

SUPPORTING STATEMENT FOR PROPOSED RULES RELATING TO *HOLDING FOREIGN COMPANIES ACCOUNTABLE ACT DISCLOSURE*

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995 (“PRA”).¹

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

On December 2, 2021,² the Securities and Exchange Commission (“Commission”) adopted amendments (“final amendments”) to finalize the interim final amendments to Forms 20-F,³ 40-F,⁴ 10-K,⁵ and N-CSR⁶ to implement the disclosure and submission requirements of Sections 2 and 3 of the Holding Foreign Companies Accountable Act (“HFCA Act”),⁷ which became law on December 18, 2020. The Commission adopted the interim final amendments on March 18, 2021.⁸

Section 2 of the HFCA Act amended Section 104 of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley Act”)⁹ by adding Section 104(i). Section 104(i)(2) of the Sarbanes-Oxley Act requires the Commission to identify each “covered issuer”¹⁰ that has retained a registered public accounting firm¹¹ to issue an audit report¹² where that registered public accounting firm has a branch or office that:

- Is located in a foreign jurisdiction; and
- The PCAOB has determined that it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction.

Once identified, Section 104(i)(2)(B) of the Sarbanes-Oxley Act requires these covered issuers, which the Final-Final Release referred to as “Commission-Identified Issuers,” to submit

¹ 44 U.S.C. §3501, *et seq.*

² *See Holding Foreign Companies Accountable Act Disclosure*, Release No. 34-93701 (Dec. 2, 2021) [86 FR 70027 (Dec. 9, 2021)] (“Final-Final Release”).

³ 17 CFR 249.220f.

⁴ 17 CFR 249.240f.

⁵ 17 CFR 249.310.

⁶ 17 CFR 249.331 and 274.128.

⁷ Pub. L. No. 116-222, 134 Stat. 1063 (Dec. 18, 2020).

⁸ *See Holding Foreign Companies Accountable Act Disclosure*, Release No. 34-91364 (Mar. 18, 2021) [86 FR 17528 (Apr. 5, 2021)] (“Interim Final Release”).

⁹ 15 U.S.C. 7214 (as amended by Pub. L. No. 116-222).

¹⁰ *See* Section 104(i)(1)(A) of the Sarbanes-Oxley Act (defining a “covered issuer” as an issuer that is required to file reports under Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act).

¹¹ The Commission uses the terms “registered public accounting firm” and “auditor” interchangeably to mean public accounting firms that, among other things, prepare accountant’s reports on U.S. public companies and are required to register with the PCAOB.

¹² The HFCA Act uses the term “audit report.” For the purposes of the final amendments, the term “audit report” has the same meaning as “accountants’ report” in Rule 1-02(a)(1) of Regulation S-X.

documentation to the Commission establishing that they are not owned or controlled by a governmental entity in that foreign jurisdiction.¹³ Additionally, Section 3 of the HFCA Act lists additional disclosure requirements for Commission-Identified Issuers that are “foreign issuers”¹⁴ (“Commission-Identified Foreign Issuers”).

The final amendments contain “collection of information” requirements within the meaning of the PRA. The titles for the collection of information are:¹⁵

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

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The Commission adopted the final amendments to implement the disclosure and submission requirements of the HFCA Act.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

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

4. DUPLICATION OF INFORMATION

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

5. REDUCING THE BURDEN ON SMALL ENTITIES

The final amendments are limited to Commission Identified Issuers that file an annual report with an audit report issued by a registered public accounting firm that is located in a

¹³ In addition to this submission requirement, pursuant to Section 104(i)(3) of the Sarbanes-Oxley Act, if an issuer is a Commission-Identified Issuer for three consecutive years, the Commission must prohibit the securities of the issuer from being traded on a national securities exchange or through any other method that is within the jurisdiction of the Commission to regulate, including through “over-the-counter” trading. 15 U.S.C. 7214(i)(3).
¹⁴ See 17 CFR 240.3b-4 (defining the term “foreign issuer”).

¹⁵ 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 that the Commission believes the PCAOB may determine it is unable to inspect or investigate completely because of a position taken by an authority in that foreign jurisdiction, and therefore the Commission estimated that no Form 40-F registrants are subject to the requirements of the final amendments. Accordingly, the Commission did not make any revisions to the PRA burden estimates for Form 40-F. 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 the Commission estimated that no registered investment companies are subject to the requirements of the final amendments. Accordingly, the Commission did not making any revisions to the PRA burden estimates for Form N-CSR.

foreign jurisdiction and that the PCAOB is unable to inspect or investigate completely.¹⁶ As a result, the Commission believes that the final amendments 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 the final amendments.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

In the Interim Final Release, the Commission adopted interim final amendments to Forms 20-F, 40-F, 10-K, and N-CSR to implement the disclosure and submission requirements of the HFCA Act and solicited comment on the new “collection of information” requirements and the associated paperwork burdens. Additionally, the Commission submitted the interim final amendments to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.¹⁷

The Commission considered all comments received prior to adopting the final amendments as required by 5 C.F.R. 1320.11(f). While some commenters provided comments on the possible costs of the interim final amendments, no commenters specifically addressed the PRA analysis. The comment letters are available to the public on the Commission’s website at <https://www.sec.gov/comments/s7-03-21/s70321.htm>.

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 in connection with the final amendments to Forms 10-K and 20-F. These information collections collect basic PII that may

¹⁶ For purposes of the PRA, the Commission estimates that approximately 275 registrants may be affected by the final amendments, of which it estimates that 25 had total assets of \$5 million or less and could be considered small entities.

¹⁷ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

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 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. and 13. ESTIMATES OF HOUR AND COST BURDENS

The Commission anticipates that new disclosure and submission requirements will increase the burdens and costs for affected registrants. The Commission derived its 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, the Commission's burden estimates are based on several assumptions. For the HFCA Act Section 3 disclosure requirements, the Commission 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 submission requirements, the Commission 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, the Commission estimates 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 and 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.¹⁸

Commission-Identified Issuers will generally have information readily available about their audit arrangements, ownership structures, and controlling parties. Therefore, the Commission estimates that the average incremental burden for an affected registrant to prepare the submission will be one hour and for an affected registrant that is a foreign issuer to prepare the disclosure will be one hour. These estimates represent the average burdens for all affected

¹⁸ For purposes of the PRA, the Commission estimates that approximately 275 registrants may be affected by the final amendments, of which the Commission estimates 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, the Commission estimates 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, the Commission estimates that approximately five percent of the affected registrants are state-owned entities and will not be required to prepare the submission. As a result, the Commission estimates 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.

registrants, both large and small.¹⁹ In deriving its estimates, the Commission recognized that the burdens would likely vary among individual registrants based on a number of factors, including the size and complexity of their operations. The Commission believes that some registrants will experience costs in excess of this average and some registrants may experience less than the average costs.

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 \$129,168,390 in fiscal year 2022, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.²⁰

15. REASON FOR CHANGE IN BURDEN

The Commission adopted the final amendments to implement the disclosure and submission requirements of the HFCA Act. The final amendments require certain disclosure from foreign issuers relating to foreign jurisdictions that prevent PCAOB inspections and require all applicable 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.

The tables below shows the incremental and total annual compliance burden, in hours and in costs, of the collection of information resulting from the final amendments.²¹ 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, the Commission estimates that 75 percent of the burden of preparation of Form 10-K and Form 20-F will be carried by the registrant internally and that 25 percent of the burden of preparation will be carried by outside professionals retained by the registrant at an average cost

¹⁹ The final amendments also include structured data tagging requirements pertaining to the auditor name and jurisdiction on the audit report signed by the registered public accounting firm in the registrant's Form 10-K, Form 20-F, and Form 40-F. However, the Commission believes that any associated burden resulting from this requirement will be encompassed within the overall PRA burden estimates for these forms because the final amendments add only a few discrete data points to an affected registrant's existing tagging obligations. Affected registrants are currently required to tag specified information in the relevant forms. *See generally* 17 CFR 232.405 and 232.406, paragraphs 101 and 104 to "Instructions as to Exhibits" in Form 20-F, paragraphs 15 and 17 to General Instruction B in Form 40-F.

²⁰ The paperwork burdens for Regulation S-K that are imposed for Regulation S-K are imposed through the forms that are subject to the requirements in these regulations and are reflected in the analysis of those forms. OMB has discontinued the OMB Control Number for this regulation so that the PRA inventory would not reflect duplicative burdens.

²¹ The table's estimated number of responses aggregates the responses for both the disclosure requirement and the submission requirement. Some registrants will be counted twice, once for each response. For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

of \$400 per hour.²²

Table 1. Incremental Paperwork Burden under the 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

²² The Commission recognized that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, the Commission estimated that such costs would 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.

The incremental PRA burden and cost estimates for the final amendments are the same as the incremental PRA burden and cost estimates for the interim final amendments, which are already reflected in the PRA inventory. As a result, the final amendments do not change the current PRA inventory.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collections do not employ statistical methods.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

The Commission requests authorization to omit the expiration date on the electronic version of these 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 the PRA submissions.

B. STATISTICAL METHODS

The information collections do not employ statistical methods.