

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Rule 10b-17- Untimely Announcements of Record Dates**  
**OMB Control No. 3235-0476**

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

In 1971, the Securities and Exchange Commission (“Commission”) adopted Rule 10b-17 (17 CFR 240.10b-17) which, in pertinent part, states that it shall constitute a “manipulative or deceptive device or contrivance as used in section 10(b)” of the Securities Exchange Act of 1934 (the “Exchange Act”) for any issuer of a class of publicly traded securities (“issuers”) to fail to provide specified advance notice, pursuant to paragraph (b) of the rule, concerning impending actions, including, dividends or other distributions in cash or in kind; planned splits or reverse splits; and rights or other subscription offerings (“distributions”) to the National Association of Securities Dealers, Inc. (n/k/a the Financial Industry Regulatory Authority, Inc., or FINRA), or an exchange on which the securities are registered and which has substantially comparable procedures to those set forth in the rule.<sup>1</sup> The requirements of Rule 10b-17 do not apply to redeemable securities issued by open-end investment companies and unit investment trusts registered with the Commission under the Investment Company Act of 1940.

The Commission has found that failures of a publicly held company to provide a timely announcement of the record date of these types of distributions has had a misleading and deceptive effect on both the broker-dealer community and the investing public. As a direct result of such failures, purchasers and their brokers may have entered into and settled securities transactions without knowledge of the accrual of rights to these distributions and were thus unable to take necessary steps to protect their interests.<sup>2</sup> The Commission has also found that sellers who have received the distributions as record holders on the specified record date, after having disposed of their securities, have also disposed of the cash or stock dividends or other rights received as such record holders without knowledge of possible claims of purchasers of the underlying security to those rights.<sup>3</sup> In addition, the Commission has found that some issuers have made belated announcements of stock splits or dividends apparently aware that such actions would have a manipulative effect on the market for their securities. In these cases, “buy-in” transactions effected by purchasers to liquidate the sellers’ obligations have had the effect of raising the price of the security. The Commission noted that this effect has been particularly significant when the existing floating supply of the security is limited.<sup>4</sup>

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<sup>1</sup> See Timely Advance Notice of Record Dates for Publicly Traded Securities, Exchange Act Release No. 34-9192 (Jun. 7, 1971), 36 FR 11513 (Jun. 15, 1971).

<sup>2</sup> See Id.

<sup>3</sup> See Id.

<sup>4</sup> See Id.

## **2. Purpose and Use of Information Collection**

The Commission believes that the information required to be provided by issuers pursuant to Rule 10b-17 is necessary to help prevent fraudulent, manipulative, and deceptive acts and practices as used in section 10(b) of the Exchange Act. The Commission has found that failures to provide timely announcement of the record date for the types of distributions covered by Rule 10b-17 has led to a number of abuses detailed above. Timely notice of the record date for these types of distributions provide investors with information necessary to make an informed investment decision.

## **3. Consideration Given to Information Technology**

Continued improvements in telecommunication and data processing technology since the rule's adoption in 1971 have reduced any regulatory burdens placed on issuers as a result of Rule 10b-17. The Commission is not aware of any technical or legal obstacles to reducing the burden through the use of improved information technology.

## **4. Duplication**

The information required to be provided by issuers pursuant to Rule 10b-17 described herein does not duplicate that required by any other federal regulation.

## **5. Effect on Small Entities**

The information required to be provided by issuers pursuant to Rule 10b-17 applies equally to all issuers subject to the rule's requirements. The Commission believes that the requirements of Rules 10b-17 are not unduly burdensome on small entities.

## **6. Consequences of Not Conducting Collection**

As discussed above, the Commission has found that failures of a publicly held company to provide a timely announcement of the record date of these types of distributions has had a misleading and deceptive effect on both the broker-dealer community and the investing public. Timely notice of the record date of these distributions provides broker-dealers and investors with information necessary to make informed investment decisions. In addition, the Commission believes that the information required to be provided by issuers pursuant to Rule 10b-17 is necessary to help prevent fraudulent, manipulative, and deceptive acts and practices as used in section 10(b) of the Exchange Act.

## **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

## **8. Consultations Outside the Agency**

The required Federal Register notice with a 60-day comment period soliciting

comments on this collection of information was published. No public comments were received.

## **9. Payment or Gift**

Not applicable. Rule 10b-17 does not involve any payments or gifts to respondents.

## **10. Confidentiality**

No assurance of confidentiality is provided.

## **11. Sensitive Questions**

This information collection relates to business entities, and no information of a sensitive nature is required.

## **12. Information Collection Burden**

In part, Rule 10b-17 requires issuers of publically traded securities to give notice of the following actions: (1) a dividend or other distribution in cash or in kind other than interest payments on debt securities; (2) a stock split or reverse stock split; or (3) a rights or other subscription offering. The Commission estimates that approximately 6,661 issuers made approximately 27,651 dividend announcements covered by Rule 10b-17 in 2019. The Commission also estimates that approximately 633 issuers made 707 split and/or reverse split announcements in 2019.<sup>5</sup> In addition, the Commission estimates that approximately 47 issuers made 49 rights and other offering announcements in 2019. In total, the Commission estimates that there were 7,341 respondents<sup>6</sup> with 28,407 responses<sup>7</sup> in 2019. The Commission estimates that each response, which constitutes an ongoing third-party disclosure burden, takes 10 minutes to complete and estimate that the total annual burden for all respondents is approximately 4,735 hours.<sup>8</sup> We estimate that the average hourly internal compliance cost to produce and file an announcement required under the rule is approximately \$73.59.<sup>9</sup> The aggregate annual internal compliance cost for complying with this rule is thus estimated to be approximately \$348,412.<sup>10</sup>

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<sup>5</sup> The Commission estimates that 101 issuers made 101 stock split announcements in 2019. The Commission estimates that 542 issuers made 606 reverse stock split announcements in 2019.

<sup>6</sup>  $6,661 + 633 + 47 = 7,341$  respondents.

<sup>7</sup>  $27,651 + 707 + 49 = 28,407$  responses.

<sup>8</sup>  $(28,407 \text{ responses} \times 10 \text{ minutes}) / 60 \text{ minutes} = 4,734.5$  hours rounded up to 4,735 hours.

<sup>9</sup> In 2017, the Commission estimated that the average hourly cost to produce a Rule 10b-17 notice was \$70.29. Adjusted for inflation, the Commission estimates that the average hourly cost to produce a Rule 10b-17 notice in 2020 is \$73.59.

<sup>10</sup>  $4,734.5 \text{ hours} \times \$73.59 = \$348,411.85$  rounded up to \$348,412.

<b>Type of information Collection</b>	<b>Burden Type</b>	<b>Number of Respondents</b>	<b>Number of Annual Reponses</b>	<b>Time Per Response (minutes)</b>	<b>Total Burden Per Burden Type (Hours)</b>
<b>Dividend announcements</b>	Third-party disclosure	6,661	27,651	10	4,608.5
<b>Stock split or reverse split announcements</b>	Third-party disclosure	633	707	10	117.84
<b>Rights or other subscription announcements</b>	Third-party disclosure	47	49	10	8.16
<b><i>Total aggregate burden hours</i></b>					<b><i>4,735</i></b>

### **13. Costs to Respondents**

It is not anticipated that respondents will incur any capital or start-up costs, or any additional operational or maintenance costs (other than provided for in Item 12) to comply with the collection of information.<sup>11</sup>

### **14. Costs to Federal Government**

The government does not experience any direct costs based on the third party reporting required pursuant to Rule 10b-17.

### **15. Changes in Burden**

The change in the estimated burden is due to an increase in the estimated number of responses. The Commission estimates that there were 27,144 responses in 2016 and 28,407 responses in 2019. Due to this increase, the Commission estimates that the total aggregate burden hours will increase from approximately 4,524 hours per year to approximately 4,735 hours per year.

### **16. Information Collection Planned for Statistical Purposes**

Not applicable. The information collection is not used for statistical purposes.

### **17. Approval to Omit OMB Expiration Date**

The Commission is not seeking approval to omit the expiration date.

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<sup>11</sup> Rule 10b-17 does not require issuers to provide notice to the Commission. Instead, issuers must provide notice to FINRA, or the exchange on which the security is registered, which may require issuers to complete a separate form and pay an applicable fee.

**18. Exceptions to the Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

**B. Collecting Information Employing Statistical Methods**

This collection does not involve statistical methods.