

## SUPPORTING STATEMENT FOR SECURITIES ACT RULE 155

### A. JUSTIFICATION

#### 1. Circumstances Making the Collection of Information Necessary

Under the Securities Act, an integration analysis often is made to determine whether multiple securities offerings should be considered part of the same offering. This analysis helps to determine whether registration is required under Section 5 of the Securities Act, or an exemption from registration is available. The concept of integration prevents an issuer from improperly avoiding registration by artificially dividing a single offering so that exemptions appear to apply to the various parts where no exemption would be available for the transaction as a whole. Improper reliance on an exemption can harm investors by depriving them of the disclosure benefits and legal remedies that flow from registration.

Securities Act Rule 155 provides safe harbors from integration in two circumstances: (1) a registered offering that follows an abandoned private offering; and (2) a private offering that follows a withdrawn registered offering. Each of the rule's safe harbors imposes conditions designed to assure that there is a clean break between the abandoned offering and the later offering. In each safe harbor, these conditions include specified disclosure designed to assure that investors understand this break as they consider an investment decision in the later offering.

#### 2. Purpose and Use of the Information Collection

Rule 155(b) provides a safe harbor from integration where an abandoned private offering is followed by a registered offering if specified conditions are satisfied. One of these conditions is that the Section 10(a) final prospectus and any Section 10 preliminary prospectus used in the registered offering disclose certain information about the abandoned private offering, so that the registered offering is not confused with the private offering. Specifically, any prospectus filed as part of the registration statement discloses information about the abandoned private offering, including: the size and nature of the private offering; the date on which the issuer terminated all offering activity in the private offering; that any offers to buy or indications of interest in the private offering were rejected or otherwise not accepted; and that the prospectus delivered in the registered offering supersedes any selling material used in the private offering.

Rule 155(c) provides a safe harbor from integration where an abandoned registered offering is followed by a private offering. The conditions for this safe harbor include that the issuer notify each offeree in the private offering that the registration statement for the abandoned offering was withdrawn, specifying the effective date of the withdrawal. The issuer also must notify each offeree in the private offering that the private offering is not registered, the securities are "restricted," and purchasers do not have the protection of Securities Act Section 11. These conditions are designed to assure that the private offering is not confused with the registered offering. For the same reason, Rule 155(c) also requires any disclosure document used in the private offering to disclose any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment

decision in the private offering. Unlike the other Rule 155 requirements described above, which always apply, this requirement will not necessarily apply to all private offerings that rely on Rule 155(c) and may require more disclosure in some cases than others where it does apply.

With respect to both Rule 155(b) and Rule 155(c), failure to satisfy the applicable information collection conditions will result in unavailability of the safe harbor provided by the rule. However, compliance with the rule is not the exclusive test for avoiding integration of the registered and private offerings. Alternative tests that were available before the rule's adoption will remain available.

3. Consideration Given to Information Technology

Submissions made pursuant to Rule 155 are filed using the Electronic Data Gathering, Analysis and Retrieval System (EDGAR).

4. Duplication of Information

We are not aware of any forms or rules that conflict with or substantially duplicate the requirements of Rule 155.

5. Reducing the Burden on Small Entities

Rule 155 will be available to all issuers, including small entities. The rule will enable issuers more easily to avoid incurring the expense of filing a registration statement, only to discover later that a registered offering cannot be completed. This flexibility should be particularly beneficial to small entities, for whom the costs of a registered offering typically represent a greater proportion of resources.

6. Consequences of Not Conducting Collection

Not applicable.

7. Special Circumstances

Not applicable.

8. Consultations with Persons Outside the Agency

Rule 155 was proposed for public comment. No comments were received during the 60-day comment period prior to OMB's review of this submission.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Respondent Reporting Burden

We estimate that submissions made under Rule 155 take approximately 4 hours per response to prepare and are filed by 600 respondents. We estimate that 50% of the 4 hours per response (2 hours per response) is prepared by the company for a total annual reporting burden of 1,200 hours (2 hours per response x 600 responses). The estimated hours are made solely for the purposes of the Paperwork Reduction Act. They are not derived from a comprehensive or even a representative survey or study of the cost of Commission rules and forms.

13. Estimate of Total Annualized Cost Burden

We estimate that 50% of the 4 hours per response (2 hours) are prepared by outside counsel. We estimate that it will cost \$400 per hour (\$400 x 2 hours per response x 600 responses) for a total cost of \$480,000. The estimated cost burden is made solely for the purposes of the Paperwork Reduction Act. The cost is not derived from a comprehensive or even a representative survey or study of the cost of Commission rules and forms.

14. Costs to Federal Government

The estimated cost to the federal government to administer Rule 155 is approximately \$50,000.

15. Reason for Change in Burden

There is no change in the burden at this time.

16. Information Collection Planned for Statistical Purposes

Not applicable.

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

Not applicable.

B. STATISTICAL METHODS

Not applicable.