

**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. Final Release

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

On December 14, 2022, the Securities and Exchange Commission (the “Commission”) adopted amendments to Rules 10b5-1 and 16a-3 under the Securities Exchange Act of 1934 (the “Exchange Act”); Regulation S-K; Regulation S-T; Exchange Act Forms 4, 5, 10-K, 10-Q, and 20-F; and Schedule 14A. A copy of Commission Release No. 33-11138 (“Adopting Release”), which contains the final amendments, is attached at Tab A.

The following collections of information (“affected forms”) will be affected by the final amendments:

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

This supporting statement is being submitted solely in connection with the new Rule 10b5-1 information collection. The supporting statement for the other affected forms will be submitted separately.

Rule 10b5-1(c)(1) provides an affirmative defense to Exchange Act Section 10(b) and Rule 10b-5 liability for insider trading in circumstances where the individual purchasing or selling a security (the “trader”) can demonstrate that material nonpublic information did not factor into the trading decision because, before becoming aware of material nonpublic information, they entered into a binding contract to purchase or sell

the security, provided instruction to another person to execute the trade for the trader's account, or adopted a written plan for trading the securities.¹

The amendments to Rule 10b5-1 add new conditions to the affirmative defense under Rule 10b5-1(c)(1) that are designed to address concerns about abuse of the rule to opportunistically trade securities on the basis of material nonpublic information in ways that harm investors and undermine the integrity of the securities markets. First, the amendments establish a mandatory cooling-off period before any trading can commence under a Rule 10b5-1 plan by persons other than the issuer of the securities after the adoption of a new or modified plan. Second, the amendments will require directors and officers, as a condition to the Rule 10b5-1(c)(1) affirmative defense, to include a representation in a written Rule 10b5-1 plan certifying that at the time of the adoption of a new or modified plan: (1) they are not aware of material nonpublic information about the issuer or its securities; and (2) they are adopting the plan in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5. Third, the amendments restrict the availability of the affirmative defense for multiple overlapping trading arrangements of all persons, other than issuers, involving open market transactions in any class of securities of the issuer, subject to certain exceptions. They also limit the availability of the affirmative defense for any "single-trade" Rule 10b5-1 plan of persons, other than issuers, to one single-trade Rule 10b5-1 plan per twelve-month period. Finally, the amendments expand the current "good faith" condition under Rule 10b5-1(c)(1) to require that traders act in good faith with respect to the Rule 10b5-1 plan.

The Commission also adopted new Item 408 of Regulation S-K (17 CFR 229.408), and amended Item 402 of Regulation S-K (17 CFR 229.402) and Rule 405 of Regulation S-T (17 CFR 232.405). These changes generally will require:

- Quarterly disclosure regarding the adoption and termination of Rule 10b5-1 plans and non-Rule 10b5-1 trading arrangements by officers and directors of the issuer, and a description of the material terms of such plans (other than pricing terms);
- Annual disclosure of whether an issuer has adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of the issuer's securities by directors, officers and employees, or the issuer itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any listing standards applicable to the issuer and, if the issuer has not adopted such policies and procedures, explain why not. If the issuer has adopted such policies and procedures, the issuer must file them as an exhibit;²
- Narrative disclosure of an issuer's policies and practices on the timing of awards of stock options, stock appreciation rights ("SARs"), and similar

¹ The terms "Rule 10b5-1 plan" and "Rule 10b5-1 trading arrangement" refer to a contract, instruction or written plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c)(1).

² Because foreign private issuers are generally not subject to the disclosure requirements under Regulation S-K, the Commission adopted amendments to Form 20-F to require that foreign private issuers provide similar disclosures regarding their insider trading policies and procedures.

option-like instruments in relation to the disclosure of material nonpublic information by the issuer;

- Tabular disclosure regarding each such award granted to a named executive officer within a period starting four business days before and ending one business day after the filing of a Form 10-Q or Form 10-K, or the filing or furnishing of a current report on Form 8-K that discloses material nonpublic information (other than a current report on Form 8-K used to disclose the grant of a new material option award under Item 5.02(e)); and
- Require issuers to tag the new disclosure required by these amendments in Inline eXtensive Business Reporting language (“XBRL”) except for, if applicable, the exhibit with the issuer’s insider trading policies and procedures.

In addition, the amendments to Forms 4 and 5 will:

- Add a new checkbox to Forms 4 and 5 that will require a filer of either form to indicate whether a transaction reported on that form was made pursuant to a contract, instruction or written plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). Filers would also be required to provide the date of adoption of such contract, instruction, or written plan; and
- Require the reporting of dispositions of bona fide gifts of equity securities on Form 4, which will require that these gift transactions be reported substantially earlier than is currently required.

2. PURPOSE OF THE INFORMATION COLLECTION

The purpose of the final amendments is to address potentially abusive practices associated with Rule 10b5-1 trading arrangements, grants of options and other equity instruments with similar option-like features, and the gifting of securities. The final amendments are also intended to provide greater transparency to investors about issuer and insider trading arrangements and restrictions, as well as insider 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 final rules are set forth in the amended rules and forms. All of 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 final amendments do not duplicate, overlap, or conflict with other federal rules.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The final amendments are expected to increase the burdens and costs for all companies, including small entities. Insider trading imposes costs on the investors in a company. The amendments to Regulation S-K and Rule 10b5-1 are intended to provide greater transparency to investors; decrease information asymmetries between corporate insiders and outside investors; and deter abusive and problematic practices associated with the use of Rule 10b5-1 plans, grants of option awards, and the gifting of securities. Importantly, we anticipate that the final amendments will work in tandem to reduce improper insider trading through Rule 10b5-1 plans. As discussed in Section V of the Adopting Release, deterring insider trading will benefit investor protection, capital formation, and promote more orderly and efficient securities markets.

Because the concerns related to insider trading that underlie these amendments apply to entities of all sizes, the final amendments apply to small entities. However, the final amendments provide for scaled disclosure for smaller reporting companies under new Item 402(x), consistent with the Commission’s scaled approach to executive compensation disclosure for these companies. To minimize the initial compliance burden on smaller reporting companies, the Commission is also providing them with a six-month transition period for compliance with the new issuer disclosure requirements. A detailed discussion of the Commission’s consideration of alternative approaches that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities, is provided in Section VII of the Adopting Release.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The final amendments set forth disclosure requirements for registration statements, periodic reports, and proxy and information statements filed by issuers 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 CIRCUMSTANCES

There are no special circumstances in connection with these amendments.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission issued a proposing release soliciting comment on the new “collection of information” requirements and the associated paperwork burdens.³ Comments on Commission releases are generally received from registrants, investors, and other market participants. The Commission did not receive any comments that directly addressed the Paperwork Reduction Act (“PRA”) analysis of the proposed amendments. In

³ See *Rule 10b5-1 and Insider Trading*, Release No. 33-11013 (Jan. 13, 2022) [87 FR 8686 (Feb. 15, 2022)] (“Proposing Release”).

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 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

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

Table 1 below shows the incremental annual compliance burden of the collection of information resulting from the final amendments.⁴ The burden estimate was calculated by multiplying the estimated number of responses by the estimated average amount of time it would take to prepare and review the information collection.

For purposes of the PRA, the Commission allocates the information collection burden between internal burden hours and outside professional costs. The portion of the burden carried by the respondent internally is reflected in hours, while the portion of the burden carried by outside professionals is reflected as a cost. The Commission estimates that all of the compliance burden associated with the new certification condition of Rule 10b5-1 will be carried by the respondent internally, and that there will be no external compliance costs.

Table 1 below shows the estimated net incremental change in the annual compliance burden for the affected rule in hours.

⁴ For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

Table 1: Calculation of the Burden Estimate of Affected Responses Resulting from the Final Amendment

Rule	Number of Estimated Affected Responses (A)	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 \$600
Rule 10b5-1	8,700	1.5	13,050	13,050	0	0

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 final amendments to Rule 10b5-1(c)(1)(ii) would impose a new certification requirement as a condition to the Rule 10b5-1(c)(1) affirmative defense. The final amendment will require directors and officers, as a condition to the affirmative defense, to provide representations in a written Rule 10b5-1 plan that, on the date of adoption of the plan, (1) they are not aware of any material nonpublic information about the security or issuer; and (2) that they are adopting the contract, instruction, or plan in good faith and not as part of a plan or scheme to evade the prohibitions of this section. The use of the Rule 10b5-1(c)(1) affirmative defense is voluntary, and compliance with this information collection is 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 13,050 burden hours for Rule 10b5-1.

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.