

SUPPORTING STATEMENT FOR PAY VERSUS PERFORMANCE

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

In Release No. 34-95607,¹ the Commission adopted amendments to implement Section 14(i) (“Section 14(i)”) of the Securities Exchange Act of 1934 (“Exchange Act”), as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). Section 14(i) directs the Commission to adopt rules requiring registrants to provide disclosure of pay versus performance. The disclosure is required in proxy or information statements in which executive compensation disclosure is required.

Specifically, the amendments require registrants to provide a table disclosing specified executive compensation and financial performance measures for their five most recently completed fiscal years. With respect to the measures of performance, a registrant is required to report its total shareholder return (“TSR”), the TSR of companies in the registrant's peer group, its net income, and a financial performance measure chosen by the registrant. Using the information presented in the table, registrants are required to describe the relationships between the executive compensation actually paid and each of the performance measures, as well as the relationship between the registrant’s TSR and the TSR of its selected peer group. A registrant is also required to provide a list of three to seven financial performance measures that it determines are its most important performance measures for linking executive compensation actually paid to company performance. Smaller reporting companies (“SRCs”) are subject to scaled disclosure requirements under the rules.

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:

- “Regulation 14A and Schedule 14A” (OMB Control No. 3235-0059); and
- “Regulation 14C and Schedule 14C” (OMB Control No. 3235- 0057).

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The Commission adopted the above-referenced regulations and schedules pursuant to the Exchange Act. The regulations and schedules set forth the disclosure requirements for proxy and information statements filed by registrants to help investors make informed investment and voting decisions.

¹ *Pay Versus Performance*, Release No. 34-95607 (Aug. 25, 2022), a copy of which is attached.

The final rules are intended to implement Section 953(a) of the Dodd-Frank Act and satisfy the requirements of Section 14(i). The Commission believes the disclosure mandated by Section 953(a) is intended to provide investors with more transparent, readily comparable, and understandable disclosure of a registrant's executive compensation, so that they may better assess a registrant's executive compensation program when making voting decisions, for example when exercising their rights to cast advisory votes on executive compensation under Exchange Act Section 14A or electing directors.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the amendments are set forth in the affected rules and forms. The affected forms are filed electronically with the Commission using the Commission's Electronic Data Gathering, Analysis 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 amendments will affect some companies that are small entities that have a class of securities that are registered under Section 12 of the Exchange Act but are not foreign private issuers, registered investment companies, or emerging growth companies ("EGCs"). The Commission performed a Final Regulatory Flexibility Act Analysis and estimated that there are approximately 450 issuers that may be considered small entities and are potentially subject to the final amendments. For purposes of the Regulatory Flexibility Act, under the Commission's 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. In addition, an investment company, including a business development company ("BDC"), is considered to be a "small business" if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year. The Commission believes that the final rules will affect some small entities that are BDCs that have a class of securities registered under Section 12 of the Exchange Act. The Commission estimates that one affected BDC may be considered a small entity.

The Commission expects the final rules to have an incremental effect on existing reporting, recordkeeping and other compliance burdens for all issuers subject to the final rules, including small entities. The Commission has provided some different and simplified compliance requirements for smaller reporting companies, including small entities, taking into account their resources. In particular, the Commission has scaled the disclosure requirements for SRCs in an attempt to limit the compliance burden to which such companies will be subject.²

² A "smaller reporting company" means, in the case of issuers required to file reports under Sections 13(a) or 15(d) of the Exchange Act, an issuer that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company and that: (1) had a public float of less than \$250 million (as of the last business day of the issuer's most recently completed second fiscal quarter); or (2)

Under the final rules, SRCs are not required to provide a peer group TSR, a Company-Selected Measure, a Tabular List, or to disclose amounts related to pensions (for purposes of calculating executive compensation actually paid). Because SRCs are not required to provide a peer group TSR or Company-Selected Measure, they are similarly not required to provide relationship descriptions with respect to those performance measures. In addition, because the existing scaled definition of named executive officer (“NEO”) in Item 402 of Regulation S-K applicable to SRCs applies for purposes of the new Item 402(v) disclosure, SRCs are required to provide disclosure about fewer NEOs than non-SRC registrants. SRCs also are only required to provide three years of disclosure (rather than five years) and are able to provide two years of data, instead of three, in the first applicable filing after the rules become effective. An SRCs is only required to provide the required Inline eXtensible Business Reporting Language (“XBRL”) data beginning in the third filing in which it provides pay-versus-performance disclosure, instead of the first.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

Schedule 14A and Schedule 14C set forth the disclosure requirements for proxy and information statements filed by issuers to help investors make informed investment decisions. Less frequent collection of the information required by the proposed amendments would frustrate the statutory intent of Section 14(i) of the Exchange Act because shareholders would have less executive compensation information on which to base voting and investment decisions.

7. SPECIAL CIRCUMSTANCES

There are no special circumstances in connection with these amendments.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission issued a release soliciting comment on the new “collection of information” requirements and the associated paperwork burdens.³ The Commission’s solicitation of public comments included estimating and requesting public comments on updated burden estimates for all information collections under the OMB control numbers specified above (i.e., both changes associated with the rulemaking and other burden updates). Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, roundtables and

had annual revenues of less than \$100 million (as of the most recently completed fiscal year for which audited financial statements are available) and either: (i) no public float (as of the last business day of the issuer’s most recently completed second fiscal quarter); or (ii) a public float of less than \$700 million (as of the last business day of the issuer’s most recently completed second fiscal quarter). 17 CFR 240.12b-2; and 17 CFR 229.10.

³ See Pay Versus Performance, Release No. 34-74835 (Apr. 29, 2015) (the “Proposing Release”). The comment period for the Proposing Release was reopened in 2022 to permit commenters to further analyze and comment upon the proposed rules in light of developments since the publication of the Proposing Release and the Commission’s further consideration of the Section 953(a) mandate. See Reopening of Comment Period for Pay Versus Performance, Release No. 34-94074 (Jan. 27, 2022) (the “Reopening Release”).

meetings. All comments received on the proposal are available at <https://www.sec.gov/comments/s7-07-15/s70715.htm>.

While several commenters provided comments on the potential costs of the proposed rules, only one commenter specifically addressed the Commission's PRA estimates, stating that the Commission's estimates of the man hour and cost burden of the rule on companies were "grossly underestimated."⁴ The Commission made some changes to the proposed amendments as a result of comments received in response to the Proposing Release and the Reopening Release and revised the estimates from the Proposing Release accordingly, taking into account the changes and the comments received. The Commission considered all comments received prior to publishing the final rules as required by 5 CFR 1320.11(f).

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. 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 March 22, 2023, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

12. /13. ESTIMATES OF HOUR AND COST BURDENS

The estimated burden hours and cost burden are made solely for the purposes of the Paperwork Reduction Act. The cost burden is not derived from a comprehensive or even a representative survey of the costs of Commission rules and forms.

⁴ See letter from National Association of Manufacturers, dated July 6, 2015.

PRA Table 1 summarizes the estimated effects of the amendments on the paperwork burdens associated with the affected collections of information.

PRA Table 1. Estimated Paperwork Burden Effects of the Amendments

Final Amendments and Effects	Estimated Burden Effect ⁵
<p><u>Pay-versus-Performance Table:</u></p> <ul style="list-style-type: none"> • <i>Registrants other than SRCs:</i> Requiring a table containing the Summary Compensation Table measure of total compensation and the values of the prescribed measure of executive compensation actually paid for the principal executive officer (“PEO”) and as an average for the other NEOs, TSR for both the registrant and its peer group, the registrant’s net income, and a Company-Selected Measure. The calculation of executive compensation actually paid includes adjustments from the Summary Compensation Table amounts with respect to equity awards and pension benefits. Related footnote disclosure of the amounts that were deducted from, and added to, the Summary Compensation Table total and of valuation assumptions also required. Registrants required to separately tag the values disclosed in the table, block-text tag the footnote disclosure, and tag specific data points (such as quantitative amounts) within the footnote disclosures, all in Inline XBRL. <i>Estimated burden increase: 20 hours per schedule.</i> • <i>SRCs:</i> Requiring a table containing the Summary Compensation Table measure of total compensation and the values of the prescribed measures of executive compensation actually paid for the PEO and as an average for the other NEOs, TSR for the registrant, and the registrant’s 	<ul style="list-style-type: none"> • 28 hour increase in compliance burden for each Schedule 14A and 14C filed by registrants other than SRCs • 17 hour increase in compliance burden for each Schedule 14A and 14C filed by SRCs

⁵ Estimated effect expressed as an increase of burden hours on average and derived from Commission staff review of samples of relevant sections of the affected forms and schedules.

Final Amendments and Effects	Estimated Burden Effect ⁵
<p>net income. The calculation of executive compensation actually paid includes adjustments from the Summary Compensation Table amounts with respect to equity awards. Related footnote disclosure of the amounts that were deducted from, and added to, the Summary Compensation Table total and of valuation assumptions also required. Registrants required to separately tag the values disclosed in the table, block-text tag the footnote disclosure, and tag specific data points (such as quantitative amounts) within the footnote disclosures, all in Inline XBRL. <i>Estimated burden increase: 15 hours per schedule.</i></p> <p><u>Relationship Disclosure:</u></p> <ul style="list-style-type: none"> • <i>Registrants other than SRCs:</i> Requiring a clear description of (i) the relationships between executive compensation actually paid to its PEOs and, on average, its other NEOs and the registrant’s TSR, (ii) the relationships between executive compensation actually paid to the registrant’s PEOs and, on average, its other NEOs and the net income of the registrant, (iii) the relationships between executive compensation actually paid to the registrant’s PEOs and, on average, its other NEOs and the registrant’s Company-Selected Measure, and (iv) the relationships between the registrant’s TSR and its peer group TSR, in each case over the registrant’s five most recently completed fiscal years. Registrants required to block-text tag the relationship disclosure in Inline XBRL. <i>Estimated burden increase: 4 hours per schedule.</i> • <i>SRCs:</i> Requiring a clear description of (i) the relationships between executive compensation actually paid to its PEOs and, on average, its other NEOs and the 	

Final Amendments and Effects	Estimated Burden Effect ⁵
<p>registrant’s TSR and (ii) the relationships between executive compensation actually paid to the registrant’s PEOs and, on average, its other NEOs and the net income of the registrant, in each case over the registrant’s three most recently completed fiscal years. Registrants required to block-text tag the relationship disclosure in Inline XBRL. <i>Estimated burden increase: 2 hours per schedule.</i></p> <p><u>Tabular List:</u></p> <ul style="list-style-type: none"> • Requiring a registrant that is not an SRC to disclose an unranked Tabular List of the most important financial performance measures used by it to link executive compensation actually paid to its PEOs and NEOs during the fiscal year to company performance. Registrants required to block-text tag the Tabular List in Inline XBRL. <i>Estimated burden increase: 4 hours per schedule.</i> 	

The estimated burden increase associated with the final rules for both SRCs and non-SRCs reflects an increase from the estimated average burden increase of 15 hours for all registrants that was included in the Proposing Release. The increase reflects adjustments made due to comments received and accounts for several modifications relative to the proposed rules, including with respect to the calculation of executive compensation actually paid, the addition of net income and the Company-Selected Measure as performance measures to be included in the table, and related relationship disclosures with respect to those performance measures, and the requirement to provide the Tabular List.

Because these estimates are averages of the burdens for all such companies in each respective category, the burden could be more or less for any particular company, and may vary depending on a variety of factors, such as the complexity of companies’ compensation plans or the degree to which companies use the services of outside professionals, or internal staff and resources, to tag the data in Inline XBRL. This burden, as discussed in more detail below, will be added to the current burdens for Schedule 14A and Schedule 14C.

The Commission does not believe that the amendments will change the frequency of responses to the existing collections of information; rather, it estimates that the amendments will change only the burden per response.

The new burden hour and cost estimates were calculated by estimating the total amount of time it would take a registrant to prepare and review the disclosure requirements contained in the final rules, as well as the average hourly rate for outside professionals who assist with such preparation. 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 disclosure required under the final amendments.

For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. For the proxy and information statements on Schedule 14A and Schedule 14C, the Commission estimates that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of \$400 per hour.⁶ The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

The Commission estimates that about 1,275 EGCs are required to file proxy statements on Schedule 14A or information statements on Schedule 14C, in which executive compensation disclosure pursuant to Item 402 of Regulation S-K is required. The Commission has adjusted the estimates to deduct the filings attributed to these companies from the estimate because EGCs are not subject to the final rules. The table below sets forth the Commission’s estimates of the number of current filings on the schedules that will be affected by the final rules. It used this data to extrapolate the effect of these changes on the paperwork burden for the listed collections of information.

PRA Table 2: Estimated Number of Affected Filings

Form	Current Annual Responses in PRA Inventory ⁷	Estimated Number of Affected Filings ⁸
Schedule 14A	6,369	4,968
Schedule 14C	569	444

⁶ The Commission recognizes that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, it estimated that such costs would be an average of \$400 per hour. In December 2022, the Commission increased the cost estimate for Schedules 14A and 14C to \$600 per hour to adjust the estimate for inflation from August 2006.

⁷ The number of responses reflected in the table equals the three-year average of the number of schedules filed with the Commission and currently reported by the Commission to OMB.

⁸ Based on the approximately 1,275 EGCs that the Commission estimates are required to file proxy statements on Schedule 14A or information statements on Schedule 14C relative to the estimated total number of approximately 4,530 registrants subject to the final rules, it is estimated that approximately 22% of the registrants filing Schedules 14A or 14C are EGCs, which are not subject to the final rules. In estimating the hours and service costs, the Commission has removed those filers from the Current Annual Responses totals for Schedule 14A and Schedule 14C. As a result, the Commission expects the final rules to affect approximately 4,968 Schedule 14A filings [$6,369 \times 0.22 = 1,401$; $6,369 - 1,401 = 4,968$] and approximately 444 Schedule 14C filings [$569 \times 0.22 = 125$; $569 - 125 = 444$].

In deriving its estimates, the Commission recognizes that the burdens will likely vary among individual registrants based on a number of factors, including the size and complexity of their executive compensation arrangements. The Commission believes that some registrants will experience costs in excess of this average (particularly in the first year of compliance with the final rules) and some registrants may experience less than the average costs. PRA Table 3 below illustrates the incremental change to the total annual compliance burden of affected collections of information, in hours and in costs, as a result of the final amendments.

PRA Table 3: Calculation of the Incremental Change in Burden Estimates of Current Responses Resulting from the Final Amendments

Collection of Information	Filed By ⁹	Estimated Number of Affected Responses (A)	Burden Hour Increase per Affected Response (B)	Increase in Burden Hours for Current Affected Responses (C) =(A) x (B)	Increase in Company Hours for Current Affected Responses (D) =(C) x 0.75	Increase in Professional Hours for Current Affected Responses (E) =(C) x 0.25	Increase in Professional Costs for Current Affected Responses (F) = (E) x \$400
Schedule 14A	Non-SRC	2,981	28	83,468			
Schedule 14A	SRC	1,987	17	33,779			
Schedule 14A (Total)		4,968		117,247	87,935	29,312	\$11,724,800
Schedule 14C	Non-SRC	266	28	7,448			
Schedule 14C	SRC	178	17	3,026			
Schedule 14C (Total)		444		10,474	7,856	2,619	\$1,047,600

⁹ Based on 2021 filings, SRCs represent about 41 percent (1,860 out of 4,530) of the affected registrants. The Commission assumes for purposes of the PRA estimates that 60 percent of each affected collection of information was filed by non-SRCs and 40 percent by SRCs.

The following PRA Table 4 summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the final amendments.

PRA Table 4. Requested Paperwork Burden under the Final Amendments

Collection of Information	Current Burden			Program Change			Revised Burden		
	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Number of Affected Responses (D)	Increase in Company Hours (E) ¹⁰	Increase in Professional Costs (F) ¹¹	Annual Responses (G) = (A)	Burden Hours (H) = (B) + (E)	Cost Burden (I) = (C) + (F)
Schedule 14A	6,369	762,901	\$101,685,312	4,968	87,935	\$11,724,800	6,369	850,836	\$113,410,112
Schedule 14C	569	55,192	\$7,359,744	444	7,856	\$1,047,600	569	63,048	\$8,407,344

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 \$125,800,170 million in fiscal year 2021, 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

As explained in further detail in Items 1, 12 and 13 above, the Commission expects that changes in burden for proxy and information statements on Schedule 14A and Schedule 14C will result from the amendments. The final rules are intended to implement Section 953(a) of the Dodd-Frank Act and satisfy the requirements of Section 14(i). The Commission believes the disclosure mandated by Section 953(a) is intended to provide investors with more transparent, readily comparable, and understandable disclosure of a registrant's executive compensation, so that they may better assess a registrant's executive compensation program when making voting decisions, for example when exercising their rights to cast advisory votes on executive compensation under Exchange Act Section 14A or electing directors.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collections do not employ statistical methods.

¹⁰ From Column (D) in PRA Table 3.

¹¹ From Column (F) in PRA Table 3.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

The Commission requests 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 for the Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

The information collections do not employ statistical methods.

Schedule 14A Short Statement

The amendments implement Section 14(i) of the Securities Exchange Act of 1934, as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 14(i) directs the Commission to adopt rules requiring registrants to provide disclosure of pay versus performance in proxy or information statements in which executive compensation disclosure is required. As a result of these amendments, the Commission estimates that the impact will be an increase in the paperwork burden for affected entities. For purposes of the PRA, the Commission estimates that, for Regulation 14A and Schedule 14A, the amendments will result in a net increase of 87,935 burden hours, and a net increase of \$11,724,800 in cost burden for the services of outside professionals.

Schedule 14C Short Statement

The amendments implement Section 14(i) of the Securities Exchange Act of 1934, as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 14(i) directs the Commission to adopt rules requiring registrants to provide disclosure of pay versus performance in proxy or information statements in which executive compensation disclosure is required. As a result of these amendments, the Commission estimates that the impact will be an increase in the paperwork burden for affected entities. For purposes of the PRA, the Commission estimates that, for Regulation 14C and Schedule 14C, the amendments will result in a net increase of 7,856 burden hours, and a net increase of \$1,047,600 in cost burden for the services of outside professionals.