

## **SUPPORTING STATEMENT FOR PROPOSED RULES RELATING TO AMENDMENTS TO THE ACCELERATED FILER AND LARGE ACCELERATED FILER DEFINITIONS**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995 (“PRA”).<sup>1</sup>

### **A. JUSTIFICATION**

#### **1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY**

On May 9, 2019, the Securities and Exchange Commission (“Commission”) proposed amendments<sup>2</sup> to the accelerated filer and large accelerated filer definitions in Rule 12b-2<sup>3</sup> under the Securities Exchange Act of 1934 (“Exchange Act”).<sup>4</sup> Accelerated and large accelerated filers are subject to Section 404(b) of the Sarbanes-Oxley Act (“SOX”),<sup>5</sup> which requires those issuers to have the independent auditor that prepares or issues their financial statement audit report attest to, and report on, management’s assessment of the effectiveness of their internal control over financial reporting (“ICFR auditor attestation”). An ICFR auditor attestation is required only in annual reports on Forms 10-K,<sup>6</sup> 20-F,<sup>7</sup> and 40-F.<sup>8</sup> Additionally, accelerated and large accelerated filers are subject to shorter deadlines for filing their Exchange Act periodic reports and must provide disclosure regarding the availability of their filings on their Internet websites and the disclosure required by Item 1B of Form 10-K and Item 4A of Form 20-F about unresolved staff comments on their periodic and/or current reports.

The proposed amendments would exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company and had annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available. In addition, the proposed amendments would increase the transition thresholds for accelerated and large accelerated filers becoming non-accelerated filers from \$50 million to \$60 million and for exiting large accelerated filer status from \$500 million to \$560 million. Finally, the proposed amendments would add a revenue test to the transition thresholds for exiting both accelerated and large accelerated filer status.

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<sup>1</sup> 44 U.S.C. §3501, *et seq.*

<sup>2</sup> *Amendments to the Accelerated Filer and Large Accelerated Filer Definition*, Release No. 34-85814 (May 9, 2019) [84 FR 24876 (May 29, 2019)] (“Proposing Release”).

<sup>3</sup> 17 CFR 240.12b-2.

<sup>4</sup> 15 U.S.C. 78a *et seq.*

<sup>5</sup> 15 U.S.C. 7262(b).

<sup>6</sup> 17 CFR 249.310.

<sup>7</sup> 17 CFR 249.220f.

<sup>8</sup> 17 CFR 249.240f.

The amendments contain “collection of information” requirements within the meaning of the PRA. The titles for the collection of information are:

- “Form 10-K” (OMB Control No. 3235-0063);
- “Form 20-F” (OMB Control No. 3235-0288); and
- “Form 40-F” (OMB Control No. 3235-0381).<sup>9</sup>

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

As a result of the proposed amendments, an issuer that is excluded from the definitions of accelerated filer and large accelerated filer would not be subject to accelerated or large accelerated filing deadlines for its annual and quarterly reports or the ICFR auditor attestation requirement. The issuer also would not have to provide the disclosure required by Item 1B of Form 10-K and Item 4A of Form 20-F about unresolved staff comments on its periodic and/or current reports or the disclosure required by Item 101(e)(4) of Regulation S-K about whether it makes filings available on or through its Internet website.

Permitting these issuers to avoid the burden of being an accelerated or large accelerated filer may enhance their ability to preserve capital without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers. Additionally, the benefits of having those issuers comply with the accelerated and large accelerated filer requirements may be more limited than for other issuers. Further, the proposed amendments are targeted at issuers whose representation in public markets have decreased over the years, and may be a positive factor in the decision of additional companies to register their offering or a class of their securities, which would provide an increased level of transparency and investor protection with respect to those companies.

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

The forms that require the new disclosure requirement are filed electronically with the Commission using the Commission’s Electronic Data Gathering and Retrieval (“EDGAR”) system.

## **4. DUPLICATION OF INFORMATION**

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

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<sup>9</sup> Our estimates for Forms 10-K, 20-F, and 40-F take into account the burden that would be incurred by including the proposed disclosure in the applicable annual report. The paperwork burden from Regulation 12B, 17 CFR 240.12b-1 through 240.12b-37, is imposed through the forms that are subject to the requirements in that regulation and is reflected in the analysis of those forms. After the Proposing Release was issued, the OMB discontinued the OMB control number for Regulation 12B, so that the PRA inventory would not reflect duplicative burdens. No PRA package will be submitted for that collection of information. Additionally, the only proposed revision to Form 10-Q, 17 CFR 249.308a, would be changing filing deadlines, which would neither increase nor decrease the burden hours necessary to prepare the filing because there would be no change to the amount of information required in the filing.

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

We believe it is likely that virtually all issuers that would be considered small businesses or small organizations, as defined in our rules, are already non-accelerated filers and would continue to be encompassed within that category if the proposed amendments are adopted. To the extent any such issuers are not already non-accelerated filers, we believe it is likely that the proposed amendments would capture those entities.

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

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

## **7. SPECIAL CIRCUMSTANCES**

There are no special circumstances in connection with these amendments.

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

The Proposing Release solicits 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 provide comments. In addition, the Commission and staff participate 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/s7-06-19/s70619.htm>. The Commission will consider all comments received prior to publishing the final rules as required by 5 CFR 1320.11(f).

## **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.

## **11. SENSITIVE QUESTIONS**

No information of a sensitive nature would be required under the following collections of information in connection with these rulemaking amendments: Forms 10-K, 20-F, and 40-F. The information collections collect basic PII that may include a 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 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>.

## 12. and 13. ESTIMATES OF HOUR AND COST BURDENS

We estimate that the proposed amendments would result in approximately 539 additional issuers being classified as non-accelerated filers. Accelerated filers are subject to the ICFR auditor attestation requirement and shorter deadlines for filing their Exchange Act periodic reports. Additionally, accelerated filers must provide disclosure regarding the availability of their filings and the disclosure required by Item 1B of Form 10-K and Item 4A of Form 20-F about unresolved staff comments on their periodic and/or current reports.

We believe that eliminating the ICFR auditor attestation requirement would reduce the PRA burden for 358 of the 539 affected issuers.<sup>10</sup> An ICFR auditor attestation is required only in annual reports on Forms 10-K, 20-F, and 40-F. The table below shows the estimated number of affected issuers that are subject to the ICFR auditor attestation requirement that file on each of these forms and the average estimated audit-fee and non-audit costs to comply with the ICFR auditor attestation requirement.

**Table 1. Estimated Annual Costs Per Issuer of ICFR Auditor Attestation Requirement for Specified Forms**

<b>Form Type</b>	<b>Number of Affected Issuers</b>	<b>Audit-Fee Costs Per Issuer</b>	<b>Non-Audit Costs Per Issuer</b>
Form 10-K	322	\$110,000	\$100,000
Form 20-F	35	\$110,000	\$100,000
Form 40-F <sup>11</sup>	1	\$110,000	\$100,000

Because these issuers would no longer be subject to the ICFR auditor attestation requirement under the proposed amendments, they would no longer incur these costs. For purposes of the PRA, this reduction in total burden is to be allocated between a reduction in internal burden hours and a reduction in outside professional costs. The table below sets forth the percentage estimates we typically use for the burden allocation for each form.

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<sup>10</sup> We estimate that the remaining 181 of the 539 affected issuers are emerging growth companies, which are not required to comply with the ICFR auditor attestation requirement under SOX Section 404(b).

<sup>11</sup> Form 40-F does not require disclosure of filer status or public float, which makes it very difficult to determine filer status. So as not to overestimate the burden hour and cost reduction of the proposed amendments, we estimate that only one MJDS issuer that files on Form 40-F would not be subject to the ICFR auditor attestation requirement.

**Table 2. Standard Estimated Burden Allocation for Specified Forms**

<b>Form Type</b>	<b>Internal</b>	<b>Outside Professionals</b>
Form 10-K	75%	25%
Form 20-F	25%	75%
Form 40-F	25%	75%

For the \$100,000 reduction in annual non-audit costs, we allocate the burden based on the percentages in Table 2 above. However, we believe that 100% of the \$110,000 annual burden reduction for audit-fee costs related to the ICFR auditor attestation requirement should be ascribed to outside professional costs because that amount is an estimate of fees paid to the independent auditor conducting the ICFR attestation audit. Table 3, below, shows the resulting estimated reduction in cost per issuer associated with outside professionals.

**Table 3. Estimated Reduction in Outside Professional Costs from Proposed Elimination of ICFR Auditor Attestation Requirement**

<b>Issuer Type (Form Used)</b>	<b>Outside Professional Costs Per Issuer (Non-Audit)</b>	<b>Outside Professional Costs Per Issuer (Audit Fees)</b>	<b>Total Outside Professional Costs Per Issuer (Non-Audit + Audit Fees)</b>	<b>Number of Affected Issuers</b>	<b>Total Proposed Reduction in Outside Professional Costs</b>
Form 10-K	\$25,000	\$110,000	\$135,000	322	\$43,470,000
Form 20-F	\$75,000	\$110,000	\$185,000	35	\$6,475,000
Form 40-F	\$75,000	\$110,000	\$185,000	1	\$185,000

For PRA purposes, an issuer's internal burden is estimated in internal burden hours. We are, therefore, converting the internal portions of the non-audit costs to burden hours. These activities would mostly be performed by a number of different employees with different levels of knowledge, expertise, and responsibility. We believe these internal labor costs will be less than the \$400 per hour figure we typically use for outside professionals retained by the issuer. Therefore, we use an average rate of \$200 per hour to estimate an issuer's internal non-audit labor costs. The table below shows the resulting estimated reduction in internal burden hours from the proposed elimination of the ICFR auditor attestation requirement.

**Table 4. Estimated Reduction in Internal Burden Hours from Proposed Elimination of ICFR Auditor Attestation Requirement**

<b>Issuer Type (Form Used)</b>	<b>Internal Cost Per Issuer (Non-Audit)</b>	<b>Burden Hours Per Issuer (Internal Cost / \$200)</b>	<b>Number of Affected Issuers</b>	<b>Total Proposed Reduction in Internal Burden Hours</b>
Form 10-K	\$75,000	375	322	120,750
Form 20-F	\$25,000	125	35	4,375
Form 40-F	\$25,000	125	1	125

As the Commission has recognized previously, changing filing deadlines neither increases nor decreases the burden hours necessary to prepare the filing because there is no change to the amount of information required in the filing.<sup>12</sup> Therefore, we do not believe that the proposed change to the filing deadlines would affect an issuer’s burden hours or costs for PRA purposes.

We believe that eliminating the requirements to provide disclosure regarding the availability of their filings and the disclosure required by Item 1B of Form 10-K and Item 4A of Form 20-F about unresolved staff comments on their periodic and/or current reports would reduce issuers’ burden hours and costs, but we do not expect that reduction to be significant. As opposed to the burden reduction resulting from the elimination of the ICFR auditor attestation requirement, which would apply only to 358 of the 539 total affected issuers that are not EGCs, the burden reduction from eliminating these disclosure requirements would apply to all the 539 affected issuers, including the 181 affected issuers that are EGCs. Of these 181 affected EGC issuers, 160 file annual reports on Form 10-K, 21 file annual reports on Form 20-F, and none file annual reports on Form 40-F. For purposes of the PRA, we estimate the reduction to be approximately one hour for each of the 539 affected issuers.<sup>13</sup> That reduction is allocated by form as shown in Table 5, below.

**Table 5. Estimated Reduction in Internal Burden Hours Per Issuer from Proposed Elimination of Disclosure Requirements Regarding Filing Availability and Unresolved Staff Comments**

<b>Form Type</b>	<b>Burden Hours Per Issuer</b>	<b>Number of Affected Issuers</b>	<b>Proposed Reduction in Internal Burden Hours</b>
Form 10-K	1	482	482
Form 20-F	1	56	56
Form 40-F	1	1	1

The table below shows the total estimated reduction in internal burden hours and outside professional costs for all aspects of the proposed amendments.

<sup>12</sup> *Revisions to Accelerated Filer Definition and Accelerated Deadlines for Filing Periodic Reports*, Release No. 33-8644 (Dec. 21, 2005) [70 FR 76634 (Dec. 27, 2005)].

<sup>13</sup> We believe that this one-hour reduction will be solely for an issuer’s internal burden hours.

**Table 6. Requested Paperwork Burden under the Proposed Amendments**

	Current Burden			Proposed Burden Change					
	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Proposed Change in Company Hours from Auditor Attestation (D)	Proposed Change in Company Hours from Disclosure Requirement Elimination (E)	Proposed Total Change in Company Hours (F)	Proposed Change in Professional Costs (G)	Proposed Burden Hours for Affected Responses (H)	Proposed Cost Burden for Affected Responses (I)
						= (D) + (E)		= (B) + (F)	= (C) + (G)
10-K	8,137	14,198,780	\$1,895,224,719	(120,750)	(482)	(121,232)	(\$43,470,000)	14,077,548	\$1,851,754,719
20-F	725	479,304	\$576,875,025	(4,375)	(56)	(4,431)	(\$6,475,000)	474,873	\$570,400,025
40-F	132	14,237	\$17,084,560	(125)	(1)	(126)	(\$185,000)	14,111	\$16,899,560

#### 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 \$103,479,690 in fiscal year 2019, 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

We are proposing amendments to the accelerated filer and large accelerated filer definitions to promote capital formation for smaller reporting issuers, by more appropriately tailoring the types of issuers that are included in the categories of accelerated and large accelerated filers and revising the transition thresholds for accelerated and large accelerated filers. As a result of the amendments, certain low-revenue issuers would not be required to have their assessment of the effectiveness of internal control over financial reporting attested to, and reported on, by an independent auditor, although they would continue to be required to make such assessments and to establish and maintain the effectiveness of their internal control over financial reporting.

The table below illustrates the changes in cost and hour burdens from the burdens currently approved by OMB. The total estimated burdens were calculated by adding the incremental burdens to the existing burdens.

**Table 7. Summary of Revised Annual Responses, Burden Hours, and Burden Hour Cost Estimates for Each Information Collection**

IC Title	Annual Number of Responses			Annual Time Burden (Hours)			Annual Burden Cost Burden (\$)		
	Previously Approved	Requested	Change	Previously Approved	Requested	Change	Previously Approved	Requested	Change
Form 10-K	8,137	8,137	0	14,198,780	14,077,548	(121,232)	\$1,895,224,719	\$1,851,754,719	(\$43,470,000)
Form 20-F	725	725	0	479,304	474,873	(4,431)	\$576,875,025	\$570,400,025	(\$6,475,000)
Form 40-F	132	132	0	14,237	14,111	(126)	\$17,084,560	\$16,899,560	(\$185,000)
<b>Total</b>	8,994	8,994	0	14,692,321	14,566,532	(125,789)	\$2,489,184,304	\$2,439,054,304	(\$50,130,000)

**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 this 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**

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

**B. STATISTICAL METHODS**

The information collections do not employ statistical methods.



## **Form 10-K Short Statement**

The proposed amendments would exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company and had annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available. In addition, the proposed amendments would increase the transition thresholds for accelerated and large accelerated filers becoming non-accelerated filers from \$50 million to \$60 million and for exiting large accelerated filer status from \$500 million to \$560 million. Finally, the proposed amendments would add a revenue test to the transition thresholds for exiting both accelerated and large accelerated filer status.

Accelerated filers are subject to the ICFR auditor attestation requirement and shorter deadlines for filing their Exchange Act periodic reports. Additionally, accelerated filers must provide disclosure regarding the availability of their filings and the disclosure required by Item 1B of Form 10-K and Item 4A of Form 20-F about unresolved staff comments on their periodic and/or current reports. Because these issuers would no longer be subject to these requirements under the proposed amendments, they would no longer incur these costs, which would decrease the burdens and costs for registrants to prepare and review the affected collections of information.

For Form 10-K, we estimate that the proposed amendments would result in a reduction of approximately 121,232 internal burden hours and a reduction of approximately \$43,470,000 in outside professional costs.

## **Form 20-F Short Statement**

The proposed amendments would exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company and had annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available. In addition, the proposed amendments would increase the transition thresholds for accelerated and large accelerated filers becoming non-accelerated filers from \$50 million to \$60 million and for exiting large accelerated filer status from \$500 million to \$560 million. Finally, the proposed amendments would add a revenue test to the transition thresholds for exiting both accelerated and large accelerated filer status.

Accelerated filers are subject to the ICFR auditor attestation requirement and shorter deadlines for filing their Exchange Act periodic reports. Additionally, accelerated filers must provide disclosure regarding the availability of their filings and the disclosure required by Item 1B of Form 10-K and Item 4A of Form 20-F about unresolved staff comments on their periodic and/or current reports. Because these issuers would no longer be subject to these requirements under the proposed amendments, they would no longer incur these costs, which would decrease the burdens and costs for registrants to prepare and review the affected collections of information.

For Form 20-F, we estimate that the proposed amendments would result in a reduction of approximately 4,431 internal burden hours and a reduction of approximately \$6,475,000 in outside professional costs.

## **Form 40-F Short Statement**

The proposed amendments would exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company and had annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available. In addition, the proposed amendments would increase the transition thresholds for accelerated and large accelerated filers becoming non-accelerated filers from \$50 million to \$60 million and for exiting large accelerated filer status from \$500 million to \$560 million. Finally, the proposed amendments would add a revenue test to the transition thresholds for exiting both accelerated and large accelerated filer status.

Accelerated filers are subject to the ICFR auditor attestation requirement and shorter deadlines for filing their Exchange Act periodic reports. Additionally, accelerated filers must provide disclosure regarding the availability of their filings and the disclosure required by Item 1B of Form 10-K and Item 4A of Form 20-F about unresolved staff comments on their periodic and/or current reports. Because these issuers would no longer be subject to these requirements under the proposed amendments, they would no longer incur these costs, which would decrease the burdens and costs for registrants to prepare and review the affected collections of information.

For Form 40-F, we estimate that the proposed amendments would result in a reduction of approximately 126 internal burden hours and a reduction of approximately \$185,000 in outside professional costs.