

SUPPORTING STATEMENT
FOR THE PAPERWORK REDUCTION ACT INFORMATION COLLECTION
SUBMISSION FOR REGULATION FD

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

The Commission adopted Regulation FD to address the issue of companies' selective disclosure of material nonpublic information to those who would reasonably be expected to trade securities on the basis of the information or provide others with advice about securities trading. The regulation provides that when an issuer, or person acting on its behalf, discloses material nonpublic information to certain enumerated persons (such as, securities market professionals and holders of the issuer's securities who may well trade on the basis of the information), it must make public disclosure of that information. The timing of the required public disclosure depends on whether the selective disclosure was intentional or non-intentional; for an intentional selective disclosure, the issuer must make public disclosure simultaneously; for non-intentional disclosure, the issuer must make public disclosure promptly. Under the regulation, Form 8-K may be used to file or furnish the required public disclosure, or the company can rely on another method or combination of methods that are reasonably designed to effect broad, non-exclusionary distribution of the information to the public.

2. Purpose and Use of the Information Collection

The purpose of Regulation FD is to require: (1) an issuer that intentionally discloses material information, to do so through public disclosure, not selective disclosure; and (2) an issuer that learns that it has made non-intentional material selective disclosure, to make prompt public disclosure of that information. The Commission believes that the practice of selective disclosure leads to a loss of investor confidence in the integrity of our capital markets. Investors who see a security price change dramatically and only later are given access to the information responsible for that move rightly question whether they are on a level playing field with market insiders. Also, Regulation FD is designed to address another threat to the integrity of our markets: the potential for corporate management to treat material information as a commodity to be used to gain or maintain favor with particular analysts or investors. Finally, the Commission has provided several methods by which issuers can comply with Regulation FD, such as press releases, Internet web casting and teleconferencing.

3. Consideration Given to Information Technology

The Commission has provided many methods for issuers to comply with Regulation FD – these include, but are not limited to, filing Form 8-K using the Commission's EDGAR system. Also, issuers may use press releases, teleconferences, and the Internet as means of communicating material information to the investing public.

4. Duplication of Information

There are no other public sources for the information.

5. Reducing the Burden on Small Entities

Regulation FD's "public disclosure" requirement provides issuers, including small entity issuers, flexibility in how to disseminate information so that they have the freedom to select the method of public disclosure that best suits their business operations and that minimizes burdens on their operations.

6. Consequences of Not Conducting Collection

Regulation FD does not require the issuer to make a certain number of public disclosures by filings or other means. The timing and frequency of public disclosure of material information pursuant to Regulation FD is largely within the control of the issuer.

7. Special Circumstances

There are no special circumstances.

8. Consultations with Persons Outside the Agency

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

9. Payment or Gift to Respondents

No payment or gift has been provided to any respondents.

10. Confidentiality

Regulation FD disclosure materials are public documents.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Estimate of Respondent Reporting Burden

Estimated Reporting Burden

Information Collection Title	OMB Control Number	Number of Responses	Burden Hours
Regulation FD-Other Disclosure Materials	3235-0536	19,274	72,278

We estimate that approximately 7,196 issuers¹ make Regulation FD disclosures approximately five times a year for a total of 35,980 responses annually. We note that there is an average of 16,706 Form 8-K filings annually that include a disclosure under Item 7.01 (calculated for the period 2021 through 2023). Because those responses are included in the information collection inventory for Form 8-K, we subtract those responses from the 35,980 for a net total of 19,274 responses under Regulation FD.

We further estimate that each Regulation FD response requires a total of 5 burden hours and that 75% of the burden is carried by the issuer internally and that 25% of the burden is carried by outside professional retained by the company. Based on our estimates, we calculated that 75% of the 5 hours per response (3.75 hours) is prepared by the issuer for an annual reporting burden of 72,278 hours (19,274 responses x 3.75 hours per response).

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 Paperwork Reduction Act (“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 companies based on the size and complexity of their organization and the nature of their operations. Our estimates reflect average burdens, and, therefore, some companies may experience more hours than our estimates and some companies may experience less hours than our estimates. For administrative convenience, the presentation of the total related to the paperwork burden hours has been rounded up to the nearest whole number. The estimated burden hours are made solely for the purpose of the PRA.

¹ The estimated number of issuers subject to Regulation FD is based on the average number of Form 10-K filings made annually (calculated for the period 2021 through 2023).

13. Estimate of Total Annualized Cost Burden

Estimated Total Cost Burden

Information Collection Title	OMB Control Number	Number of Responses	Burden Hours
Regulation FD-Other Disclosure Materials	3235-0536	19,274	\$14,455,500

We estimated that 25% of the 5 hours per response (1.25 hours) is prepared by outside professionals. We estimate an hourly cost of \$600 for outside professional services used in connection with public company reporting. This estimate is based on our consultations with registrants and professional firms who regularly assist with public company reporting requirements. We estimate that the total annual cost of compliance with Regulation FD is \$14,455,500 (\$600 per hour x 1.25 hours per response x 19,274 responses). 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 burden has been rounded to the nearest dollar. The estimated cost burden is made solely for the purposes of the PRA.

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 \$131,724,880 in fiscal year 2023, 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

Information Collection Title	OMB Control Number	Burden Hours Adjustment	Cost Burden Adjustment
Regulation FD	3235-0536	(222)	(\$72,544,500)

The decreases of in 222 burden hours and \$72,544,500 cost burden are due to adjustments. These decreases reflect a reduction in the estimated number of annual Regulation FD responses from the previous estimate of 58,000 to the current estimate of 19,274. The assumptions underlying the previous estimate had not been adjusted since the Commission

adopted Regulation FD in 2000. Since 2000, there has been a significant decrease in the estimated number of issuers subject to Regulation FD (from 13,000 to 7,196). There also has been an increase in the estimated number of Regulation FD responses made annually on Form 8-K (from 7,000 to 16,706). Because these responses are included in the information collection inventory for Form 8-K, we have excluded them from the number of Regulation FD responses, consistent with our past approach.

The burden hour and cost burden adjustments also reflect a change in our expectation regarding how issuers will complete their responses to Regulation FD. Previously, we had estimated that 25% of the burden would be carried by an issuer's internal professionals and 75% of the burden would be carried by outside professionals. Because the information collection inventory for Regulation FD only reflects those responses not filed on Form 8-K, we believe it is more appropriate to assume that 75% of the burden is carried by the issuer's internal professionals and 25% of the burden is carried by outside professionals.² As such, we have adjusted the burden hour and cost burden calculations accordingly.

Finally, the decrease in cost burden is offset, in part, by the Commission's increase of its estimated cost burden per hour for outside professionals from \$400 per hour to \$600 per hour.

16. Information Collections Planned for Statistical Purposes

The information collection is not planned for statistical purposes.

17. Approval to Omit OMB 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.

² See *Selective Disclosure and Insider Trading*, Release No. 33-7881 (Aug. 15, 2000) [65 FR 51716, 51732 & n.157 (Aug. 24, 2000)] (assuming that 75% of the burden hours for preparing a Form 8-K response to Regulation FD would be carried by outside professionals but stating that "we anticipate that other methods of disclosure, such as press releases, may require less preparation time than a Form 8-K and will be prepared primarily, if not exclusively, by the company's internal staff").