

# **SUPPORTING STATEMENT FOR PROPOSED RULES RELATING TO CYBERSECURITY RISK MANAGEMENT, STRATEGY, GOVERNANCE, AND INCIDENT DISCLOSURE**

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

## **A. JUSTIFICATION**

### **1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY**

On March 9, 2022, the Securities and Exchange Commission (“Commission”) proposed rules and rule amendments to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and cybersecurity incident reporting by public companies that are subject to the reporting requirements of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>2</sup> Specifically, the Commission proposed amendments to require current reporting about material cybersecurity incidents. It also proposed to require periodic disclosures about a registrant’s policies and procedures to identify and manage cybersecurity risks, management’s role in implementing cybersecurity policies and procedures, and the board of directors’ cybersecurity expertise, if any, and its oversight of cybersecurity risk. Additionally, the proposed rules would require registrants to provide updates about previously reported cybersecurity incidents in their periodic reports. Further, the proposed rules would require the cybersecurity disclosures to be presented in Inline eXtensible Business Reporting Language (“Inline XBRL”).

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

- Schedule 14C (OMB Control No. 3235-0057);
- Schedule 14A (OMB Control No. 3235-0059);
- Form 8-K (OMB Control No. 3235-0060);
- Form 10-K (OMB Control No. 3235-0063);
- Form 10-Q (OMB Control No. 3235-0070);
- Form 6-K (OMB Control No. 3235-0116); and
- Form 20-F (OMB Control No. 3235-0288).

### **2. PURPOSE AND USE OF THE INFORMATION COLLECTION**

The proposed amendments are intended to better inform investors about a registrant’s cybersecurity risk management, strategy, and governance and to provide timely notification of material cybersecurity incidents.

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<sup>1</sup> 44 U.S.C. §3501, *et seq.*

<sup>2</sup> See Release No. 34-11038 (Mar. 9, 2022) [87 FR 16590 (Mar. 23, 2022)] (“proposed amendments”).

### **3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY**

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

We are also proposing to require registrants to tag the information specified by Item 1.05 of Form 8-K and Items 106 and 407(j) of Regulation S-K in Inline XBRL in accordance with Rule 405 of Regulation S-T (17 CFR 232.405) and the EDGAR Filer Manual.<sup>3</sup> The proposed requirements would include block text tagging of narrative disclosures, as well as detail tagging of quantitative amounts disclosed within the narrative disclosures. Inline XBRL is both machine-readable and human-readable, which improves the quality and usability of XBRL data for investors.<sup>4</sup> Requiring Inline XBRL tagging of the disclosures provided pursuant to these disclosure items would benefit investors by making the disclosures more readily available and easily accessible to investors, market participants, and others for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as ASCII or HTML.

### **4. DUPLICATION OF INFORMATION**

Business development companies (“BDCs”) could be subject to both the proposed rules and rule amendments in the Division of Investment Management’s cybersecurity proposing release<sup>5</sup> and those proposed in this release if both proposals were to be adopted. To the extent that BDCs would need to provide substantively the same or similar disclosure on both Form 8-K and in registration statements, the compliance costs could be duplicative. However, the potential duplication should not result in a significant increase in compliance costs, because BDCs should be able to provide similar disclosure for both sets of rules.

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<sup>3</sup> This tagging requirement would be implemented by including a cross-reference to Rule 405 of Regulation S-T in proposed Item 1.05 of Form 8-K and Items 106 and 407(j) of Regulation S-K, and by revising Rule 405(b) of Regulation S-T [17 CFR 232.405(b)] to include the listed disclosure Items. In conjunction with the EDGAR Filer Manual, Regulation S-T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S-T specifically governs the scope and manner of disclosure tagging requirements for operating companies and investment companies, including the requirement in Rule 405(a)(3) to use Inline XBRL as the specific structured data language to use for tagging the disclosures.

<sup>4</sup> See Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)]. Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. Inline XBRL is both human-readable and machine-readable for purposes of validation, aggregation, and analysis. *Id.* at 40851.

<sup>5</sup> See Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies, Release No. 34-94197 (Feb. 9, 2022) [87 FR 13524 (Mar. 9, 2022)].

## **5. REDUCING THE BURDEN ON SMALL ENTITIES**

The proposed amendments would affect some issuers that are small entities. Commission staff estimates that, as of June 2021, there were 660 issuers,<sup>6</sup> and 9 BDCs<sup>7</sup> that may be considered small entities that would be subject to the proposed amendments.

If adopted, the proposed amendments would apply to small entities to the same extent as other entities, irrespective of size. Therefore, we expect that the nature of any benefits and costs associated with the proposed amendments to be similar for large and small entities. We anticipate that the economic benefits and costs likely could vary widely among small entities based on a number of factors, such as the nature and conduct of their businesses, which makes it difficult to project the economic impact on small entities with precision. As a general matter, however, we recognize that the costs of the proposed amendments borne by the affected entities could have a proportionally greater effect on small entities, as they may be less able to bear such costs relative to larger entities.

The Commission requested comment on how the proposed disclosure amendments would affect small entities and will consider ways in the adopting release to ease the regulatory burden on them, if appropriate.

## **6. CONSEQUENCES OF NOT CONDUCTING COLLECTION**

The forms were adopted under the Exchange Act and set forth the disclosure requirements for current reports, periodic reports, and proxy and information statements filed by registrants to help investors make informed investment and voting decisions. Less frequent collection would deprive investors of access to information that is important to these decisions.

## **7. SPECIAL CIRCUMSTANCES**

There are no special circumstances in connection with the proposed amendments.

## **8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY**

Members of the Commission staff consulted with the Cybersecurity and Infrastructure Security Agency (CISA), the Federal Bureau of Investigation (FBI), and the United States Department of Justice (DOJ) among other federal agencies, commentators, and market participants. The Commission is currently soliciting public comment on the new “collection of information” requirements and the associated paperwork burdens.

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<sup>6</sup> This estimate is based on staff analysis of Form 10-K filings on EDGAR, or amendments thereto, filed during the calendar year of Jan. 1, 2020 to Dec. 31, 2020, or filed by Sept. 1, 2021, and on data from XBRL filings, Compustat, and Ives Group Audit Analytics.

<sup>7</sup> These estimates are based on staff analysis of Morningstar data and data submitted by investment company registrants in forms filed on EDGAR as of June 30, 2021.

**9. PAYMENT OR GIFT TO RESPONDENTS**

No payment or gift has been provided to any respondents.

**10. CONFIDENTIALITY**

All the affected information collections filed with the Commission are available to the public.

**11. SENSITIVE QUESTIONS**

No information of a sensitive nature would be required in connection with the proposed amendments. These information collections collect basic Personally Identifiable Information (PII) that may 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 Privacy Impact Assessment (PIA) of the EDGAR system, in connection with these/this collection(s) 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. All of these burden estimates incorporate the proposed tagging requirements in Rule 405 of Regulation S-T.

Table 1 summarizes the estimated changes in burden attributable to the proposed amendments for the affected forms and schedules:

**Table 1: Estimated Paperwork Burden Associated with the Proposed New Rules and Amendments**

Proposed Requirements and Effects	Affected Forms and Schedules	Estimated Burden Per Response	Number of Estimated Affected Responses
<p><b>Form 8-K, Item 1.05</b></p> <ul style="list-style-type: none"> <li>Require disclosure regarding cybersecurity incidents.</li> </ul>	Form 8-K	10 Hours	200 Filings

<p><b>Form 6-K</b></p> <ul style="list-style-type: none"> <li>Require disclosure regarding cybersecurity incidents.</li> </ul>	<p>Form 6-K</p>	<p>9 Hours</p>	<p>20 Filings</p>
<p><b>Adding Item 106 Disclosures</b></p> <ul style="list-style-type: none"> <li>Require disclosure regarding policies and procedures. (Item 106(b)).</li> <li>Require disclosure regarding board and management oversight of cybersecurity risk. (Item 106(c)).</li> <li>Require updated disclosure regarding cybersecurity incidents. (Item 106(d)).</li> </ul>	<ul style="list-style-type: none"> <li>Form 10-K</li> <li>Form 20-F</li> <li>Form 10-Q (Item 106(d))</li> </ul>	<ul style="list-style-type: none"> <li>Form 10-K: 15 Hours</li> <li>Form 20-F: 16.5 Hours</li> <li>Form 10-Q: 5 Hours</li> </ul>	<ul style="list-style-type: none"> <li>Form 10-K: 8,292 Filings</li> <li>Form 20-F: 729 Filings</li> <li>Form 10-Q: 600 Filings</li> </ul>
<p><b>Adding Item 407(j) disclosures</b></p> <ul style="list-style-type: none"> <li>Require disclosure on the cybersecurity expertise of members of the board of directors of the registrant, if any.</li> </ul>	<ul style="list-style-type: none"> <li>Form 10-K</li> <li>Schedule 14A</li> <li>Schedule 14C</li> </ul>	<ul style="list-style-type: none"> <li>Form 10-K: 1.5 Hours</li> <li>Schedule: 14A: 1.5 Hours</li> <li>Schedule 14C: 1.5 Hours</li> </ul>	<ul style="list-style-type: none"> <li>Form 10-K: Filings: 5,464 Filings</li> <li>Schedule 14A: 2,600 Filings</li> <li>Schedule 14C: 228 Filings</li> </ul>

In addition, the Commission’s burden estimates are based on the following:

- We estimate that 600 of these filings will be increased by five hours due to the proposed Item 106(d) disclosure.
- The burden estimate for Form 10-K assumes that Schedules 14A and 14C would be the primary disclosure documents for the information provided in response to

proposed Item 407(j) of Regulation S-K in connection with proxy and information statements involving the election of directors. In this case, we assume that the disclosure would be incorporated by reference in Form 10-K from the proxy or information statement.

- Not every filing on Form 6-K and Form 8-K, would include cybersecurity disclosures. These disclosures would be required only when a registrant has made the determination that it has experienced a material cybersecurity incident. Further, in the case of Form 6-K, the registrant would only have to provide the disclosure if it is required to disclose such information elsewhere.
- For Form 10-Q, Schedule 14A, and Schedule 14C, not every filing would require cybersecurity disclosure.

Table 2 below sets forth our estimates of the number of current filings on the forms which will be affected by the proposed rules. We used this data to extrapolate the effect of these changes on the paperwork burden for the listed periodic reports.<sup>8</sup>

**Table 2: Estimated Paperwork Burden of Proposed Cybersecurity Disclosure**

<b>Form</b>	<b>Current Annual Responses in PRA Inventory</b>	<b>Estimated Number of Filings that Would Include Cybersecurity Disclosure</b>
Schedule 14A	6,369	2,600
Schedule 14C	569	228
10-K	8,292	8,292
10-Q	22,925	600
20-F	729	729
8-K	118,387	200
6-K	34,794	20

Table 3 on the next page summarizes the current paperwork burden to prepare and review the current required disclosure and submissions, including the current annual responses, current burden hours, and current cost burdens. This information is then compared to the changes in those respective burdens under the proposed amendments, if adopted and the overall cost and burden of such implementation of the proposed amendments.

<sup>8</sup> The OMB PRA filing inventories represent a three-year average. Averages may not align with the actual number of filings in any given year.

**Table 3. Requested Paperwork Burden under the Proposed Amendments\***

Form	Current Burden			Program Change			Requested Change in Burden		
	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Number of Affected Responses (D)	Change in Company Hours (E)	Change in Professional Costs (F)	Annual Responses (G) (G)=(A)	Burden Hours (H) = (B) + (E)	Cost Burden (I) = (C) + (F)
Schedule 14A	6,369	860,389	\$114,684,112	2,600	2,925	\$390,000	6,369	863,314	\$115,074,112
Schedule 14C	569	63,901	\$8,520,944	228	256.50	\$34,200	569	64,158	\$8,555,144
Form 10-K	8,292	13,988,811	\$1,835,594,519	8,292 (Item 106) 5,464 (407(j))	99,432 (93,285 (Item 106) + 6,147 (407(j)))	\$13,257,600 (\$12,438,000 +\$819,600)	8,292	14,088,243	\$1,848,852,119
Form 10-Q	22,925	3,098,084	\$410,257,154	600	2,250	\$300,000	22,925	3,100,334	\$410,557,154
Form 20-F	729	479,667	\$576,970,825	729	3,007.125	\$3,608,550	729	482,674	\$580,579,375
Form 8-K	70,560	445,300	\$59,373,418	200	1,500	\$200,000	70,560	446,800	\$59,573,418
Form 6-K	34,794	227,031	\$30,270,780	20	135	\$18,000	34,794	227,166	\$30,288,780

\* For purposes of the PRA, the requested change in burden hours (column H) is rounded to the nearest whole number.

#### **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

As explained in further detail in Items 1, 12 and 13 above, changes in burden for Schedule 14C, Schedule 14A, Form 8-K, Form 10-K, Form 10-Q, Form 6-K, and Form 20-F would result from the proposed amendments to those rules.

Table 4 below shows the total estimated annual compliance burden, in hours and in costs that would result from the proposed amendments, if adopted.<sup>9</sup> 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.

**Table 4. Calculation of the Incremental Change in Burden Estimates of Current Responses Resulting from the Proposed Amendments**

Collection of Information	Number of Estimated Affected Responses (A) <sup>a</sup>	Burden Hour Increase per Response (B)	Change in Burden Hours (C) = (A) x (B)	Change in Company Hours (D) = (C) x 0.75 or .25	Change in Professional Hours (E) = (C) x 0.25 or .75	Change in Professional Costs (F) = (E) x \$400
Schedule 14A	2,600	1.5	3,900	2,925	975	\$390,000
Schedule 14C	228	1.5	342	256.50	85.50	\$34,200
10-K	8,292	15	124,380	93,285	31,095	\$12,438,000
10-K	5,464	1.5	8,196	6,147	2,049	\$819,600
10-Q	600	5	3,000	2,250	750	\$300,000
20-F	729	16.5	12,028.50	3,007.125	9,021.375	\$3,608,550
8-K	200	10	2,000	1,500	500	\$200,000
6-K	20	9	180	135	45	\$18,000

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 Schedule 14A, Schedule 14C, Form 10-Q, Form 10-K, Form 6-K, and Form 8-K would be carried by the registrant internally and that 25 percent of the burden of preparation would be carried by outside professionals. By contrast, the Commission estimates that estimates that 75 percent of the burden of preparation of Form 20-F would be allocated to outside professionals and 25 percent of the preparation burden would be allocated internally. In all cases, we estimate that the outside

<sup>9</sup> 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.



professionals retained by the registrant would cost an average cost of \$400 per hour.<sup>10</sup>

These estimates represent the average burden for all respondents, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual respondents based on a number of factors, including the nature of their business.

**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.

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<sup>10</sup> 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.

### **Schedule 14C Short Statement**

If adopted, the proposed amendments would require registrants to disclose information on the cybersecurity expertise of members of the board of directors of the registrant, if any. Schedule 14C, along with Schedule 14A, would be the primary disclosure documents for the information provided in response to proposed Item 407(j) of Regulation S-K in connection with proxy and information statements involving the election of directors. For purposes of the PRA, the Commission estimates that, for Schedule 14C, the proposed amendments would result in an increase of 256.50 burden hours and \$34,200 for the services of outside professionals.

### **Schedule 14A Short Statement**

If adopted, the proposed amendments would require registrants to provide the same sort of cybersecurity disclosure as in Schedule 14C *i.e.*, requiring to disclose information on the cybersecurity expertise of members of the board of directors of the registrant, if any. For purposes of the PRA, the Commission estimates that, for Schedule 14A, the proposed amendments would result in an increase of 2,925 burden hours and \$390,000 for the services of outside professionals.

## **Form 8-K Short Statement**

If adopted, the proposed amendments would require registrants to disclose information about a cybersecurity incident within four business days after the registrant determines, that it has experienced a material cybersecurity incident. The Commission estimates that the amendments would result in an increase in the paperwork burden of affected entities. For purposes of the PRA, the Commission estimates that, for Form 8-K, the proposed amendments would result in an increase of 1,500 burden hours and \$200,000 for the services of outside professionals.

## **Form 10-K Short Statement**

If adopted, the proposed amendments would require additional disclosure of a registrant's policies and procedures, if any, for the identification and management of risks from cybersecurity threats, a registrant's cybersecurity governance, including the board of directors' oversight role regarding cybersecurity risks, and management's role and expertise in assessing and managing cybersecurity risk and implementing the registrant's cybersecurity policies, procedures, and strategies, as well as disclosure regarding board member cybersecurity expertise, if any. The Commission also proposed to require registrants to provide updated disclosure relating to previously disclosed cybersecurity incidents and to require disclosure, to the extent known to management, when a series of previously undisclosed individually immaterial cybersecurity incidents has become material in the aggregate.

The Commission estimates that the amendments would result in an increase in the paperwork burden of affected entities. For purposes of the PRA, the Commission estimates that, for Form 10-K, the proposed amendments would result in an increase of 99,432 burden hours and \$13,257,600 for the services of outside professionals.

## **Form 10-Q Short Statement**

If adopted, the proposed amendments would require registrants to provide updated disclosure relating to previously disclosed cybersecurity incidents and to require disclosure, to the extent known to management, when a series of previously undisclosed individually immaterial cybersecurity incidents has become material in the aggregate. The Commission estimates that the amendments would result in an increase in the paperwork burden of affected entities. For purposes of the PRA, the Commission estimates that, for Form 10-Q, the proposed amendments would result in an increase of 2,250 burden hours and \$300,000 for the services of outside professionals.

## **Form 6-K Short Statement**

If adopted, the proposed amendments would require the addition of “cybersecurity incidents” as a reporting topic. The Commission estimates that the amendments would result in an increase in the paperwork burden of affected entities. For purposes of the PRA, the Commission estimates that, for Form 6-K, the proposed amendments would result in an increase of 135 burden hours and \$18,000 for the services of outside professionals.

## **Form 20-F Short Statement**

If adopted, the proposed amendments would require additional disclosure of a registrant's policies and procedures, if any, for the identification and management of risks from cybersecurity threats, including whether the registrant considers cybersecurity as part of its business strategy, financial planning, and capital allocation, disclosure about the board's oversight of cybersecurity risk and management's role and expertise in assessing and managing cybersecurity risk and implementing the registrant's cybersecurity policies, procedures, and strategies, as well as disclosure regarding board member cybersecurity expertise, if any. The Commission estimates that the amendments would result in an increase in the paperwork burden of affected entities. For purposes of the PRA, the Commission estimates that, for Form 20-F, the proposed amendments would result in an increase of 3007.125 burden hours and \$3,608,550 for the services of outside professionals.