

**SUPPORTING STATEMENT FOR FINAL RULES
UNDER THE SECURITIES ACT OF 1933 AND
THE SECURITIES EXCHANGE ACT OF 1934**

This submission, pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq., consists of this supporting statement and the following attachments:

- A. Statutory Authority
- B. Proposing Release

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

Rule 10b5-1 under the Securities Exchange Act of 1934 provides corporate insiders—executives, directors, employees and issuers themselves—an affirmative defense to insider trading if they trade shares of their own companies pursuant to a binding contract, instruction, or written plan that meets certain conditions set forth in the rule. On December 15, 2021, the Securities and Exchange Commission (the “Commission”) proposed amendments that would update the conditions of the Rule 10b5-1 affirmative defense to better protect investors from insider trading. In addition, the proposed amendments would also improve transparency around the use of Rule 10b5-1 trading plans by directors and officers; the insider trading policies and procedures of companies; the timing of option grants awarded by a company close in time to the company’s disclosure of material nonpublic information; and the reporting of gifts of securities on Form 4.

A copy of Commission Release No. 33-11013 (“Proposing Release”), which contains the proposed amendments, is attached at Tab A. The following collections of information (“affected forms”) would be affected by the proposed amendments:

- Form 10-K (OMB Control No. 3235-0063);
- Form 10-Q (OMB Control No. 3235-0070);
- Form 20-F (OMB Control Number 3235-0288);
- Schedule 14A (OMB Control No. 3235-0059); and
- Schedule 14C (OMB Control No. 3235-0057)
- Form 4 (OMB Control No. 3235-0287);
- Form 5 (OMB Control No. 3235-0362);
- Rule 10b5-1 (a proposed new collection of information)

2. PURPOSE OF THE INFORMATION COLLECTION

Since Rule 10b5-1 was adopted in 2000, courts, commentators and members of Congress have expressed concern that the affirmative defense under Rule 10b5-1 has allowed corporate insiders to take advantage of the insider trading liability protection to

opportunistically trade securities on the basis of material nonpublic information. Furthermore, academic research has shown that trading by corporate insiders pursuant to plans that nominally meet the conditions of Rule 10b5-1 realize significant abnormal gains or loss avoidance. The purpose of the proposed amendments is to address potentially abusive practices associated with Rule 10b5-1 trading arrangements, grants of options and the gifting of securities. The proposed amendments are also intended to provide investors with greater transparency about issuer and insider trading arrangements and restrictions, as well as executive compensation and incentives, enabling more informed voting and investment decisions about an issuer.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the proposed rules are set forth in amended rules and forms. The Commission is also proposing amendments to Rule 10b5-1(c)(1)(ii) that would impose a certification requirement as a condition to the Rule 10b5-1(c)(1) affirmative defense. Under the proposed amendment, if a director or officer of the issuer of the securities adopts a Rule 10b5-1(c)(1) trading arrangement, as a condition to the availability of the affirmative defense, such director or officer would be required to furnish to the issuer a written certification. The use of the Rule 10b5-1(c)(1) affirmative defense is voluntary, and compliance with this proposed information collection would be mandatory only if a respondent chooses to rely on the affirmative defense. The proposed certification would not be filed with the Commission.

All of the other affected forms are filed electronically with the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system.

4. DUPLICATION OF INFORMATION

Proposed Item 408 of Regulation S-K may partially duplicate and overlap with an existing disclosure requirement under Item 406 of Regulation S-K, which requires a company to disclose whether it has adopted a code of ethics that applies to its principal executive officer, chief financial officer, and other appropriate executives and, if it has not adopted such a code, to state why it has not done so. A company's existing code of ethics may contain insider trading policies. In such instances, a company could cross-reference to the particular components of its code of ethics that constitute insider trading policies and procedures in response to proposed Item 408. Other than Item 408, the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The proposed amendments would affect small entities and we anticipate that the proposed amendments would increase the burdens and costs for all companies. Insider trading imposes costs on the investors in a company. The proposed amendments are intended to provide greater transparency to investors and decrease information asymmetries between corporate insiders and outside investors and to deter improper

insider trading and problematic practices associated with grants of option awards, and the gifting of securities. Some of the proposed amendments, however, would be required in some but not all of the above listed forms, and would not apply to smaller reporting companies, including smaller reporting companies that are small entities. For these reasons, the proposed amendments should not have a significant economic impact on small entities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The affected forms and schedules listed above set forth disclosure requirements for periodic reports, beneficial ownership reports, and proxy and information statements filed by respondents to help investors make informed investment and voting decisions. Less frequent collection would deprive investors of access to material information that is important to their voting and investment decisions.

7. SPECIAL CIRCUMSTANCE

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

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Proposing Release solicits comment on the new “collection of information” requirements and the associated paperwork burdens. Investors, registrants, and other market participants may provide comments in response to the solicitation for comment. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, roundtables and meetings. All comments received on the proposal are available at <https://www.sec.gov/comments/s7-20-21/s72021.htm>. The Commission will consider 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

All documents submitted to the Commission are available to the public.

11. SENSITIVE QUESTIONS

No information of a sensitive nature will be required under the affected forms. 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 February 5, 2020, 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 burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a respondent to prepare and review disclosure required under the proposed amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. 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.

For the new collection of information under Exchange Act Rule 10b5-1(c), we estimate that there would be 7,200 responses based on the staff’s analysis, discussed in Section IV.B.1 of the Proposing Release, that approximately 4,800 officers and directors reported a transaction pursuant to a Rule 10b5-1 trading arrangement. As noted above, the number of officers and directors using a Rule 10b5-1 trading arrangement is likely larger. Accordingly, we adjusted the estimate upward by 50 percent.

For purposes of the PRA, the burden is allocated between internal burden hours and outside professional costs. The table 1 below sets forth the percentage estimates the Commission typically uses for the burden allocation for each affected form. We also estimate that the average cost of retaining an outside professional is \$400 per hour.¹

PRA Table 1: Standard Estimated Burden Allocation for Specified Forms and Schedules.

| Form / Schedule Type | Internal | Outside Professionals |
|--|-----------------|------------------------------|
| Forms 10-K, 10-Q, 20-F and Schedules 14A and 14C | 75% | 25% |
| Forms 4 and 5 | 100% | |
| Rule 10b5-1 | 100% | |

Table 2 below illustrates the estimated net incremental change to the total annual compliance burdens for the affected forms, in hours and in costs, as a result of the proposed amendments.

¹ 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 \$400 per hour. This estimate is based on consultations with several registrants, law firms, and other entities that regularly assist registrants in preparing and filing documents with the Commission.

Table 2: Calculation of the Incremental Change in Burden Estimates of Current Responses Resulting from the Proposed Amendments

| Form / Schedule | Number of Estimated Affected Responses (A) ² | Estimated Burden Hour Increase /Affected Response (B) | Total Incremental Increase in Burden Hours (C) = (A) x (B) | Estimated Increase in Internal Burden Hours (D) = (C) x (Allocation %) | Estimated Increase in Outside Professional Hours (E) = (C) x (Allocation %) | Total Increase in Outside Professional Costs (F) = (E) x \$400 |
|-----------------|---|---|---|---|--|---|
| 10-K | 8,292 | 16 | 132,672 | 99,504 | 33,168 | \$13,267,200 |
| 10-Q | 22,925 | 15 | 343,875 | 257,906.25 | 85,968.75 | \$34,387,500 |
| 20-F | 729 | 4 | 2,916 | 2,187 | 729 | \$291,600 |
| 14A | 6,369 | 13 | 82,797 | 62,097.75 | 20,699.25 | \$8,279,700 |
| 14C | 569 | 13 | 7,397 | 5,547.75 | 1,849.25 | \$739,700 |
| 4 | 338,207 | 0.5 | 169,103.5 | 169,103.5 | 0 | 0 |
| 5 | 5,939 | 0.25 | 1,484.75 | 1,484.75 | 0 | 0 |
| Total | 383,030 | | 740,245.25 | \$597,831 | 142,414.25 | \$56,965,700 |

14. COST TO FEDERAL GOVERNMENT

The estimated annual cost of reviewing and processing disclosure documents, including registration statements, post-effective amendments, proxy statements, annual report and other filings of operating companies amounted to \$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. REASON FOR CHANGES IN BURDEN

The following tables summarizes the requested paperwork burden changes to existing information collections, including the estimated total reporting burdens and costs, under the proposed amendments. Columns (A) and (B) represent the most recent burden estimates submitted to OMB. Columns (C) and (D) represent the new burden estimates under the final rules. Columns (E) and (F) represent the program change, which encompasses the change in the burden estimates attributable to the proposed amendments.

² The number of estimated affected responses is based on the number of responses in the Commission’s current OMB PRA filing inventory. The OMB PRA filing inventory represents a three-year average.

Table 3: Requested Paperwork Burden under the Proposed Amendments³

| Form / Sch. | 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) | Increase in Internal Hours (E) | Increase in Outside Professional Costs (F) | Annual Responses (G) = (A) | Burden Hours (H) = (B) + (E) | Cost Burden (I) = (C) + (F) |
| 10-K | 8,292 | 13,988,770 | \$1,835,588,919 | 8,292 | 99,504 | \$13,267,200 | 8,292 | 14,088,274 | \$1,848,856,119 |
| 10-Q | 22,925 | 3,098,084 | \$410,257,154 | 22,925 | 257,906 | \$34,387,500 | 22,925 | 3,355,990 | \$444,644,654 |
| 20-F | 729 | 479,348 | \$576,927,825 | 729 | 2,187 | \$291,600 | 729 | 481,535 | \$577,219,425 |
| 14A | 6,369 | 762,561 | \$101,640,112 | 6,369 | 62,098 | \$8,279,700 | 6,369 | 824,659 | \$109,919,812 |
| 14C | 569 | 55,118 | \$7,350,144 | 569 | 5,548 | \$739,700 | 569 | 60,666 | \$8,089,844 |
| 4 | 338,207 | 169,104 | 0 | 338,207 | 169,104 | 0 | 338,207 | 338,208 | 0 |
| 5 | 5,939 | 5,939 | 0 | 5,939 | 1,485 | 0 | 5,939 | 7,424 | 0 |
| Total | 383,030 | 18,558,924 | \$2,931,764,154 | 383,030 | 597,832 | \$56,965,700 | 383,030 | 19,156,756 | \$2,988,729,854 |

Table 4 summarizes the requested paperwork burden for the proposed new collection of information under proposed Rule 10b5-1(c)(1)(ii) certification, including the estimated total reporting burdens and costs. For purposes of the PRA, we estimate that the Rule 10b5-1(c)(1)(ii) certification would entail a one hour compliance burden per response with 7,200 annual responses.

Table 4. Requested Paperwork Burden for the new Collection of Information

| Collection of Information | Proposed Paperwork Burden | |
|-------------------------------------|---------------------------|----------------------|
| | Annual Responses (A) | Burden Hours (A) x 1 |
| Rule 10b5-1(c)(1)(ii) Certification | 7,200 | 7,200 |

³ Figures in Table 3 have been rounded to the nearest whole number.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collections do not employ statistical methods.

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.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

There are no exceptions to certification for Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

The information collections do not employ statistical methods.

Short Statements Release No. 33-11013

Form 10-K

The proposed amendments would require companies to disclose in Form 10-K the following: (1) whether the company has adopted (and if not, why) insider trading policies and procedures governing the purchase, sale, and other dispositions of the registrant's securities by directors, officers and employees that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any listing standards applicable to the company; (2) their policies and practices governing stock option awards as well as tabular disclosure showing any award granted during the fiscal year that was made within 14 days of the release of material nonpublic information; and (3) the adoption or termination of any Rule 10b5-1 and non-Rule 10b5-1 trading plan by the company, and any of its directors and senior officers during the company's fourth fiscal quarter. For purposes of the Paperwork Reduction Act, the Commission estimates that the proposed amendments will result in an increase of approximately 99,504 burden hours and an increase of approximately \$13,267,200 in the cost burden for Form 10-K.

Form 10-Q

The proposed amendments would require companies to disclose in Form 10-Q, the adoption or termination of any Rule 10b5-1 and non-Rule 10b5-1 trading plans by the company, senior officers, and directors. For purposes of the Paperwork Reduction Act, the Commission estimates that the proposed amendments will result in an increase of approximately 257,906 burden hours and an increase of approximately \$34,387,500 in the cost burden for Form 10-Q.

Form 20-F

The proposed amendments would require a foreign private issuer to disclose in Form 20-F whether the foreign private issuer has adopted (and if not, why) insider trading policies and procedures governing the purchase, sale, and other dispositions of the registrant's securities by directors, officers and employees that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any stock exchange listing standards applicable to the foreign private issuer. For purposes of the Paperwork Reduction Act, the Commission estimates that the proposed amendments will result in an increase of approximately 2,187 burden hours and an increase of approximately \$291,600 in the cost burden for Form 20-F.

Schedule 14A

The proposed amendments would require companies to make two new disclosures in Schedule 14A: (1) whether the company has adopted (and if not, why) insider trading policies and procedures governing the purchase, sale, and other dispositions of the registrant's securities by directors, officers and employees that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any listing standards applicable to the company; and (2) their policies and practices governing stock option awards as well as tabular disclosure showing any award granted during the fiscal year that was made within 14 days of the release of material nonpublic information. For purposes of the Paperwork Reduction Act, the Commission estimates that the proposed amendments will result in an increase of approximately 62,098 burden hours and an increase of approximately \$8,279,700 in the cost burden for Schedule 14A.

Schedule 14C

The proposed amendments would require companies to make two new disclosures in Schedule 14C: (1) whether the company has adopted (and if not, why) insider trading policies and procedures governing the purchase, sale, and other dispositions of the registrant's securities by directors, officers and employees that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any listing standards applicable to the company; and (2) their policies and practices governing stock option awards as well as tabular disclosure showing any award granted during the fiscal year that was made within 14 days of the release of material nonpublic information. For purposes of the Paperwork Reduction Act, the Commission estimates that the proposed amendments will result in an increase of approximately 5,548 burden hours and an increase of approximately \$739,700 in the cost burden for Schedule 14C.

Form 4

The proposed amendments would require a Form 4 filer to indicate by checkbox whether a reported transaction was made pursuant to a Rule 10b5-1(c) plan, and the date of adoption of such plan. In addition, the proposed amendments would add a new checkbox that would permit a Form 4 filer to indicate, at their option, whether a sale or purchase reported on the form was made pursuant to a contract, instruction or written plan to purchase or sell securities not intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). For purposes of the Paperwork Reduction Act, the Commission estimates that the proposed amendments will result in an increase of approximately 169,104 burden hours for Form 4.

Form 5

The proposed amendments would require a Form 5 filer to indicate by checkbox whether a reported transaction was made pursuant to a Rule 10b5-1(c) plan, and the date of adoption of such plan. In addition, the proposed amendments would add a new checkbox that would permit a Form 5 filer to indicate, at their option, whether a sale or purchase reported on the form was made pursuant to a contract, instruction or written plan to purchase or sell securities not intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). For purposes of the Paperwork Reduction Act, the Commission estimates that the proposed amendments will result in an increase of approximately 1,485 burden hours for Form 5.

Rule 10b5-1

The proposed amendments to Rule 10b5-1(c)(1)(ii) would impose a certification requirement as a condition to the Rule 10b5-1(c)(1) affirmative defense. Under the proposed amendment, if a director or officer (as defined in Rule 16a-1(f) under the Exchange Act) of the issuer of the securities (or a subsidiary of the issuer) enters into a Rule 10b5-1(c)(1) trading arrangement, as a condition to the availability of the affirmative defense, such director or officer would be required to furnish to the issuer a written certification. The use of the Rule 10b5-1(c)(1) affirmative defense is voluntary, and compliance with this proposed information collection would be mandatory only if a respondent chooses to rely on the affirmative defense. For purposes of the Paperwork Reduction Act, the Commission estimates that this new information collection will result in 7,200 burden hours for Rule 10b5-1.