

SUPPORTING STATEMENT
FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION
SUBMISSION FOR SCHEDULE TO

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

In 1999, in Release No. 33-7760, the Commission adopted comprehensive revisions to its rules and regulations applicable to takeover transactions (including tender offers, mergers, acquisitions and similar extraordinary transactions). In addition, the revised rules integrate forms and disclosure requirements applicable to issuer tender offers, third-party tender offers and going private transactions. The revised rules also consolidated the disclosure requirements. As part of the comprehensive revisions, the Commission created Schedule TO which contains information concerning a reporting company that make tender offer for its own securities and information concerning any persons, other than the reporting company, that makes a tender offer for a company's equity securities registered under Section 12 of the Exchange Act (which offer, if consummated, would cause that person to own over 5 percent of that class of the securities) must file at the time of the offer and send to certain other parties, such as the issuer and any competing bidders.

2. Purpose and Use of the Information Collection

The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. The information is needed so that security holders may make informed tender and voting decisions in tender offers, mergers, acquisitions, and other extraordinary transactions.

3. Consideration Given to Information Technology

Schedule TO is filed electronically with the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system.

4. Duplication of Information

Schedule TO consolidated the requirements of Schedule 13E-4 and Schedule 14D-1 under the Securities Exchange Act of 1934. There are no other publicly filed sources of this information.

5. Reducing the Burden on Small Entities

Many small businesses do not have a class of securities registered pursuant to Section 12 of the Exchange Act and therefore are generally not subject to the requirements of Schedule TO. A small entity may be required to file a Schedule TO if it has significant equity participation in a control transaction. Schedule TO is designed to reduce the costs and burdens for all registrants, including small businesses.

6. Consequences of Not Conducting Collection

The purpose of collecting information on Schedule TO is to elicit disclosure concerning substantial equity participants in control transactions and to identify indirect control. Less frequent collection could compromise investor protection and the legislative intent behind this information collection.

7. Special Circumstances

There are no special circumstances with this information collection.

8. Consultations with Persons Outside the Agency

No comments were received during the 60-day comment period prior to OMB's review of this submission.

9. Payment or Gift to Respondents

No payment or gift to respondents.

10. Confidentiality

Schedule TO is a public document.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection collects basic Personally Identifiable Information (PII) that may include the name, address, telephone number, zip code of the person filing the form. Also, it may include the signature of the official signing on behalf of the entity. 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 March 22, 2023, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. Estimate of Respondent Reporting Burden**Estimated Reporting Burden**

| Information Collection Title | OMB Control Number | Number of Responses | Burden Hours |
|------------------------------|--------------------|---------------------|--------------|
| Schedule TO | 3235-0515 | 1,378 | 30,834 |

For purposes of the Paperwork Reduction Act (“PRA”), we estimate that Schedule TO takes approximately 44.752 hours per response to comply with the collection of information requirements and is filed by 1,378 issuers. We derived our burden hour estimates by estimating the average number of hours it would take an issuer to compile the necessary information and data, prepare and review disclosure, file documents and retain records. In connection with rule amendments to the form, we occasionally receive PRA estimates from public commenters about incremental burdens that are used in our burden estimates. We believe that the actual burdens will likely vary among individual issuers based on the nature of their operations. We further estimate that 50% of the collection of information burden is carried by the issuer internally and that 50% of the burden of preparation is carried by outside professionals retained by the company. Based on our estimates, we calculated the total reporting burden to be 30,834 hours ((44.752 total burden hours per response) x 0.50 hours x 1,378 responses). For administrative convenience, the presentation of the total related to the paperwork burden hours has been rounded to the nearest whole number. The estimated burden hours is made solely for the purpose of the Paperwork Reduction Act.

13. Estimate of total annualized cost burden**Estimated Cost Burden**

| Information Collection Title | OMB Control Number | Number of Responses | Cost Burden |
|------------------------------|--------------------|---------------------|--------------|
| Schedule TO | 3235-0515 | 1,378 | \$18,500,477 |

We estimated that 50% of the 44.752 hours per response (22.376 hours) is prepared by an outside counsel hired by the company. We estimate the cost to be \$600 per hour (\$600 x 22.376 hours x 1,378 responses) for a total cost burden of \$18,500,477. We estimate an hourly cost of \$600 for outside legal and accounting services used in connection with public company reporting. This estimate is based on our consultations with registrants and professional firms who regularly assist registrants in preparing and filing disclosure documents with the Commission. Our estimates reflect average burdens, and therefore, some companies may experience costs in excess of our estimates and some companies may experience costs that are lower than our estimates. For administrative convenience, the presentation of the total related to the paperwork cost total has been rounded to the nearest dollar. The cost estimate is made solely for the purpose of the Paperwork Reduction Act.

14. Estimate of Cost 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**Change In Burden**

| Information Collection Title | OMB Control Number | Cost per Hour | Cost Burden Adjustment |
|------------------------------|--------------------|---------------|------------------------|
| Schedule TO | 3235-0515 | \$600 | \$6,167,477 |

The increase in cost burden of \$6,167,477 is due an adjustment in how the cost burden is calculated. 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 would be an average of \$600 per hour. We are increasing the cost estimate to \$600 per hour to adjust the estimate for inflation from August 2006 to the present.

16. Information Collection Planned for Statistical Purposes

The information collection does not employ statistical methods.

17. Approval to Omit Expiration Date

We request authorization to omit the expiration date on the electronic version of the 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.

B. STATISTICAL METHODS

The information collection does not employ statistical methods.