

SUPPORTING STATEMENT  
FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION  
SUBMISSION FOR REGULATION S

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

Under Section 5 of the Securities Act, no offer or sale of securities involving a means of interstate commerce may be made unless the securities are registered with the Securities and Exchange Commission. Registration under Section 5 entails, among other things, filing a registration statement with the Commission and delivering a prospectus to investors.

The registration requirements of Section 5 apply virtually to any offer or sale of a security involving a means of U.S. interstate commerce or use of the U.S. mails. However, in 1964, the Commission recognized that the application of Section 5 should be more restricted than the Securities Act's full jurisdictional reach. In Release No. 33-4708, the Commission stated that it would not take any enforcement action for failure to register securities of U.S. corporations distributed abroad solely to foreign nationals even though the means of interstate commerce are used if the distribution is effected in a manner designed to ensure that the securities come to rest abroad. Although Release No. 33-4708 mentions only securities of domestic companies, the staff has applied the same principles to offerings of foreign issuers as well.

Regulation S further clarifies the extraterritorial application of the registration provisions of the Securities Act. Regulation consists of a general statement of applicability of the registration provision ("General Statement") and two safe harbor provisions. The General Statement provides that Section 5 of the Securities Act does not apply to offers or sales of securities that occur outside the United States. The first Regulation S safe harbor applies to offers and sales by issuers, securities professionals involved in the distribution process ("distributors"), any of their affiliates, or any person acting on behalf of any of the foregoing. The second safe harbor applies to resales by persons other than the issuer, distributor, or any of their respective affiliates (other than certain officers and directors). An offer, sale or resale of securities that satisfies all of the conditions of either safe harbor is deemed to be outside the United States with the meaning of the General Statement, and thus not subject to the registration requirements of Section 5 of the Securities Act.

2. Purpose and Use of the Information Collection

Regulation S does not involve the collection of any information by the Commission. Regulation S simply constitutes a clarification of the extent to which Section 5 of the Securities Act applies to offers and sales of securities outside the United States.

3. Consideration Given to Information Technology

Regulation S does not create any filing obligations but, rather, clarifies that securities sold offshore do not have to be registered with the Commission.

4. Duplication of Information

One of the purposes of Regulation S is to reduce duplication between the requirements of domestic and foreign laws.

5. Reducing the Burden on Small Entities

Regulation S does not involve the collection of any information from small or large entities. Any company or person is able to rely on the provisions of the General Statement in offering and selling securities offshore.

6. Consequences of Not Conducting Collection

Regulation S does not directly impose any collection requirements. Regulation S sets forth rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933.

7. Special Circumstances

There are no special circumstances.

8. Consultations with Persons Outside the Agency

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

No payment or gift to respondents.

10. Confidentiality

No assurance of confidentiality has been given for information reported.

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

Regulation S is assigned one burden hour for administrative convenience because the regulation only clarifies the extent to which Section 5 of the Securities Act applies to offers and sales of securities outside the United States.

13. Estimate of Total Annualized Cost Burden

There is no cost directly associated with Regulation S.

14. Costs to Federal Government

The annual cost of reviewing and processing disclosure documents, including registration statements, post-effective amendments, proxy statements, annual reports and other filings of operating companies amounted to approximately \$102 million in fiscal year 2018, based on the Commission's computation of the value of staff time devoted to this activity and related overhead for the Division of Corporation Finance.

15. Reason for Change in Burden

There is no change in burden.

16. Information Collection Planned for Statistical Purposes

The information collection does not employ statistical methods.

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

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

B. STATISTICAL METHODS

The information collection does not employ statistical methods.