

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**Rule 489 and Form F-N**

**A. JUSTIFICATION**

**1. Necessity for the Information Collection**

The Investment Company Act of 1940 (“Investment Company Act”)<sup>1</sup> requires investment companies to register with the Commission before conducting any business in interstate commerce.<sup>2</sup> In the absence of an exemption, foreign banks and foreign insurance companies and their holding companies and finance subsidiaries may be considered investment companies for purposes of the Investment Company Act and may therefore be subject to its requirements.<sup>3</sup>

Rule 3a-6 under the Investment Company Act exempts foreign banks and foreign insurance companies from the definition of “investment company” under the Act, and therefore from the requirement to register under the Act.<sup>4</sup> In connection with the exemption provided by rule 3a-6, the holding companies and finance subsidiaries of foreign banks and insurance companies are eligible for exemption from the definition of “investment company” by rule 3a-1 and rule 3a-5 under the Investment Company Act, respectively.<sup>5</sup> Rule 489 under the Securities Act of 1933 (the “Securities Act”)<sup>6</sup> requires foreign banks and foreign insurance companies and

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<sup>1</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>2</sup> 15 U.S.C. 80a-7.

<sup>3</sup> 15 U.S.C. 80a-3(a).

<sup>4</sup> 17 CFR 270.3a-6(a).

<sup>5</sup> 17 CFR 270.3a-1; 17 CFR 270.3a-5.

<sup>6</sup> 15 U.S.C. 77a *et seq.*

holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are exempted from the definition of “investment company” by virtue of rules 3a-6, 3a-1, and 3a-5 to file Form F-N to appoint an agent for service of process when making a public offering of securities in the United States.<sup>7</sup> Form F-N under the Securities Act designates an agent for service of process in the United States.<sup>8</sup>

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

The information is collected so that the Commission and private plaintiffs may serve process on foreign entities in actions and administrative proceedings arising out of or based on the offer or sales of securities in the United States by such foreign entities. Without an agent for service in the United States, serving process on such foreign entities could be difficult and expensive.

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

The Commission’s Electronic Data Gathering, Analysis, and Retrieval System (“EDGAR”) automates the filing, processing, and dissemination of full disclosure filings. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets. Form F-N is required to be filed electronically on EDGAR.<sup>9</sup> The public may access filings on

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<sup>7</sup> 17 CFR 230.489.

<sup>8</sup> 17 CFR 239.43.

<sup>9</sup> Regulation S-T, rule 101(a)(1)(v) [17 CFR 232.101(a)(1)(v)].

EDGAR through the Commission's website (<http://www.sec.gov>) or at EDGAR terminals located at the Commission's public reference rooms.

#### **4. Duplication**

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule. There is no other rule that requires the entities subject to rule 489 to provide the Commission with the same information.

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

Foreign businesses are not small entities for the purposes of the Regulatory Flexibility Act.<sup>10</sup> Rule 489 and Form F-N, therefore, place no burden on small entities. The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act, to identify methods to minimize reporting or recordkeeping requirements affecting small businesses.

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

Form F-N is required to be filed only when a foreign bank, foreign insurance company, or a finance subsidiary or holding company of a foreign bank or insurance company makes a public offering of securities in the United States. In the absence of the filing requirements in rule 489 and Form F-N, it would be difficult and expensive for the Commission and private plaintiffs to serve process on the foreign entities in

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<sup>10</sup> 5 U.S.C. 603.

actions and administrative proceedings arising out of or based on the offer or sales of securities in the United States by such foreign entities.

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

The collection is not inconsistent with 5 CFR 1320.5(d)(2).

**8. Consultation Outside the Agency**

The Commission and staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and the staff with a means of ascertaining and acting upon the paperwork burdens confronting the industry. The Commission requested public comment on the collection of information requirements in rule 489 and Form F-N before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments in response to its request.

**9. Payment or Gift**

No payment or gift to respondents was provided.

**10. Assurance of Confidentiality**

No assurance of confidentiality was provided.

## **11. Sensitive Questions**

No information of a sensitive nature will be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII) that includes the name of the U.S. person serving as an agent for service of process, and his/her business address and telephone number. It also requires the signatory's name and title. However, the agency has determined that the information collection does 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 1/29/2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

## **12. Burden of Information Collection**

The following estimates of average burden hours are made solely for purposes of the Paperwork Reduction Act of 1995<sup>11</sup> and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with the information collection requirements of rule 489 and Form F-N is mandatory to obtain the benefit of the exemption. Responses to the collection of information requirements will not be kept confidential.

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<sup>11</sup> 44 U.S.C. 3501 *et seq.*

Foreign banks, foreign insurance companies, and holding companies and finance subsidiaries of foreign banks and foreign insurance companies are required to file Form F-N each time they make a public offering of securities in the United States. The form is required to be amended only if the entity appoints a successor agent or if the name or address of the agent changes. The Commission received an average of 27 Form F-N filings from 18 unique filers each year for the last three years (2017-2019). The information requested in Form F-N is minimal and should be readily available to the entity filing the form. The Commission has previously estimated that the total annual burden associated with information collection and Form F-N preparation and submission is one hour per filing. Based on the Commission's experience with disclosure documents generally, the Commission continues to believe that this estimate is appropriate. Thus the estimated total annual burden for rule 489 and Form F-N is 27 hours.<sup>12</sup> Using an estimated hourly wage rate of \$71 for a compliance clerk,<sup>13</sup> the Commission estimates that the total annual cost of the hour burden imposed by rule 489 and Form F-N is \$1,917.<sup>14</sup>

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<sup>12</sup> 27 responses per year × 1 hour per response = 27 hours per year.

<sup>13</sup> The Commission's estimate concerning the wage rate is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for compliance clerks, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of \$71. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (updated for inflation).

<sup>14</sup> 27 hours per year × \$71 per hour = \$1,917 per year.

TABLE 1: CHANGE IN PRA BURDEN ESTIMATES

Rule 489 and Form F-N	Annual No. of Responses			Annual Time Burden (Hrs.)			Cost Burden (\$)		
	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>	<i>Previously approved</i>	<i>Requested</i>	<i>Change</i>
Rule 489 and Form F-N	30	27	-3	30	27	-3	\$1,980	\$1,917	-63
<b>TOTAL</b>	30	27	-3	30	27	-3	\$1,980	\$1,917	-63

**13. Costs to Respondents**

Cost burden is the cost of services purchased to comply with rule 489 and Form F-N, such as for the services of computer programmers, outside counsel, financial printers, and advertising agencies. The cost burden does not include the cost of the hour burden discussed in Item 12 above. If a respondent does not have an office in the United States, it may incur the cost of paying an agent to accept service of process. The Commission continues to believe that this cost is minimal.

**14. Costs to Federal Government**

Because the sole purpose of Form F-N is to appoint an agent for service of process in the event of a suit against the registrant, Commission staff does not review Form F-N submissions when they are filed. Also, Form F-N submissions are filed electronically. Processing Form F-N submissions thus involves minimal cost to the Federal government.

**15. Changes in Burden**

The estimated hourly burden associated with rule 489 and Form F-N has decreased from 30 to 27 hours (an decrease of 3 hours). The decrease is due to a decrease in the estimated number of responses per year.

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

The results of any information collected will not be published.

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

The Commission is not seeking approval to not display the expiration date for OMB approval.

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

The Commission is not seeking an exception to the certification statement.

**B. COLLECTION OF INFORMATION EMPLOYING  
STATISTICAL METHODS**

The collection of information will not employ statistical methods.