

SUPPORTING STATEMENT FOR THE HOLDING FOREIGN COMPANIES ACCOUNTABLE ACT¹ DISCLOSURE INTERIM FINAL AMENDMENTS

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, *et seq.*

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

On March 18, 2021, the Securities and Exchange Commission (the “Commission”) adopted interim final amendments to implement the disclosure and submission requirements of the Holding Foreign Companies Accountable Act.² Section 2 of the HFCA Act requires Commission rulemaking within 90 days of the date of enactment in order to “establish the manner and form in which a covered issuer shall make a submission required under paragraph (2)(B).”

The amendments apply to registrants that the Commission identifies as having filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board (“PCAOB”) is unable to inspect or investigate completely because of a position taken by an authority in that jurisdiction. Consistent with the HFCA Act, the amendments require the submission of documentation to the Commission establishing that such a registrant is not owned or controlled by a governmental entity in that foreign jurisdiction and also require disclosure in a foreign issuer’s annual report regarding the audit arrangements of, and governmental influence on, such registrants.

The amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”). The titles of the collections of information impacted by the amendments are:

“Form 10-K” (OMB Control No. 3235-0063); and
“Form 20-F” (OMB Control No. 3235-0288).³

A copy of Commission Release No. 34-91364, which contains the interim amendment, is attached.

¹ Pub. L. No. 116-222, 134 Stat. 1063 (Dec. 18, 2020).

² *See* Release. No. 34-91364 (Mar. 18, 2021).

³ The interim final amendments also revise Form 40-F and Form N-CSR. Based on recent Form 40-F filings, no Form 40-F registrants reported having retained a registered public accounting firm located in a foreign jurisdiction, and therefore we are not making any revisions to the PRA burden estimates for Form 40-F at this time. Additionally, based on recent Form N-CEN filings, no registered investment company reported having retained a registered public accounting firm located in a foreign jurisdiction, and therefore we are not making any revisions to the PRA burden estimates for Form N-CSR at this time.

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The forms listed above were adopted under the Exchange Act and set forth registrant's annual disclosure requirements. The interim final amendments to registrant annual report forms implement the disclosure and submission requirements of the HFCA Act and require certain disclosure from foreign issuers relating to foreign jurisdictions that prevent PCAOB inspections and require registrants to submit documentation to the Commission establishing that such a covered issuer is not owned or controlled by a governmental entity in that foreign jurisdiction.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the amendment are set forth in Form 10-K and Form 20-F. These forms are filed electronically with the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system.

4. DUPLICATION OF INFORMATION

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

5. REDUCING THE BURDEN ON SMALL ENTITIES

The amendments are limited to Commission identified registrants that filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction and that the PCAOB is unable to inspect or investigate completely.⁴ As a result, we believe that the new requirements will not affect many small entities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The forms were adopted under the Exchange Act and set forth the disclosure requirements for annual reports filed by registrants to help investors make informed investment decisions. Less frequent 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.

⁴ Based on the data and analysis described in Section IV of the release, for purposes of the PRA we estimate that approximately 275 registrants may be affected by the rules, of which we estimate 25 had total assets of \$5 million or less and could be considered small entities.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission has amended the forms several times since their adoption. The Commission is soliciting comment on the interim final amendments. Comments on the Commission's releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges.

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY

Documents submitted to the Commission are available to the public.

11. SENSITIVE QUESTIONS

No information of a sensitive nature will be required under these amendments. These information collections collect basic Personally Identifiable Information (PII) that may include a name and job title. However, the agency has determined that these 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 interim amendments will increase the burdens and costs for affected registrants. We derived our burden hour and cost estimates by estimating the average amount of time it would take a registrant to prepare and review the required disclosure and submission, as well as the average hourly rate for outside professionals who assist with such preparation. In addition, our burden estimates are based on several assumptions. For the HFCA Act Section 3 disclosure requirements we estimated the number of affected registrants by determining the number of foreign issuer registrants that retained registered public accounting firms that issued an audit report and are located in a jurisdiction where obstacles to PCAOB inspections exist. For the Section 104(i)(1)(B) of the Sarbanes-Oxley Act (as added by Section 2 of the HFCA Act) submission requirements we estimated the number of affected registrants by determining the number of registrants that retained registered public accounting firms that issued an audit report and are located in a jurisdiction where obstacles to PCAOB inspections exist.

Based on these estimates, for purposes of the PRA, we estimate that there will be:

- No affected Form 10-K filers for the HFCA Act Section 3 disclosure requirements and 55 affected filers for the Section 104(i)(1)(B) of the Sarbanes-Oxley Act submission requirement; and
- Two hundred twenty affected Form 20-F filers for the HFCA Act Section 3 disclosure requirements and 206 affected filers for the Section 104(i)(1)(B) of the Sarbanes-Oxley Act submission requirement.⁵

Registrants will generally have information readily available about their audit arrangements, ownership structures, and controlling parties. Therefore we estimate that the average incremental burden for an affected registrant to prepare the submission to be 1 hour and for an affected registrant that is a foreign issuer to prepare the disclosure to be 1 hour. These estimates represent the average burdens for all affected registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the size and complexity of their operations. We believe that some registrants will experience costs in excess of this average and some registrants may experience less than the average costs.

Table 1 below shows the total annual compliance burden, in hours and in costs, of the collection of information resulting from the interim final amendments.⁶ The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review the required information. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the registrant internally is reflected in hours. For purposes of the PRA, we estimate that 75 percent of the burden of preparation of Form 10-K and Form 20-F is carried by the registrant internally and that 25 percent of the burden of preparation is carried by outside professionals retained by the registrant at an average cost of \$400 per hour.⁷

⁵ Based on the data and analysis described in Section IV of the release, for purposes of the PRA we estimate that approximately 275 registrants may be affected by the rules, of which we estimate 20 percent are U.S. registrants that file on Form 10-K (55 registrants) and 80 percent are foreign issuers that file on Form 20-F (220 registrants). For purposes of the HFCA Act Section 3 disclosure requirement, we estimate that only foreign filers filing on Form 20-F will be required to provide the disclosure (220 registrants). For purposes of the Section 104(i)(1)(B) of the Sarbanes-Oxley Act submission requirement, we estimate that approximately five percent of the affected registrants are state-owned entities and will not be required to prepare the submission. As a result, we estimate that U.S. registrants that file on Form 10-K (55 registrants) and foreign issuers that file on Form 20-F but are not state-owned entities (206) will be required to provide the submission.

⁶ For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

⁷ We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that such costs will be an average of \$400 per hour. This estimate is based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

Table 1. Incremental Paperwork Burden under the Interim Final Amendments.

	Estimated number of affected responses (A)	Incremental Burden Hours/Form (B)	Total Incremental Burden Hours (C)=(A)*(B)	75% Company (D)=(C)*0.75	25% Professional (E)=(C)*0.25	Professional Costs (F)=(E)*\$400
Form 10-K (submission)	55	1	55	41	14	\$5,600
Form 20-F (submission)	206	1	206	155	52	\$20,800
Form 20-F (disclosure)	220	1	220	165	55	\$22,000

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 \$125,800,170 in fiscal year 2021, based on the Commission’s computation of the value of staff time devoted to this activity and related overhead.

15. EXPLANATION OF CHANGES IN BURDEN

The interim final amendments will increase the burdens and costs for affected registrants. Table 2 below illustrates the changes in cost and hour burdens from the burden estimates currently approved by OMB. Columns (A) and (B) represent the most recent burden estimates submitted to OMB. Columns (C) and (D) represent the new burden estimates under the interim amendment. Columns (E) and (F) represent the program change, which encompasses the change in the burden estimates attributable to the interim amendment.

Table 2. Changes in Burden under the Interim Final Amendments.

	Current Burden		Change in Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Costs (D)	Burden Hours (E)	Cost (F)
10-K	13,988,770	\$1,835,588,919	13,988,811	\$1,835,594,519	41	\$5,600
Form 20-F	478,983	\$576,490,625	479,303	\$576,533,425	320	\$42,800

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 the forms. Including the expiration date on the electronic version of the forms will result in increased costs, because the need to make changes to the forms 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 Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

The information collections do not employ statistical methods.

Form 10-K Short Statement

Consistent with the HFCA Act, the amendments require the submission of documentation to the Commission establishing that such a registrant is not owned or controlled by a governmental entity in that foreign jurisdiction and also require disclosure in a foreign issuer's annual report regarding the audit arrangements of, and governmental influence on, such registrants. As a result of these amendments, we estimate that the impact will be an increase in the paperwork burden of affected entities. For purposes of the PRA, we estimate that, for Form 10-K, the amendments will result in an increase of 41 burden hours and \$5,600 for the services of outside professionals.

Form 20-F Short Statement

Consistent with the HFCA Act, the amendments require the submission of documentation to the Commission establishing that such a registrant is not owned or controlled by a governmental entity in that foreign jurisdiction and also require disclosure in a foreign issuer's annual report regarding the audit arrangements of, and governmental influence on, such registrants. As a result of these amendments, we estimate that the impact will be an increase in the paperwork burden of affected entities. For purposes of the PRA, we estimate that, for Form 20-F, the amendments will result in an increase of 320 burden hours and \$42,800 for the services of outside professionals.