

## **SUPPORTING STATEMENT FOR 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**

In Release No. 34-88365 (“Adopting Release “),<sup>2</sup> the Securities and Exchange Commission (“Commission”) adopted amendments 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> The amendments more properly tailor the types of issuers that are included in the categories of accelerated and large accelerated filers and promote capital formation, preserve capital, and reduce unnecessary burdens and compliance costs for certain smaller issuers while maintaining investor protections.

Section 404(a) of the Sarbanes-Oxley Act (“SOX”)<sup>5</sup> requires almost all issuers that file reports pursuant to Exchange Act Section 13(a) or 15(d)<sup>6</sup> to establish and maintain internal control over financial reporting (“ICFR”) and have their management assess the effectiveness of their ICFR. Accelerated and large accelerated filers are also subject to SOX Section 404(b),<sup>7</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 ICFR (“ICFR auditor attestation”). 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<sup>8</sup> and Item 4A of Form 20-F<sup>9</sup> about unresolved staff comments on their periodic and/or current reports.

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

<sup>2</sup> *Accelerated Filer and Large Accelerated Filer Definitions*, Release No. 34-88365 (Mar. 12, 2020) [85 FR 17178 (Mar. 26, 2020)]. *See also Accelerated Filer and Large Accelerated Filer Definitions; Correction*, Release No. 34-88365A (Mar. 30, 2020) [85 FR 19884 (Apr. 9, 2020)].

<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(a).

<sup>6</sup> *See* 17 CFR 240.13a-15 and 17 CFR 240.15d-15.

<sup>7</sup> 15 U.S.C. 7262(b).

<sup>8</sup> 17 CFR 249.310.

<sup>9</sup> 17 CFR 249.220f.

The amendments exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company (“SRC”) and that had annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available (“SRC revenue test”). The amendments also include a specific provision excluding business development companies from the accelerated and large accelerated filer definitions in analogous circumstances. In addition, the amendments 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. Further, the amendments add a revenue test to the transition thresholds for exiting from both accelerated and large accelerated filer status. Finally, the amendments add a check box to the cover pages of Forms 10-K, 20-F, and 40-F<sup>10</sup> to indicate whether an ICFR auditor attestation is included in the filing. As a result of these amendments, certain low-revenue issuers will be required, among other things, to establish and maintain ICFR and have management assess the effectiveness of ICFR, but they will not be required to have their management’s assessment of the effectiveness of ICFR attested to, and reported on, by an independent auditor.

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);<sup>11</sup> and
- “Form 10-Q”<sup>12</sup> (OMB Control No. 3235-0070).<sup>13</sup>

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

These amendments would permit certain low-revenue issuers to avoid the compliance costs of being an accelerated or large accelerated filer, which may represent a meaningful costs savings for these issuers and have beneficial economic effects on competition and capital formation without significantly affecting the ability of investors to make informed investment decisions based on the financial reporting of those issuers. Further, the 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.

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<sup>10</sup> 17 CFR 249.240f.

<sup>11</sup> The paperwork burden from 17 CFR 240.12b-1 through 240.12b-37 (“Regulation 12B”) is imposed through the forms that are subject to the requirements in that regulation and is reflected in the analyses of those forms. The Commission’s estimate for Forms 10-K takes into account the burden that will be incurred by including the disclosure in the applicable annual report.

<sup>12</sup> 17 CFR 249.308a.

<sup>13</sup> The only revision to this form will be changing filing deadlines, which will neither increase nor decrease the burden hours necessary to prepare the filing because there will be no change to the amount of information required in the filing.

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

The forms affected by the amendments are filed electronically with the Commission using the Commission’s Electronic Data Gathering and Retrieval (“EDGAR”) system.

### **4. DUPLICATION OF INFORMATION**

The Commission believes that the amendments do not duplicate, overlap, or conflict with other federal rules.

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

The Commission believes it is likely that virtually all issuers that are considered “small businesses” or “small organizations,” as defined in Commission rules,<sup>14</sup> are already non-accelerated filers and will continue to be encompassed within that category under the amendments. To the extent any such issuers are not already non-accelerated filers, the Commission believes it is likely that the amendments capture those entities.

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

The regulations and forms set forth the disclosure requirements for periodic and current reports filed by companies to help investors make informed investment decisions. Not conducting these collections 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**

In Release No. 34-85814 (“Proposing Release”),<sup>15</sup> the Commission proposed amendments to the accelerated filer and large accelerated filer definitions and solicited comment on the new “collection of information” requirements and associated paperwork burdens. Also, the Commission submitted the proposed amendments to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.<sup>16</sup> The Commission considered all comments received prior to adopting the amendments as required by 5 C.F.R. 1320.11(f). While several commenters provided comments on the possible costs of the proposed amendments, no commenters specifically addressed the PRA analysis. The comment letters are available to the

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<sup>14</sup> For purposes of the Regulatory Flexibility Act, under our rules, an issuer, other than an investment company, is a “small business” or “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year.

<sup>15</sup> *Amendments to the Accelerated Filer and Large Accelerated Filer Definition*, Release No. 34-85814 (May 9, 2019) [84 FR 24876 (May 29, 2019)].

<sup>16</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

public on the Commission’s website at <https://www.sec.gov/comments/s7-06-19/s70619.htm>. Where appropriate, the Commission has revised its burden estimates after considering these comments as well as differences between the proposed and final rules.

## **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 collection of information in connection with these rulemaking amendments: Form 10-K. The information collection collect basic Personally Identifiable Information 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 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>.

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

The Commission estimates that the final amendments will result in approximately 527 additional issuers being classified as non-accelerated filers.<sup>17</sup> 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.

### **a. ICFR Auditor Attestation Requirement**

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<sup>17</sup> The amendments apply to foreign private issuers (“FPIs”) only an FPI files on a domestic form and presents its financial statements pursuant to U.S. GAAP, as well as meeting the required thresholds and other qualifications. The Commission estimates that there are no FPIs that file on domestic forms and present their financial statements pursuant to U.S. GAAP that would meet the required thresholds and other qualifications of the amendments. However, there are an estimated 31 FPIs that file on forms only available to FPIs, but otherwise meet the required thresholds and other qualifications. In the Proposing Release, the Commission included FPIs that file the forms available only to FPIs, but otherwise meet the required thresholds and other qualifications, in the number of affected issuers. While these issuers could become subject to the amendments by changing their reporting regime, it is difficult to predict how many would do so, as a result, the Commission does not include them in the number of affected issuers in this release. Accordingly, the Commission does not estimate any effect on the collections of information corresponding to Forms 20-F or 40-F.

The Commission believes that expanding the exemption from the ICFR auditor attestation requirement will reduce the PRA burden for 373 of the 527 affected issuers.<sup>18</sup> An ICFR auditor attestation is required only in annual reports. Table 1, below, shows the estimated number of affected issuers that are subject to the ICFR auditor attestation requirement that file on Form 10-K and the average estimated audit-fee and non-audit costs to comply with the ICFR auditor attestation requirement.<sup>19</sup>

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

<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	373	\$110,000	\$100,000

Because these issuers would no longer be subject to the ICFR auditor attestation requirement under the amendments, they would no longer incur these costs. For purposes of the PRA, this reduction in total burden is allocated between a reduction in internal burden hours and a reduction in outside professional costs. Table 2, below, sets forth the percentage estimates the Commission typically uses for the burden allocation.

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

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

For the \$100,000 reduction in annual non-audit costs,<sup>20</sup> the Commission allocates the burden based on the percentages in Table 2 above. However, the Commission believes that 100 percent 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,

<sup>18</sup> The Commission estimates that the remaining 154 of the 527 affected issuers are Emerging Growth Companies (“EGCs”), which are not required to comply with the ICFR auditor attestation requirement under SOX Section 404(b). See Section IV.C.1. of the Adopting Release. In addition to the 154 EGCs, the Commission estimates that a further 78 of the 527 affected issuers are currently also subject to the FDIC’s auditor attestation requirement. See Section 18A of Appendix A to FDIC Rule 363. These issuers would continue to incur burden hours and costs associated with an auditor attestation requirement even under the final amendments. However, the FDIC’s auditor attestation requirement is not part of the Commission’s rules. For purposes of considering the PRA effects of the final amendments, therefore, the Commission has reduced the burden hours and costs for these 78 issuers as it would for the other affected issuers that are not EGCs.

<sup>19</sup> See Sections IV.C.3. and IV.C.5. of the Adopting Release.

<sup>20</sup> As discussed in Section IV.C.3, of the Adopting Release, in deriving this estimate of the reduction in non-audit costs, the Commission has looked to outside vendor and internal labor costs, and not to non-labor costs, because it believes that those non-labor costs (such as software, hardware, and travel costs) are primarily attributable to management’s ICFR responsibilities under SOX Section 404(a) and thus would continue to be incurred. To the extent elimination of the auditor attestation requirement also results in a reduction in management’s time burden, the Commission believes this reduction generally is captured by the estimated \$100,000 reduction, as this amount reflects an overall reduction in non-audit costs.

below, shows the resulting estimated reduction in cost per issuer associated with outside professionals.

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

<b>Issuer Type (Form Used) [A]</b>	<b>Outside Professional Costs Per Issuer (Non-Audit) [B]</b>	<b>Outside Professional Costs Per Issuer (Audit Fees) [C]</b>	<b>Total Outside Professional Costs Per Issuer (Non-Audit + Audit Fees) [D]</b>	<b>Number of Affected Issuers [E]</b>	<b>Total Reduction in Outside Professional Costs (D x E) [F]</b>
Form 10-K	\$25,000	\$110,000	\$135,000	373	\$50,355,000

For PRA purposes, an issuer’s internal burden is estimated in internal burden hours. The Commission is, therefore, converting the internal portions of the non-audit costs to burden hours. These activities are mostly be performed by a number of different employees with different levels of knowledge, expertise, and responsibility. The Commission believes these internal labor costs will be less than the \$400 per hour figure it typically uses for outside professionals retained by the issuer. Therefore, the Commission uses an average rate of \$200 per hour to estimate an issuer’s internal non-audit labor costs. Table 4, below, shows the resulting estimated reduction in internal burden hours from the elimination of the ICFR auditor attestation requirement.

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

<b>Issuer Type (Form Used) [A]</b>	<b>Internal Cost Per Issuer (Non-Audit) [B]</b>	<b>Burden Hours Per Issuer (B / \$200) [C]</b>	<b>Number of Affected Issuers [D]</b>	<b>Total Reduction in Internal Burden Hours (C x D) [E]</b>
Form 10-K	\$75,000	375	373	139,875

**b. Filing Deadlines, Disclosure Regarding Filing Availability, and Unresolved Staff Comments**

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>21</sup> Therefore, the Commission does not believe that the change to the filing deadlines will affect an issuer’s burden hours or costs for PRA purposes.

<sup>21</sup> See *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)].

The Commission believes 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 will reduce their burden hours and costs, but it does not expect that reduction to be significant. For purposes of the PRA, the Commission estimates the reduction to be approximately one hour for each affected issuer.<sup>22</sup> However, as opposed to the burden reduction resulting from the elimination of the ICFR auditor attestation requirement, which would apply only to 373 of the 527 total affected issuers that are not EGCs, the burden reduction from eliminating these disclosure requirements will apply to all the 527 affected issuers, including the 154 affected issuers that are EGCs. That reduction is allocated as shown in Table 5, below.

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

<b>Form Type [A]</b>	<b>Burden Hours Per Issuer [B]</b>	<b>Number of Affected Issuers [C]</b>	<b>Reduction in Internal Burden Hours (B x C) [D]</b>
Form 10-K	1	527	527

**c. Check Box Disclosure**

In a change from the proposed amendments, the final amendments add a check box to the cover pages of annual reports on Forms 10-K, 20-F, and 40-F<sup>23</sup> for issuers to indicate that they included an ICFR auditor attestation in the filing. In addition, if the issuer is otherwise required to tag cover page disclosure data using Inline XBRL, it must also to tag the cover page check box disclosure using Inline XBRL. Issuers must already determine whether they are subject to the ICFR auditor attestation requirement, so requiring issuers to add a check box to the cover pages of their annual reports on Forms 10-K, 20-F, and 40-F, and check that box if they provide the ICFR auditor attestation, will not substantively modify existing collection of information requirements or otherwise affect the overall burden estimates associated with these forms. Therefore, the Commission is not adjusting any burden or cost estimates in connection with the check box requirement in the final amendments.

**d. Total Burden Reduction**

Table 6, below, shows the total estimated reduction in internal burden hours and outside professional costs for all aspects of the amendments.

<sup>22</sup> The Commission believes that this one-hour reduction will be solely for an issuer’s internal burden hours.

<sup>23</sup> We estimate that the amendments will not affect the PRA costs and burdens associated with Forms 20-F and 40-F. *See supra* note 17.

**Table 6. Requested Paperwork Burden Under the Amendments**

	Current Burden			Burden Change					
	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Change in Company Hours from Auditor Attestation (D)	Change in Company Hours from Disclosure Requirement Elimination (E)	Total Change in Company Hours (F) = (D) + (E)	Change in Professional Costs (G)	Burden Hours for Affected Responses (H) = (B) + (F)	Cost Burden for Affected Responses (I) = (C) + (G)
10-K	8,292	14,188,040	\$1,893,793,119	(139,875)	(527)	(140,402)	(\$50,355,000)	14,047,638	\$1,843,438,119

#### **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 \$119,447,840 million in fiscal year 2020, 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**

The Commission adopted the amendments to the accelerated filer and large accelerated filer definitions to permit certain low-revenue issuers to avoid the compliance costs of being an accelerated or large accelerated filer, which may have beneficial economic effects on competition and capital formation. As described in further detail in Items 12 and 13, the amendments more appropriately tailor the types of issuers that are included in the categories of accelerated and large accelerated filers, among other things. 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	Decrease In Burden	Previously Approved	Requested	Decrease In Cost Burden
Form 10-K	8,292	8,292	0	14,188,040	14,047,638	(140,402)	\$1,893,793,119	\$1,843,438,119	(\$50,355,000)
<b>Total</b>	8,292	8,292	0	14,188,040	14,047,638	(140,402)	\$1,893,793,119	\$1,843,438,119	(\$50,355,000)

**16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES**

The information collection does not employ statistical methods.

**17. APPROVAL TO OMIT OMB EXPIRATION DATE**

The Commissions requests 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 is no exceptions to certification for the PRA submission.

**B. STATISTICAL METHODS**

The information collection does not employ statistical methods.

## Form 10-K Short Statement

The amendments exclude from the accelerated and large accelerated filer definitions an issuer that is eligible to be a smaller reporting company and that had annual revenues of less than \$100 million in the most recent fiscal year for which audited financial statements are available. In addition, the amendments 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. Further, the amendments add a revenue test to the transition thresholds for exiting from both accelerated and large accelerated filer status. Finally, the amendments add a check box to the cover page of Form 10-K to indicate whether an internal control over financial reporting auditor attestation is included in the filing.

An issuer that is excluded from the definitions of accelerated filer and large accelerated filer is not be subject to accelerated or large accelerated filing deadlines for its annual and quarterly reports or the internal control over financial reporting auditor attestation requirement. The issuer also does 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.

For Form 10-K, the Commission estimates that the amendments would result in a reduction of approximately 140,402 internal burden hours and a reduction of approximately \$50,355,000 in outside professional costs.