

## SUPPORTING STATEMENT

### For the Paperwork Reduction Act Information Collection Submission for Rule 607 under Regulation E

#### A. JUSTIFICATION

##### 1. Necessity for the Information Collection

Regulation E (17 CFR 230.601 - 230.610a) exempts from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (“Securities Act”) securities of small business investment companies (“SBICs”) that are registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (“Investment Company Act”) and closed-end investment companies that elect to be regulated as business development companies (“BDCs”) under the Investment Company Act, so long as the aggregate offering price of all securities of the issuer that may be sold within a 12-month period does not exceed \$5,000,000 and certain other conditions are met. Regulation E was initially adopted in 1958 and made available to SBICs pursuant to Section 3(c) of the Securities Act. Section 3(c) of the Securities Act generally permits the Securities and Exchange Commission (“Commission”) to add to the securities exempted from the Securities Act by Section 3 any class of securities issued by a SBIC. In 1984, pursuant to Section 3(b) of the Securities Act, Regulation E was amended to permit the availability of the exemption to BDCs. Section 3(b) of the Securities Act generally permits the Commission to add any class of securities to the securities exempted from the Securities Act by Section 3.

Rule 607 under Regulation E (17 CFR 230.607) entitled, “Sales material to be filed,” requires sales material used in connection with securities offerings under Regulation E to be filed

with the Commission at least five days (excluding weekends and holidays) prior to its use.<sup>1</sup>

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

Commission staff reviews sales material filed pursuant to rule 607 for materially misleading statements and omissions. The requirements of rule 607 are designed to protect investors from the use of false or misleading sales material in connection with Regulation E offerings.

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

The Commission’s electronic filing system (Electronic Data Gathering, Analysis and Retrieval or “EDGAR”) automates the filing, processing, and dissemination of disclosure filings. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets. Sales material filed pursuant to rule 607 is required to be filed with the Commission electronically on EDGAR. (17 CFR 232.101(a)(1)(v)). The public may access filings on 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 collection of information requirements for duplication, and reevaluates them whenever it proposes a rule or form, or a change in either. The reporting requirements of rule 607 are not duplicated elsewhere.

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<sup>1</sup> Sales material includes advertisements, articles or other communications to be published in newspapers, magazines, or other periodicals; radio and television scripts; and letters, circulars or other written communications proposed to be sent given or otherwise communicated to more than ten persons.

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

A primary purpose of the small offering exemption under Regulation E is to provide a simple and relatively inexpensive procedure by which small businesses can raise limited amounts of needed capital. Offerings under Regulation E require less extensive disclosure than Securities Act registrations. Generally, the less burdensome provisions under Regulation E reflect a commitment by the Commission to facilitate capital formation by SBICs and BDCs while protecting investors.

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

Without this information collection requirement, the Commission would not be able to effectively monitor the content of sales material used in connection with offerings under Regulation E, limiting the Commission's ability to protect investors from false or misleading advertisements.

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

Not applicable.

## **8. Consultation Outside the Agency**

The Commission and the 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 paperwork burdens confronting the industry. The Commission requested public comment on the collection of information requirements in rule 607 under Regulation E 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**

Not applicable.

## **10. Confidentiality**

Not applicable.

## **11. Sensitive Questions**

No information of a sensitive nature, including social security numbers, will be required under this collection of information.

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

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

Respondents to this collection of information include SBICs and BDCs making an offering of securities pursuant to Regulation E. No filings were submitted to the Commission under rule 607 in 2019, 2020, or 2021. Accordingly, we estimate no annual responses. Each respondent's reporting burden under rule 607 relates to the internal burden associated with filing its sales material electronically, which is negligible. For administrative purposes, we estimate an annual burden of one hour per response. Our estimates are summarized in the following table.

**Table 1: Updated Annual Burden Hours and Associated Internal Cost Estimates**

Information Collection	Annual Number of Responses	Annual Internal Time Burden (Hours)	Annual Internal Cost Burden
Reporting	0	1	\$0
Total:	0	1	\$0

### **13. Cost to Respondents**

We continue to estimate that rule 607 does not impose any external cost burdens.

### **14. Cost to the Federal Government**

The annual cost of reviewing and processing new registration statements, post-effective amendments, proxy statements, and shareholder reports of investment companies amounted to approximately \$25.7 million in fiscal year 2020, based on the Commission's computation of the value of staff time devoted to this activity and related overhead. Because no filings under rule 607 were made in 2020, none of these 2020 costs were attributable to review of rule 607 filings.

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

Because no rule 607 filings were submitted to the Commission in 2019, 2020, or 2021, we estimate no annual responses. As a result, we estimate that this information collection does not impose any hour burdens. Nevertheless, we are continuing to request a one hour burden for administrative purposes, which does not result in a change to the existing burden. We likewise continue to estimate that rule 607 does not impose any external cost burdens.

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

Not applicable.

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

Not applicable.

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

Not applicable.

## **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.