

**SUPPORTING STATEMENT FOR THE PAPERWORK REDUCTION ACT
INFORMATION COLLECTION SUBMISSION FOR FINAL AMENDMENTS TO
RULE 504(b)(3) OF REGULATION D**

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

The Securities Act of 1933 (the “Securities Act”) requires that a registration statement be filed with the Securities and Exchange Commission disclosing prescribed information before securities may be offered for sale to the public. The securities cannot be sold to the public until the registration statement becomes effective. In addition, prospective investors must be furnished a prospectus containing the most significant information in the registration statement. Congress, however, recognized that there are certain situations where there is no practical need for registration or where the public benefits derived from registration are too remote.

Accordingly, a number of exemptions to the registration requirements are contained in the Securities Act. The exemptions that small businesses most typically rely on are those provided by Sections 3(b) and 4(a)(2).

The Commission is authorized under Section 3(b) of the Securities Act to exempt securities from registration if it finds that registration for these securities is not necessary in the public interest or for the protection of investors because of the small amount involved or the limited character of the public offering. Section 4(a)(2) of the Securities Act exempts transactions by an issuer not involving any public offering. Pursuant to these provisions, the Commission has adopted various rules (collectively “Regulation D”) establishing small issues or limited offering exemptions from the registration requirements of the Securities Act. Specifically, Rules 504 and 506 provide exemptions for offerings that satisfy certain conditions, including a limitation on the aggregate dollar amount of securities that may be offered in any twelve-month period, as well as the type and/or number of investors that may participate.

Rule 504 provides an exemption to issuers for an aggregate offering amount up to \$5 million of their securities in any twelve-month period and disqualifies certain bad actors from participation in Rule 504 offerings.

For all Regulation D offerings, Form D must be filed with the Commission no later than 15 days after the first sale of securities in the offering. The Form D is a simple notice that provides certain information about the issuer and the offering.

Rule 504 disqualifies issuers from reliance on Rule 504 if such issuer would be subject to disqualification under Rule 506(d) of Regulation D. Consistent with the requirements of Rule 506(e), Rule 504(b)(3) requires the issuer in a Rule 504 offering to furnish to each purchaser, a

reasonable time prior to sale, a written description of any matters that occurred before January 20, 2017, the date of effectiveness of the amendments to the rule adopting these disqualification provisions and within the time periods described in the list of disqualification events set forth in Rule 506(d)(1) of Regulation D, in regard to the issuer or any other “covered person” associated with the offering. For purposes of the mandatory disclosure provision described in the instruction to Rule 504(b)(3), issuers are required to ascertain whether any disclosures are required in respect of covered persons involved in their offerings, prepare any required disclosures and furnish them to purchasers.

The Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement required to be furnished to investors does not involve submission of a form filed with the Commission and is not required to be presented in any particular format, although it must be in writing.

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The disclosure or paperwork burden imposed on issuers appears in an instruction to Rule 504(b)(3) and pertains to events that occurred before effectiveness of the amendments to the rule adopting these disqualification provisions (i.e., prior to January 20, 2017) but which would have triggered disqualification had they occurred on or after effectiveness of these amendments. Since the effectiveness of these amendments on January 20, 2017, issuers relying on Rule 504 are required to furnish disclosure of any relevant past events that would have triggered disqualification under Rule 504(b)(3) had they occurred on or after January 20, 2017 that relate to the issuer or any other covered person. If there are any such events, a disclosure statement is required to be furnished, a reasonable time before sale, to all purchasers in the offering. The disclosure requirement serves to protect purchasers by ensuring that they receive information regarding any covered persons that were subject to such disqualifying events.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements for the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement is not provided to the Commission, either electronically or otherwise.

4. DUPLICATION OF INFORMATION

We are not aware of any rules that conflict with or substantially duplicate the amendments to Rule 504.

5. REDUCING THE BURDEN ON SMALL ENTITIES

Regulation D is a comprehensive set of exemptions from registration relating to small issues and small issuers. Regulation D was designed to simplify and clarify existing exemptions and to expand their availability to small issuers.

The Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement applies to all issuers, including small entities. The requirement does not vary depending on the size of the issuer. We believe that many of the issuers in these Rule 504 private offerings are small entities, but we currently do not collect information on total assets of companies and net assets of funds to determine if they are small entities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The purpose of collecting Form D information is to provide the Commission with information to observe use of the Regulation D exemption.

In contrast, the purpose of the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement is to alert potential investors about the “bad actor” history of issuers conducting securities offerings, as well as the issuer’s covered persons. Adopting the bad actor disqualification amendments to Rule 504 without the Rule 504(b)(3) disclosure requirement would weaken the investor protection benefits intended by the disqualification provisions of Rule 506(d) by enabling issuers and other covered persons with a “bad actor” history to avoid disclosing that history to potential investors.

7. SPECIAL CIRCUMSTANCES

No special circumstances at this time.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

No comments were received 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 information is filed with the Commission pursuant to Rule 504(b)(3).

11. SENSITIVE QUESTIONS

The information collection collects Personally Identifiable Information (PII) of certain individuals. 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 February 5, 2020, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>. The agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act as information is not retrieved by a personal identifier.

12/13. ESTIMATES OF HOUR AND COST BURDENS

The estimated burden hours and cost burden are made solely for the purposes of the PRA 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.

We anticipate that the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement results in an incremental increase in the burdens and costs for issuers that rely on the Rule 504 exemption by requiring these issuers to conduct factual inquiries into the backgrounds of covered persons with regard to events that occurred before effectiveness of the bad actor disqualification amendments (i.e., prior to January 20, 2017). For purposes of the PRA, we estimate the total annual increase in paperwork burden for all affected Rule 504 issuers to comply with our new collection of information requirements would be approximately 880 hours of company personnel time and approximately \$9,600 for the services of outside professionals. These estimates include the incremental time and cost of conducting a factual inquiry to determine whether the Rule 504 issuers have any covered persons with past disqualifying events. The estimates also include the cost of preparing a disclosure statement that issuers will be required to furnish to each purchaser a reasonable time prior to sale.

In deriving our estimates, consistent with those assumptions used in the PRA analysis for the Rule 506 bad actor disqualification provisions, we assume that:

- Approximately 800 issuers relying on Rule 504 of Regulation D will spend on average one additional hour to conduct a factual inquiry to determine whether any covered persons had a disqualifying event that occurred before the effective date of the amendments (i.e., prior to January 20, 2017); and
- On the basis of the factual inquiry, approximately eight issuers (or approximately 1%) will spend ten hours to prepare a disclosure statement describing matters that would have triggered disqualification under Rule 504(b)(3) of Regulation D had they occurred on or after the effective date of the amendments (i.e., on or after January 20, 2017); and
- For purposes of the Rule 504(b)(3) disclosure statement, approximately eight issuers will retain outside professional firms to spend three hours on disclosure preparation at an average cost of \$400 per hour.

The increase in burdens and costs associated with conducting a factual inquiry for the disclosure statement requirement should be minimal given that issuers are likely to conduct simultaneously a similar factual inquiry for purposes of determining disqualification from Rule 504 for disqualifying events occurring on or after January 20, 2017.

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 \$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.

15. REASON FOR CHANGE IN BURDEN

There is no change in burden.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collection is not planned for statistical purposes.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

In regard to the Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement, since this requirement does not involve submission of a form filed with the Commission and is not required to be presented in any particular format, although it must be in writing, 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.