownership related to their employment or board service. Neither Section 14(j) nor the 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 amendments affect Schedules 14A and Schedules 14C. These forms are filed electronically with the Commission using the Commission’s Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

4. DUPLICATION OF INFORMATION

In order to reduce potentially duplicative disclosure between Item 407(i) and the existing requirement for Compensation Discussion and Analysis (“CD&A”) under Item 402(b) of Regulation S-K, the Commission added 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 Item 407(i) to the extent that the information disclosed there satisfies this CD&A disclosure 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 amendments 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 performed a Final Regulatory Flexibility Act Analysis and estimated that there are approximately 1,144 issuers that may be considered small entities. The amendments would affect small entities that have a class of securities that is registered under Section

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”).

12 of the Exchange Act. The Commission estimated that 876 of these small entities have a class of securities registered under Section 12(b) or Section 12(g) and therefore will be subject to the amendments. 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 26 business development companies that will be subject to the amendments that may be considered small entities.

The amendments require clear and straightforward disclosure of any practices or policies the company has adopted regarding the ability of employees or directors to engage in transactions that hedge or offset, or are designed 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. The company will be required either to provide a fair and accurate summary of the practices or policies that apply or to disclose the practices or policies in full. If the company does not have any such practices or policies, the company must disclose that fact or state that hedging transactions are generally permitted. Given the straightforward nature of the disclosure, the Commission does not believe that it is necessary to simplify or consolidate the disclosure requirement for small entities. Additionally, the amendments do 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.

In order to give companies adequate time to implement the new disclosures, we are providing a transition period. Companies that are not SRCs or EGCs are required to comply with Item 407(i) in proxy and information statements with respect to the election of directors during fiscal years beginning on or after July 1, 2019. We believe that providing a delayed compliance date for SRCs and EGCs will benefit those companies by allowing them to observe how other larger and more established companies implement Item 407(i). Accordingly, to assist SRCs and EGCs in preparing to implement Item 407(i), we are requiring them to comply with Item 407(i) in proxy and information statements with respect to the election of directors during fiscal years beginning on or after July 1, 2020.

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 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 reduce or avoid the incentive alignment associated with equity ownership.

7. SPECIAL CIRCUMSTANCES

There are no special circumstances in connection with these proposed amendments.

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 Commission 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. Comments received are available at <https://www.sec.gov/comments/s7-01-15/s70115.shtml>. The Commission received no substantive comments relating to our Paperwork Reduction Act analysis.

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. CONFIDENTIALITY

All documents submitted to the Commission are available to the public via the EDGAR system.

11. SENSITIVE QUESTIONS

No information of a sensitive nature, including social security numbers, will be required under Regulation S-K. This collection of information 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.

No information of a sensitive nature, including social security numbers, will be required under Regulation 14A (Schedule 14A) and Regulation 14C (Schedule 14C). 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>.

⁴ See *supra* note 1.

12/13. ESTIMATES OF HOUR AND COST BURDENS

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

The Commission added new Item 407(i) to Regulation S-K.⁵ This item requires a company to describe any practices or policies it has adopted regarding the ability of its employees or directors, or their designees, to purchase financial instruments, or otherwise engage in transactions, that hedge or offset any decrease in the market value of company equity securities that are granted to them as compensation, or that are held, directly or indirectly, by them.

Pursuant to the amendment to Item 7 of Schedule 14A, Item 407(i) requires 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. The final amendments incorporate some changes from the proposal. In particular, the proposal would have required every company to disclose the categories of hedging transactions it permits and those it prohibits, and to specify those categories of persons who are permitted to engage in hedging transactions and those who are not. In contrast, the final amendments require disclosure of a company's practices or policies regarding hedging transactions, including the categories of persons covered and any categories of hedging transactions that are specifically permitted or specifically disallowed. A company will be required either to provide a fair and accurate summary, or to disclose the practices or policies in full. Because we anticipate that this change in emphasis may make compliance easier and more straightforward, we expect it to decrease the burden hour and cost estimates per company compared to the proposal. In another change from the proposal, the final rules exclude listed closed-end funds. We anticipate that this change will reduce the number of affected companies from the proposal, and the numbers in the table below reflect that reduction, as well as more recent numbers of affected companies compared with the numbers in the Proposing Release.

For purposes of the PRA, we estimate the total annual increase in the paperwork burden for all affected issuers to comply with the new collection of information requirements, averaged over the first three years, to be approximately 5,253.45 hours of in-house personnel time and approximately \$700,460 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

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 disclosure requirements in Regulation S-K, and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by Regulation S-K to be a total of one hour.

the documents. In deriving these estimates, we assumed that the information that new Item 407(i) requires to be disclosed would be readily available to the management of a company because it only requires disclosure of practices or policies they already have but does not direct them to have a practice or policy or dictate the content of the policy.

Since the first year of compliance with the 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 two total hours per form the first year and one total hour per form in all subsequent years.⁶ Based on our assumptions, we estimated that the amendments will 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. Emerging growth companies and smaller reporting companies which are eligible for an extended compliance date will incur no burden in the first year of the amendments, two burden hours to prepare each Schedule 14A or Schedule 14C filing in the second year, and one burden hour per filing in the third year, for an average of 1.0 total hour per year over the first three years of the amendments for each Schedule 14A or 14C with respect to the election of directors.⁷ Companies that are not eligible for the extended compliance date will incur an average of 1.3 total hours per year over the first three years of the amendments for each Schedule 14A or 14C with respect to the election of directors.⁸ The table below shows the three-year average annual compliance burden, in hours and in costs, of the collection of information pursuant to 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 new 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 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.⁹ 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.

⁶ In the Proposing Release, we assumed it would take five total hours per form the first year and two total hours per form in all subsequent years.

⁷ $(0 + 2 + 1) / 3 = 1.0$.

⁸ $(2 + 1 + 1) / 3 = 1.3$.

⁹ 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 companies, law firms and other persons who regularly assist companies in preparing and filing reports 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.

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

	Number of responses (A)¹⁰	Incremental burden hours/form (B)	Total incremental 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
Sch. 14A	5,586					
Filers eligible for an extended compliance date¹¹	5,586*0.54 = 3,016	1.0	3,016	2,262	754	\$301,600
Filers not eligible for an extended compliance date	5,586*0.46 = 2,570	1.3	3,341	2,505.75	835.25	\$334,100
Sch. 14A Totals	5,586		6,357	4,767.75	1,589.25	\$635,700
Sch. 14C	569					
Filers eligible for an extended compliance date	569*0.54 = 307	1.0	307.0	230.25	76.75	\$30,700
Filers not eligible for an extended compliance date	569*0.46 = 262	1.3	340.6	255.45	85.15	\$34,060
Sch. 14C Totals	569		647.6	485.7	161.9	\$64,760
Sch. 14A and Sch. 14C Totals	6,155		7,004.6	5,253.45	1,751.15	\$700,460

¹⁰ For Schedules 14A and 14C, the number of responses reflected in the table equals the three-year average of the number of schedules filed with the Commission and currently reported by the Commission to OMB.

¹¹ We estimate that 54% of the filers subject to the amendments will have an additional year to comply. We therefore assume that approximately 46% (100%-54%) of the filings will be subject to the amendments in the first year. We recognize that filers that receive an additional year to comply may account for a lower or higher proportion of filings than estimated, thus these estimates are approximate.

14. COSTS TO FEDERAL GOVERNMENT

The estimated cost of preparing the amendments was approximately \$100,000.

15. REASON FOR CHANGE IN BURDEN

As explained in further detail in Items 12 and 13 above, the amendments are mandated by Section 955 of the Dodd-Frank Act and will increase the burdens and costs for companies.

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 the ability of employees or directors to engage in transactions that reduce or avoid the incentive alignment associated with equity ownership. The change in burdens of Schedule 14A and Schedule 14C corresponds to these disclosure requirements.

There is no change in burden for Regulation S-K. (See footnote 5 for further explanation.)

Summary of Revised Burden Hours and Cost Burden Estimates for Each Information Collection

	Current Burden			Program Change			Requested Change in Burden	
	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Number of Affected Responses (D)	Change in Company Hours (E)	Change in Professional Costs (F)	Burden Hours for Affected Responses (G) = (B) + (E)	Proposed Cost Burden for Affected Responses (H) = (C)+(F)
Schedule 14A	5,586	546,333	\$72,844,312	5,586	4,767.75	\$635,700	551,100.75	\$73,480,012
Schedule 14C	569	55,870	\$7,450,184	569	485.7	\$ 64,760	56,355.7	\$7,514,944

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collections do not employ statistical methods.

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

There are no exceptions to certification for Paperwork Reduction Act Submissions.

B. STATISTICAL METHODS

The information collections do not employ statistical methods.