

## SUPPORTING STATEMENT FOR REGULATION FD-FAIR DISCLOSURE

### A. Justification

#### 1. Necessity of Information Collection

The Commission adopted Regulation FD to address the issue of companies' selective disclosure of material nonpublic information to analysts or particular investors before making disclosure to the investing public. 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. Purposes of, and Consequences of Not Requiring, 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. Role of Improved Information Technology and Obstacles to Reducing Burden

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. Efforts to Identify Duplication

There are no other public sources for the information.

5. Effect on Small Entities

Regulation FD would affect small entities. Regulation FD's "public disclosure" requirement would give 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 Less Frequent 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. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Not applicable.

8. Consultations Outside the Agency

Regulation FD was proposed for public comment. No comments were received during the 60-day comment period prior to OMB approval.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Respondent Reporting Burden

We estimate that approximately 13,000 issuers make Regulation FD disclosures approximately five times a year for a total of 58,000 submissions annually, not including an estimated 7,000 issuers who file a Form 8-K to comply with Regulation FD. We estimate that 25% of the 5 hours per response (1.25 hours) is prepared by the issuer for an annual reporting burden of 72,500 hours (58,000 responses x 1.25 hours). The estimated burden hours are made solely for purposes of the Paperwork Reduction Act.

13. Estimate of Total Annualized Cost Burden

Regulation FD – The remaining 75% of the 5 hours per response (3.75 hours) is prepared outside the company. We estimate the law firm cost to be \$400 per hour (\$400 per hour x 3.75 hours per response x 58,000 responses) for a total cost burden of \$87,000,000. The estimated cost burden is made solely for purposes of the Paperwork Reduction Act. The cost burden is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

14. Estimate of Cost to the Federal Government

The estimated cost to the federal government of developing Regulation FD was \$100,000.

15. Explanation of Changes in Burden

The increase in cost burden is due to an adjustment. The increase in the cost burden by \$21,750,000 is due to the Commission increasing its cost estimate from \$300 per hour to \$400 per hour for outside counselors.

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Explanation as to Why the Expiration Date Will Not be Displayed

Not applicable.

B. Collection of Information Employing Statistical Methods

Not applicable.