will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 1083

Administrative practice and procedure, Consumer protection, Penalties.

Authority and Issuance

For the reasons set forth above, the Bureau amends 12 CFR part 1083 as set forth below:

PART 1083—CIVIL PENALTY ADJUSTMENTS

■ 1. The authority citation for part 1083 continues to read as follows:

Authority: 12 U.S.C. 2609(d); 12 U.S.C. 5113(d)(2); 12 U.S.C. 5565(c); 15 U.S.C. 1639e(k); 15 U.S.C. 1717a(a); 28 U.S.C. 2461 note.

■ 2. Section 1083.1 is revised to read as follows:

§ 1083.1 Adjustments of civil penalty amounts.

(a) The maximum amount of each civil penalty within the jurisdiction of the Bureau of Consumer Financial Protection to impose is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. 2461 note), as follows:

TABLE 1 TO PARAGRAPH (A)

U.S. Code citation	Civil penalty description	Adjusted maximum civil penalty amount
12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	$5,781
12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	28,906
12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,156,242
15 U.S.C. 1717a(a)(2)	Per violation	2,014
15 U.S.C. 1717a(a)(2)	Annual cap	2,013,399
12 U.S.C. 2609(d)(1)	Per failure	94
12 U.S.C. 2609(d)(1)	Annual cap	189,427
12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	190
12 U.S.C. 5113(d)(2)	Per violation	29,192
15 U.S.C. 1639e(k)(1)	First violation	11,563
15 U.S.C. 1639e(k)(2)	Subsequent violations	23,125

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after January 31, 2019, whose associated violations occurred on or after November 2, 2015.

Dated: January 6, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–00488 Filed 1–29–19; 4:15 pm]

BILLING CODE 4810–AM–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33–10591; File No. S7–29–18]

RIN 3235–AM42

Conditional Small Issues Exemption Under the Securities Act of 1933 (Regulation A)

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to Regulation A under the Securities Act of 1933 (the ''Securities Act''). Regulation A provides an exemption from registration under the Securities Act for offerings of securities up to $50 million. As mandated by the Economic Growth, Regulatory Relief, and Consumer Protection Act (the ''Economic Growth Act''), the amendments revise Regulation A to permit entities subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') to use the exemption and provide that entities meeting the reporting requirements of the Exchange Act will be deemed to have met the reporting requirements of Regulation A. The amendments also make conforming changes to Form 1–A.

DATES:

Effective date: January 31, 2019.

Comment date: Comments regarding the collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 should be received on or before March 4, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/final.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–29–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–29–18. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/final.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Charlie Guidry, Staff Attorney, or

Jennifer Zepralka, Office of Small Business Policy, Division of Corporation Finance, at (202) 551–3460.

SUPPLEMENTARY INFORMATION: We are adopting amendments to 17 CFR 230.251 (''Rule 251'') and 17 CFR 230.257 (''Rule 257'') under the Securities Act.[1] We are also amending Form 1–A.[2]

I. Background

Regulation A[3] provides an exemption from the registration requirements of the Securities Act for offers and sales of securities up to $20 million, for Tier 1 offerings, or up to $50 million, for Tier 2 offerings. Under the current rules, Regulation A is not available to companies subject to the ongoing reporting requirements of Section 13 or 15(d) of the Exchange Act. The Economic Growth Act[4] requires that the Commission amend Rule 251 of Regulation A to allow these reporting companies to use the exemption provided by Regulation A. In addition, under Rule 257(b), an issuer that has filed an offering statement for a Tier 2 offering that has been qualified pursuant to Regulation A must file specified periodic and current reports with the Commission. The Economic Growth Act requires that the Commission amend Rule 257, with respect to a Tier 2 offering, to deem a reporting company issuer as having met the periodic and current reporting requirements of Rule 257 if such issuer meets the reporting requirements of Section 13 of the Exchange Act.

II. Rule Amendments

A. Amendments to Regulation A and Form 1–A

As mandated by Section 508 of the Economic Growth Act, we are amending Rule 251 of Regulation A by deleting Rule 251(b)(2), which prohibits companies subject to the ongoing reporting requirements of Section 13 or 15(d) of the Exchange Act from using Regulation A.[5] We also are making conforming changes to Item 2 of Part I of Form 1–A, which lists the issuer eligibility criteria to use such form.[6]

To implement the Economic Growth Act's requirement with respect to Rule 257 reporting obligations, we are adding a new paragraph to Rule 257(b) specifying that the duty to file reports under Rule 257 shall be deemed to have been met if the issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act and, as of each Form 1–K and Form 1–SA due date, has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the 12 months (or such shorter period that the registrant was required to file such reports) preceding such due date. The Economic Growth Act provides that an issuer's Regulation A reporting obligations will be deemed satisfied if the issuer ''meets'' its Exchange Act reporting requirements. To implement this aspect of the statutory mandate, the amendments use a 12-month lookback period consistent with the standard applied in Commission rules in other contexts. Such a lookback period is used, for example, in determining eligibility to use Form S–8[7] and satisfaction of the ''current public information'' requirement of 17 CFR 230.144 (''Rule 144'').[8]

We also are deleting Rule 257(d)(1), which currently provides for an automatic suspension of the duty to file reports under Rule 257 if and so long as the issuer is subject to the duty to file reports required by Section 13 or 15(d) of the Exchange Act. The automatic suspension provision will no longer be necessary in light of the mandated amendment to deem the Rule 257(b) obligation met by Exchange Act reporting.

As a result of these amendments, an Exchange Act reporting company will be eligible to rely upon the Regulation A exemption from registration[9] and, upon qualification of an offering statement for a Tier 2 offering, will become subject to Rule 257(b)'s reporting requirements. So long as the issuer is current in its Exchange Act reporting as of the due dates for periodic reports on Form 1–K and Form 1–SA required under Rule 257(b) (including, as applicable, the due dates for any special financial reports on such forms), its Rule 257 reporting obligation will be deemed to be met. However, if at the relevant Form 1–K or Form 1–SA due date the issuer is not current in its Exchange Act reporting, the issuer's Rule 257 reporting obligation will not be deemed to be met, and at that time the issuer will be required to file Regulation A reports.[10]

In light of the deletion of the automatic suspension provision, we are also amending Rule 257(e) to clarify the operation of the rule if a reporting company issuer that is relying on new Rule 257(b)(6) to deem its Rule 257 reporting obligation met then terminates or suspends its duty to file reports under the Exchange Act in accordance with the Exchange Act and relevant rules thereunder.[11] This revision will not change the operation of Rule 257(e). If an issuer terminates or suspends its reporting obligations under the Exchange Act *and* if the issuer is eligible to suspend its Regulation A reporting obligation under Rule 257(d)(2) by filing a Form 1–Z at that time, then the ongoing reporting obligations under Rule 257 will terminate automatically.[12] No Form 1–Z filing will be required to terminate the issuer's Regulation A reporting obligation. If, on the other hand, the issuer is not eligible to file a Form 1–Z at that time, it will be required to

[1] 15 U.S.C. 77a *et seq.*

[2] 17 CFR 239.90.

[3] 17 CFR 230.251–230.263.

[4] Public Law 115–174, 132 Stat. 1296 (2018).

[5] 17 CFR 230.251(b)(2).

[6] This change to Item 2 of Part I of Form 1–A will be implemented on the eXtensible Markup Language (XML) based fillable form available on EDGAR after the effective date of the amendments. Until such time as the change is implemented, we will not object if an issuer subject to section 13 or 15(d) of the Exchange Act that meets the other listed eligibility criteria checks the box in Item 2.

[7] 17 CFR 239.16b(a).

[8] 17 CFR 230.144(c)(1).

[9] Rule 251(c) provides issuers with a safe harbor that offerings conducted pursuant to Regulation A will not be integrated with prior offers and sales of securities or with certain subsequent offers and sales of securities. *See* 17 CFR 230.251(c). A reporting company issuer contemplating concurrent registered and Regulation A offerings will need to analyze its specific facts and circumstances with regard to integration concerns and the solicitation restrictions arising from each offering type. In addition, a reporting company issuer conducting an offering under Regulation A continues to be subject to the requirements of the Exchange Act. For example, a reporting company that elects to solicit indications of interest in conjunction with a prospective Regulation A offering in reliance on 17 CFR 230.255 (''Rule 255'') remains subject to Regulation FD (17 CFR 244.100–244.102).

[10] Prior to the amendments being adopted in this release, an issuer that was not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act that conducted a Tier 2 Regulation A offering and concurrently registered the class of securities under the Exchange Act would have had its Regulation A reporting obligations suspended, regardless of whether it had remained current in Exchange Act reporting. Under the amendments, such an issuer technically will be subject to both reporting regimes; however, as long as the issuer remains current in its Exchange Act periodic reporting, its Exchange Act reports will be deemed to satisfy its ongoing reporting obligations under amended Rule 257(b).

[11] *See* Exchange Act Section 12(g)(4) and Section 15(d)(1), and 17 CFR 240.12g–4 and 240.12h–3 (''Rules 12g–4 and 12h–3'').

[12] A Tier 2 issuer that has filed all reports required by Regulation A for the shorter of: (1) The period since the issuer became subject to such reporting obligation, or (2) its most recent three fiscal years and the portion of the current year preceding the date of filing Form 1–Z is permitted to immediately suspend its ongoing reporting obligation under Regulation A at any time after completing reporting for the fiscal year in which the offering statement was qualified, if the securities of each class to which the offering statement relates are held of record by fewer than 300 persons (1,200 persons for a bank or bank holding company) and offers or sales made in reliance on a Tier 2 offering statement are not ongoing. *See* Rule 257(d)(2)–(4).

commence its Regulation A reporting with the report covering the most recent financial period after that included in any effective registration statement or a filed Exchange Act report.

Finally, we are making a technical amendment to Rule 251(b)(6) to define the term ''Exchange Act.'' This term had been defined in Rule 251(b)(2), which is being deleted.

B. Implementation Guidance

Because we are limiting the rule amendments adopted in this release to those necessary to implement the Economic Growth Act's mandate, we are providing the following guidance to clarify the operation of our rules in the context of a Regulation A offering by an Exchange Act reporting company.

1. Financial Statements to be Provided in Form 1–A

In both Tier 1 and Tier 2 offerings, issuers are required to file financial statements for the two previous fiscal years (or such shorter time that they have been in existence).[13] Tier 1 and Tier 2 issuers have different form and content requirements for their financial statements. Part F/S of Form 1–A permits Tier 1 issuers to follow the requirements set out in Part F/S, rather than the requirements in Regulation S–X.[14] In contrast, Tier 2 issuers are required to follow 17 CFR 210.8–01 through 210.8–08 (''Article 8 of Regulation S–X''), as if the issuer were a smaller reporting company conducting a registered offering on Form S–1, except the age of financial statements may follow the Part F/S requirements.

Another difference between the two tiers is in the audit requirements for such financial statements. In a Tier 1 offering, the financial statements are not required to be audited, although paragraph (b)(2) of Part F/S states that: (i) If an issuer has already obtained an audit of its financial statements for other purposes, (ii) if that audit was performed in accordance with U.S. Generally Accepted Auditing Standards (''U.S. GAAS'') or the standards of the Public Company Accounting Oversight Board (''PCAOB''), and (iii) if the auditor was independent pursuant to the standards of either 17 CFR 210.2–01 (''Rule 2–01 of Regulation S–X'') or of the American Institute of Certified Public Accountants, then those audited financial statements must be filed. The financial statements in a Tier 2 offering are required to be audited in accordance with either U.S. GAAS or the standards issued by the PCAOB, and the report and qualifications of the independent accountant must comply with the requirements of 17 CFR 210.2–01 through 210.2–07 (''Article 2 of Regulation S–X''). The accounting firm conducting the audit for any audited financial statements included in an offering circular may, but need not, be registered with the PCAOB.

We are not at this time amending the requirements of Part F/S. Exchange Act reporting companies using Regulation A are therefore required, at a minimum, to include in the Form 1–A financial statements for the two previous fiscal years (or such shorter time that they have been in existence), prepared in accordance with the form and content requirements of Part F/S.[15] Similarly, with respect to the age of financial statements required in a Form 1–A, we are not amending the age requirement applicable to Regulation A offerings at this time.[16] However, under 17 CFR 230.252 (''Rule 252 of Regulation A''), issuers must include in an offering statement ''any other material information necessary to make the required statements, in light of the circumstances under which they are made, not misleading.'' [17] Therefore, if at the time a reporting company issuer files a Form 1–A (or when the offering statement is qualified), it has made publicly available more recent audited or reviewed financial statements prepared in accordance with the standard required for the issuer's Exchange Act reports, including such financial statements in the offering statement may be necessary to make the required statements therein, in light of the circumstances under which they are being made, not misleading.

2. New or Revised Accounting Standards

Part F/S of Regulation A permits issuers, where applicable, to delay the implementation of new accounting standards to the extent such standards provide for delayed implementation by non-public business entities, similar to accommodations for emerging growth companies under Section 102(b) of the Jumpstart Our Business Startups Act (''JOBS Act'').[18] This accommodation will continue to be available to issuers that are not reporting companies (*i.e.,* are not ''issuers'' for purposes of the Sarbanes-Oxley Act) [19] at the time of their Regulation A offering. However, it does not apply to a reporting company issuer (including an emerging growth company that did not elect delayed implementation in connection with its initial registration of securities) that is, at the time of the Regulation A offering, subject to the rules that apply to public business entities.

3. Canadian Issuers

Regulation A is available only to companies organized in and with their principal place of business in the United States or Canada. Outside the Regulation A framework, a Canadian company may file reports with the Commission under the Exchange Act multijurisdictional disclosure system (''MJDS''). The MJDS allows eligible Canadian issuers to register securities under the Securities Act and to register securities and report under the Exchange Act by use of documents prepared largely in accordance with Canadian requirements. A Canadian reporting company issuer, whether or not filing under the MJDS, will be deemed to have met its Rule 257 reporting obligations so long as it is current in its applicable Exchange Act reporting obligations. The disclosure requirements for Canadian issuers reporting under the MJDS will continue to be established under home country standards. The other implementation guidance provided in this Section B also applies to Canadian reporting company issuers.

[13] Part F/S of Form 1–A requires consolidated balance sheets, statements of comprehensive income, cash flows and changes in stockholders' equity. In addition, the financial statements must be prepared in accordance with U.S. GAAP (or International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB) for Canadian issuers), which requires footnotes.

[14] 17 CFR part 210.

[15] As noted above, under paragraph (b)(2) of Part F/S, a reporting company issuer conducting a Tier 1 offering that has available audited financial statements prepared for other purposes is required to include such audited financial statements in its Form 1–A. As is the case for non-reporting companies, reporting company issuers in either Tier 1 or Tier 2 offerings will not be permitted to incorporate their financial statements by reference into the Form 1–A or any amendment thereto.

[16] Part F/S requires issuers in both Tier 1 and Tier 2 offerings to include financial statements in Form 1–A that are dated not more than nine months before the date of non-public submission, filing, or qualification, with the most recent annual or interim balance sheet not older than nine months. For filings made more than three months but no more than nine months after the end of the issuer's most recently completed fiscal year end, issuers are required to include a balance sheet as of the two most recently completed fiscal year ends. For filings made more than nine months after the end of the issuer's most recently completed fiscal year end, the balance sheet is required to be dated as of the two most recently completed fiscal year ends and an interim balance sheet must be included as of a date no earlier than six months after the end of the most recently completed fiscal year. If interim financial statements are required, they must cover a period of at least six months.

[17] *See* 17 CFR 230.252(a).

[18] Public Law 112–106, 126 Stat. 306.

[19] *See* Section 2(a) of the Sarbanes Oxley Act, 15 U.S.C. 7201(a).

4. Securities ''Held of Record'' for Section 12(g) Purposes

Under 17 CFR 240.12g5–1(a)(7) (''Rule 12g5–1(a)(7)''), Tier 2 securities issued by certain small reporting companies may, subject to certain conditions, be excluded from the count of securities ''held of record'' for purposes of Exchange Act Section 12(g).[20] We are not amending this provision at this time. As a result, securities issued in a Tier 2 offering by an Exchange Act reporting company that meets the requirements of the rule will be excluded from the ''held of record'' count.

C. Future Review

Section 401 of the JOBS Act added Section 3(b)(5)[21] to the Securities Act, which requires the Commission to review the $50 million Tier 2 offering limit not later than two years after enactment of the JOBS Act and every two years thereafter. The Chairman directed the staff to begin the next review in 2019. In connection with such review or in other future rulemaking, the Commission may explore whether additional changes to Regulation A should be made to address the application of the rule to Exchange Act reporting companies, including the topics addressed in Section B of this release.

III. Procedural Matters

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register** and provide an opportunity for public comment.[22] This requirement does not apply, however, if the agency ''for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' [23]

As discussed above, Section 508 of the Economic Growth Act directs the Commission to amend Rules 251 and 257 of Regulation A to permit entities subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act to use Regulation A and to provide that entities meeting the reporting requirements of the Exchange Act will be deemed to have met the reporting requirements of Regulation A. Because the amendments are necessary to conform Regulation A to the requirements of the Economic Growth Act and involve limited exercise of agency discretion, we find that notice and public comment are unnecessary.[24]

The APA also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[25] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[26] For the same reasons as we are forgoing notice and comment, we find good cause to make the rules effective immediately upon publication in the **Federal Register**. In addition, we find that the amendments relieve a restriction in our rules.[27]

IV. Economic Analysis

We are mindful of the costs imposed by and the benefits obtained from our rules and amendments.[28] The discussion below addresses the potential economic effects of the amendments, including the likely benefits and costs. The Commission is adopting amendments to implement the specific statutory mandates of Section 508 of the Economic Growth Act. Accordingly, the costs and benefits of the amendments stem almost entirely from the statutory mandates of Section 508.

At the outset, we note that, where possible, we have attempted to quantify the economic effects of the amendments. However, in some cases we are unable to quantify the economic effects. For example, it is difficult to quantify the number of reporting companies that will use Regulation A instead of a registered offering; the extent to which the amendments will attract new issuers; the types of reporting companies that will rely on Regulation A; and the effects of Regulation A's use by reporting companies on the amount and cost of capital raised in the Regulation A market. As we discuss below, the effects of the amendments are likely to be driven by issuers switching from small registered offerings to Regulation A offerings, which may limit the aggregate net economic effects of the amendments. We discuss the potential effects of the amendments relative to the baseline, which includes existing Regulation A requirements and market practices, as well as information about reporting companies and other parties likely to be affected by the amendments.

A. Baseline and Affected Parties

1. Regulation A

As discussed in Section I above, Regulation A is an exemption from registration under the Securities Act that includes two overlapping offering tiers (Tier 1—$20 million limit; Tier 2—$50 million limit) with different requirements. Companies subject to Exchange Act reporting requirements were ineligible to use Regulation A prior to the amendments being adopted in this release.

Regulation A's use has increased in relative terms since the 2015 amendments.[29] However, Regulation A's use remains modest in absolute terms. Between June 19, 2015 (the effective date of the 2015 amendments) and September 30, 2018, there were approximately 260 qualified offerings seeking up to approximately $5.8 billion in the aggregate.[30] In the same period, approximately $1.3 billion in aggregate proceeds was reported to have been raised by 123 issuers.[31] Tier 2 accounted

[20] *See* Rule 12g5–1(a)(7). To take advantage of Rule 12g5–1(a)(7), an issuer must have had, as of the last business day of its most recently completed semiannual period, a public float of less than $75 million or a public float of zero and annual revenues of less than $50 million as of its most recently completed fiscal year. Rule 12g5–1(a)(7) also requires that the issuer is required to file reports pursuant to Rule 257(b) of Regulation A, is current in filing annual, semiannual and special financial reports as of its most recently completed fiscal year end, and has engaged a transfer agent registered pursuant to Section 17A(c) of the Securities Act to perform the function of a transfer agent with respect to the securities.

[21] 15 U.S.C. 77c(b)(5).

[22] *See* 5 U.S.C. 553(b).

[23] *Id.*

[24] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendments to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary, or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The amendments also do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

[25] *See* 5 U.S.C. 553(d).

[26] *Id.*

[27] *Id.*

[28] Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[29] *See* Report to Congress, Access to Capital and Market Liquidity (Aug. 2017), *https://www.sec.gov/files/access-to-capital-and-market-liquidity-study-2017.pdf,* at 49–51.

[30] Offerings are identified based on CIK and file number; offerings that were withdrawn or abandoned are excluded; offerings identified as duplicates are consolidated. Amendments are consolidated with the original offering for purposes of the number of offerings. Rounding affects totals. Dollar amounts sought are based on the maximum offering amounts reported by companies in Parts I and II of Form 1–A.

[31] Capital raised is based on information reported by companies in Forms 1–Z, 1–K, 1–SA, 1–U, and offering circular supplements pertaining to completed and ongoing Regulation A offerings and post-qualification amendments, and for issuers whose shares have become exchange-listed, information from other public sources. Estimates represent a lower bound on the amounts raised given the time frames for reporting proceeds following completed or terminated offerings and

Continued

for most of the Regulation A capital raising activity (approximately 180 qualified offerings seeking up to approximately $5.1 billion with approximately $1.1 billion in aggregate proceeds reported raised by 98 issuers). In other words, Tier 2 accounted for approximately 88% of the amount sought to be raised and approximately 85% of the amount reported to have been raised during this period.

2. Affected Parties

The amendments will affect reporting companies that will be newly eligible to seek financing under Regulation A. We anticipate that the amendments will affect U.S. and Canadian reporting companies seeking to conduct a public offering within the Regulation A offering limit. Among such issuers, the amendments will likely have the most impact on issuers in offerings of securities that fall within Regulation A offering limits and that are not listed on a national securities exchange (because blue sky preemption is available for Tier 2 of Regulation A, but is generally not available for non-exchange-listed securities sold in registered offerings).[32] This may afford issuers additional flexibility in raising capital and lower their costs. Among such issuers, reporting company issuers ineligible for a streamlined registration process on Form S–3 or F–3 may be incrementally more likely to rely on Regulation A (due to incrementally lower preparation costs of Form 1–A). During calendar year 2017, there were approximately 584 reporting companies with registered securities offerings of up to $50 million that may be eligible for Regulation A under the amendments, including approximately 267 of those that were not exchange-listed.[33] Excluding issuers that have used Form S–3 or F–3,[34] there were approximately 326 reporting companies with registered securities offerings of up to $50 million that may be eligible for Regulation A under the amendments, including approximately 215 that were not exchange-listed. In addition, we expect that the amendments may affect past Regulation A issuers that became reporting companies to the extent that such issuers may seek follow-on Regulation A financing. Among issuers in Regulation A offerings that were qualified during calendar year 2017, nine became reporting companies during that period.[35]

The amendments also may affect Regulation A issuers that are not reporting companies to the extent that they compete for capital with reporting companies that are newly eligible for Regulation A. During calendar year 2017, there were approximately 90 issuers in qualified Regulation A offerings, including issuers that later became reporting companies.[36] However, the extent of competition for capital in the Regulation A market may remain unchanged if the amendments draw additional investors to the Regulation A market, as discussed in Section IV.B.3 below.

The flexibility afforded by the amendments may lead some new issuers that are not reporting companies and that have not previously conducted a public offering to seek Regulation A financing or to become a reporting company.

The amendments also will affect Regulation A investors and intermediaries. Data on the number of Regulation A investors is not available to us because this information is not required to be disclosed. Currently very few intermediaries participate in the Regulation A market. Based on Part I of Form 1–A, approximately 30 intermediaries received underwriting or sales compensation or served as promoters or finders in Regulation A offerings qualified during calendar year 2017. The flexibility afforded by the amendments may lead intermediaries that have not previously participated in Regulation A offerings to begin participating in such offerings. Overall, there were approximately 971 registered broker-dealers that reported being underwriters or selling group participants for corporate securities in 2017.[37] Such intermediaries may increase their participation in Regulation A offerings after the amendments.

B. Economic Effects of the Amendments

1. Amendments to Rule 251

Below we discuss the potential economic effects of the amendments to Rule 251(b) that permit companies subject to Exchange Act reporting obligations to rely on Regulation A.

a. Effects on Issuers

Reporting companies that are newly eligible under Regulation A may realize several benefits from the amendments.

First, reporting companies may benefit from the additional flexibility in raising capital permitted under Regulation A. Reporting companies offering securities not listed on a national exchange that use Tier 2 are eligible for blue sky preemption, which can expedite the offering process, allow offerings involving a wider range of reporting companies and offering terms,[38] and enable offers of securities in multiple states to a broader range of investors.[39] However, Regulation A does not permit at-the-market offerings, which may limit the attractiveness of this offering method for some reporting companies.[40]

Second, Regulation A, particularly Tier 2,[41] may also provide additional flexibility with respect to solicitation of investor interest (*i.e.,* ''test-the-waters'' communications), as compared to registered offerings, particularly for reporting companies that either do not qualify as emerging growth companies

given that offerings qualified during the report period may be ongoing. In particular, proceeds in ongoing offerings disclosed in periodic reports of Tier 2 issuers may be amended at a future date. Issuers that report proceeds of zero are excluded from the count. Changes over time in cumulative amounts reported raised may reflect the timing of reporting by the company rather than the time at which the capital was raised, and therefore should not be used to gauge trends in capital raising activity. If an issuer reported proceeds both from a Tier 1 and a Tier 2 offering, that issuer is counted twice (once under Tier 1 and once under Tier 2).

[32] Under Section 18(b)(1) of the Securities Act, securities that are listed or authorized for listing on a national securities exchange are exempt from state securities law registration and qualification requirements. *See* Section 18(b)(1), 15 U.S.C. 77r(b)(1).

[33] The estimate is based on the number of unique issuers with registration statements on Forms S–1, S–3, S–4, S–11, F–1, F–3, F–4, and F–10, excluding amendments, declared effective during calendar year 2017 with registration size up to $50 million. Issuers incorporated outside the U.S. and Canada and issuers with SIC code 6770 (denoting blank checks) are excluded. Data is obtained from Intelligize.

[34] *Id.* Issuers that had at least one registration statement on Form S–3 or F–3 declared effective, irrespective of registration size, during calendar year 2017 are excluded.

[35] The number of Regulation A issuers is based on the number of unique filers of Form 1–A or pre-qualification amendments to it that were qualified during calendar year 2017, excluding offerings withdrawn after qualification. Regulation A issuers that became reporting companies are identified based on subsequent exchange listing, effectiveness of registration on Form 8–A, or subsequent filing of Exchange Act reports after the qualification of a Regulation A offering. Given the short period of observation and small number of issuers, it is not possible to conclude whether that period was an outlier.

[36] *Id.*

[37] This estimate is based on Form BD filings as of December 2017. It is not limited to underwriters of small offerings due to data availability reasons.

[38] This would be particularly applicable to issuers offering securities in states with merit review.

[39] Non-accredited investors in Tier 2 offerings of non-exchange-listed securities may invest no more than 10% of the greater of their income or net worth in a given offering. *See* 17 CFR 230.251(d)(2)(i)(C).

[40] *See* Regulation A Adopting Release, 80 FR 21806, 21840 (April 20, 2015) (''Regulation A Adopting Release'').

[41] While Regulation A solicitation provisions are the same for both tiers, blue sky restrictions may limit solicitation before state qualification of a Tier 1 offering. *See* Regulation A Adopting Release, fn. 998.

(EGCs) or that seek to solicit indications of interest from individual or small institutional investors.[42] Subject to certain conditions, Regulation A issuers may solicit indications of interest from any investor before qualification of an offering statement, which may allow issuers to gauge investor interest prior to deciding whether to incur the full cost of the offering. Test-the-waters materials used in conjunction with a Regulation A offering must contain required legends and, should an issuer proceed with an offering, must be publicly filed, and a Preliminary Offering Circular must be available in conjunction with test-the-waters materials used after the public filing of the offering statement.[43] Further, reporting companies that elect to solicit indications of interest in conjunction with a prospective Regulation A offering in reliance on Rule 255 remain subject to Regulation FD. In addition, Regulation A contains a safe harbor from integration of Regulation A offerings with any prior offers or sales of securities, as well as with any subsequent offers or sales of securities registered under the Securities Act.[44] The flexibility to alternate between Regulation A and registered offerings may be particularly valuable for non-exchange-listed issuers, past Regulation A issuers that have become reporting companies but wish to seek follow-on Regulation A financing, and more generally, for other issuers that are uncertain about whether their future financing strategy will rely on Regulation A or registered offerings.

Third, reporting companies may realize legal and compliance cost savings from using Regulation A to raise capital instead of a registered offering. The cost of preparing Form 1–A may be lower than the cost of preparing a registration statement,[45] particularly for issuers ineligible for a streamlined securities registration on Form S–3 or F–3,[46] or under the multijurisdictional disclosure system (MJDS).[47] In addition, because Tier 2 securities of smaller issuers may be conditionally exempt from the number of shareholders of record for purposes of Section 12(g), using Regulation A for new financing may enable issuers to maintain a lower number of shareholders of record, which may make it easier for issuers to deregister under Section 12(g) in the future and suspend Exchange Act reporting.[48] However, for issuers that remain subject to Exchange Act reporting, the incremental effect of using Form 1–A on the overall compliance costs may be relatively small. Unlike a registered offering, a Regulation A offering is not subject to liability under Section 11,[49] which may lower the legal risk and cost associated with the offering. Further, blue sky preemption for Tier 2 of Regulation A may result in legal and compliance cost savings for issuers offering securities not listed on an exchange.[50]

These factors may give reporting companies that seek financing from public markets within the Regulation A offering limit (particularly those that are not exchange-listed) greater flexibility in the process of raising capital, potentially allowing such issuers to incrementally increase the amount of capital raised, or reduce the cost or time associated with raising capital.

Reporting companies that use Regulation A will also incur certain costs. In particular, issuers that rely on the amendments will incur costs to prepare Form 1–A and undertake a Regulation A offering. It is likely that many of the reporting companies using Regulation A under the amendments would have otherwise conducted a registered offering or a private placement. Given the optional nature of the provision, reporting companies are likely to use Regulation A only if they expect the benefits to outweigh the costs.

Finally, if Regulation A use by reporting companies increases (decreases) overall investor interest in the Regulation A market, as discussed in Section IV.B.3 below, the resulting inflow (outflow) of investor capital may indirectly affect all Regulation A issuers, including issuers that are not reporting companies.

b. Effects on Investors

Many of the reporting companies using Regulation A under the amendments may be switching from registered offerings to Regulation A, and the same investors may be investing in their Regulation A securities as would have invested in their registered securities today, which may limit the net aggregate impact of the amendments on investors in public offerings. Nevertheless, the amendments may have an impact on investors if they facilitate some offerings that would not have been conducted either under a registration regime or under the Regulation A regime today. The amendments may also affect investors if provisions specific to reporting company Regulation A offerings affect investor benefits and costs associated with offerings that would have otherwise been conducted either under a registration regime or under a Regulation A regime. We discuss these considerations in greater detail below.

The amendments may yield benefits for some investors in certain circumstances. Investors that currently invest primarily in Regulation A securities may realize incremental

[42] Section 5(d) of the Securities Act allows EGCs to test the waters with qualified institutional buyers and institutional accredited investors without a requirement to file test-the-waters materials. However, EGCs may not solicit other investors under Section 5(d). Non-EGC issuers may not rely on Section 5(d).

[43] *See* 17 CFR 230.255.

[44] *See* 17 CFR 230.251(c). As noted above, a reporting company issuer contemplating concurrent registered and Regulation A offerings will need to analyze its specific facts and circumstances with regard to integration concerns and the solicitation restrictions arising from each offering type, as well as the application of Regulation FD.

[45] The average preparation burden of Form 1–A for purposes of the PRA is 750 hours. The average preparation burden of a registration statement varies depending on registration statement type. For example, the average preparation burden for purposes of the PRA is: 4,104 hours for Form S–4; 783 hours for Form S–11; 1,713 hours for Form F–1; and 1,461 hours for Form F–4. In turn, the average preparation burden for purposes of the PRA is 671 hours for Form S–1. The preparation burden may also vary from issuer to issuer. Average preparation burdens are included on the cover page of each referenced form at *https://www.sec.gov/forms.*

[46] *See* 17 CFR 239.13, 17 CFR 239.33, and *supra* note 34 and accompanying text. For issuers using registration statements on Form S–3 or F–3, the average preparation burden is estimated to be lower than the average preparation burden of Form 1–A. The average preparation burden for purposes of the PRA is 475 hours for Form S–3 and 170 hours for Form F–3. The preparation burden may also vary from issuer to issuer. Average preparation burdens are included on the cover page of each referenced form at *https://www.sec.gov/forms.*

[47] The MJDS allows eligible Canadian issuers to register securities under the Securities Act and to register securities and report under the Exchange Act by use of documents prepared largely in accordance with Canadian requirements. *See https://www.sec.gov/corpfin/cf-manual/topic-16.* The preparation burden of such forms estimated for purposes of the PRA is relatively low: 4 hours for Form F–7; 1 hour for Form F–8; 29 hours for Form F–10; and 2 hours for F–80. The preparation burden may also vary from issuer to issuer. Average preparation burdens are included on the cover page of each referenced form at *https://www.sec.gov/forms.* Based on EDGAR data, approximately 56 Canadian issuers had a registration statement on one of these forms declared effective during calendar year 2017.

[48] *See* 17 CFR 240.12g5–1.

[49] However, under Section 3(b)(2)(D) of the Securities Act, the civil liability provisions of Section 12(a)(2) apply to any person offering or selling securities under Regulation A. Further, antifraud liability provisions in Section 17 of the Securities Act apply to any person who commits fraud in the offer or sale of securities. *See* Regulation A 2015 Adopting Release, fn. 538.

[50] State regulators retain the authority to require the filing with them of any documents filed with the Commission. *See* Regulation A 2015 Adopting Release, fn. 277. Thus, Tier 2 issuers may incur the cost of complying with state notice filing requirements. Further, issuers remain subject to state registration requirements with respect to Tier 1 securities and registered securities not listed on a national securities exchange.

benefits if they begin investing in Regulation A securities of reporting companies due to greater availability of information about Exchange Act reporting companies. Greater availability of information may enable such investors to make better informed investment decisions,[51] as well as lead to more informationally efficient pricing and potentially greater liquidity of Regulation A securities of such issuers compared to other Regulation A issuers.[52]

In addition, existing investors in reporting companies that use Regulation A under the amendments may also benefit if the amendments enable such issuers to increase shareholder value as a result of improved access to capital or a lower cost of capital.

Further, the flexibility afforded to reporting companies under the amendments may make conducting public offerings more attractive overall, compared to conducting private placements, either as a public or as a private company. If the amendments lead to an increase in public offerings (either registered or Regulation A offerings), investors in the aggregate may benefit from the greater level of transparency associated with public offerings, increased secondary market liquidity, and the increased number of investment options, which may enable investors to make more informed decisions and allocate capital more efficiently.

Overall, the aggregate benefits to investors are expected to be more limited if the use of Regulation A by reporting companies is driven by some reporting companies switching from registered offerings to Regulation A or by past Regulation A issuers that become reporting companies continuing to raise Regulation A financing instead of undertaking registered offerings.

We recognize that the amendments may impose potential costs on some investors in Regulation A securities of some reporting companies that would have otherwise invested in registered securities of reporting companies. Specifically, certain features of Regulation A may make it more attractive to some non-exchange-listed reporting companies that have high information asymmetries or that are offering securities with risky and complex payoffs, some of which might not have pursued a registered offering today. In particular, Regulation A offering disclosures are not subject to Section 11 liability; Tier 2 offerings are not subject to state blue sky review or state investor and solicitation restrictions; and Regulation A offerings are generally not subject to the gun-jumping provisions of Section 5(c) due to the ability to test the waters under Rule 255. These differences can impose costs on investors to the extent that information asymmetries may make it more difficult for investors to fully appreciate the risks the investments present. Some investors may off-set these costs, however. For example, some investors anticipating such costs may demand compensation in the form of more attractive offering terms. Additionally, some of these provisions of the amendments could in fact benefit investors by enabling issuers to lower compliance costs.

Potential costs of the amendments to investors may be further mitigated by the following factors: (1) Exchange Act reporting requirements; (2) disclosures required in Regulation A offering statements, which provide information on potential risks of the offering to enable informed investment decisions; (3) the requirement that Regulation A offering statements be qualified by the Commission before any sales can be made; (4) potential liability under Section 12(a)(2) and application of the general antifraud provisions of federal and state securities laws to Regulation A offerings; and (5) Regulation A requirements (*e.g.,* issuer eligibility criteria, offering limits, investment limits for non-accredited investors in Tier 2 offerings of non-exchange-listed securities; and audited financial statement requirements for Tier 2 offerings).[53] In general, the readily observable nature of reporting company status and offering type enables investors concerned about potential risks of reporting company Regulation A offerings to reallocate to other types of offerings.

c. Effects on Intermediaries

The amendments may affect intermediaries in Regulation A offerings. As discussed in Section IV.A.2 above, very few intermediaries presently participate in Regulation A offerings. An increase in the number and types of Regulation A issuers may increase demand for the services of intermediaries in connection with such offerings and potentially attract new intermediaries to the Regulation A market. For example, existing intermediaries participating in small registered offerings may begin to offer Regulation A services to their clients. If the amendments increase the number and range of issuers using Regulation A and thereby increase investor interest in the Regulation A market more generally, intermediaries may realize higher revenue from Regulation A deals, and vice versa.

The availability of Exchange Act reports may facilitate intermediary due diligence. However, if reporting companies that use Regulation A have higher information asymmetries, due diligence costs and effort of intermediaries may not decrease. Due to the voluntary nature of matching between issuers and intermediaries, we expect intermediaries to participate in offerings only when they on average expect benefits to exceed costs.

Overall, however, the extent to which the use of Regulation A by reporting companies is driven by some reporting companies switching from registered offerings to Regulation A is expected to limit the aggregate effects of the amendments on intermediaries. Further, intermediaries may not experience significant effects of the amendments if reporting companies using Regulation A primarily conduct offerings without involving intermediaries.

2. Amendments to Rule 257

Below we consider the economic effects of the amendments to Rule 257. Under the amendments, a Tier 2 reporting company issuer will be deemed to have met its Rule 257(b) reporting obligation if it is current in its Exchange Act reporting as of the due dates for periodic reports on Form 1–K and Form 1–SA required under Rule 257(b). The requirement that a reporting company Regulation A issuer be current in, rather than merely subject to Exchange Act reporting, in order to meet its Rule 257(b) obligations, is expected to encourage more regular periodic disclosures following a reporting company's Regulation A offering. Therefore, this requirement should benefit investors in all classes of securities of reporting company Regulation A issuers by enabling better informed investment decisions, as well as more informationally efficient prices for securities of reporting company Regulation A issuers traded in secondary markets.

Specifying a time period for which Exchange Act reports must have been filed will provide certainty to issuers regarding how to satisfy the requirements of Rule 257(b). The amendments use a 12-month lookback period consistent with the standard applied in Commission rules in other

[51] For example, reporting companies must file quarterly reports and current reports in a broader range of circumstances than required for Tier 2 issuers. In addition, reporting companies are subject to Regulation FD.

[52] *See* Regulation A 2015 Adopting Release, at 21866.

[53] *See* 17 CFR 230.251–230.252.

contexts, including for the determination of eligibility to use Form S–8 and for satisfaction of the ''current public information'' requirement of Rule 144. Use of a standard that is familiar from these other contexts may facilitate compliance by issuers. As an alternative, we could have adopted a longer (shorter) period for purposes of ''meeting'' the Rule 257(b) requirements. Such a longer (shorter) period would have increased (decreased) the incentives for reporting companies to provide more regular period disclosures following a Regulation A offering while also increasing (decreasing) costs incurred by those reporting companies that have previously failed to file Exchange Act reports. As another alternative, we could have required filers to have filed in a timely manner all reports required to be filed during the prior 12 months, consistent with Form S–3 and F–3 requirements.[54] This alternative may benefit investors by incentivizing reporting companies that use Regulation A to provide timely periodic disclosures. However, this alternative may increase costs and decrease the ability of reporting companies that have failed to timely file Exchange Act reports during the lookback period to raise follow-on Regulation A Tier 2 financing. Overall, relative to the amendments, we do not expect the effects of these alternatives to be significant given the other incentives that reporting companies have to remain current in their Exchange Act reports (*e.g.,* greater secondary market liquidity, not being delisted from an exchange or downgraded to a lower OTC market tier, future eligibility for a streamlined registration process, reduced legal liability, and a reputation for transparency).

Prior to the amendments being adopted in this release, an issuer that was not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act that conducted a Tier 2 Regulation A offering and concurrently registered the class of securities under the Exchange Act would have had its Regulation A reporting obligations suspended so long as it was subject to Exchange Act reporting obligations, regardless of whether it had remained current in such Exchange Act reporting. Under the mandated amendments, such issuers technically will be subject to both reporting regimes. Thus, some Tier 2 issuers may incur costs as a result of this amendment, particularly if they are likely not to remain current in their Exchange Act reporting.

3. Efficiency, Competition, and Capital Formation

The amendments may attract additional issuers and a potentially wider range of issuers to the Regulation A market segment, resulting in potentially greater capital formation under Regulation A. As we note below, many of these issuers may have otherwise pursued a registered offering today, thus the net effects on capital formation may be small.

Nevertheless, the amendments may enable some issuers to optimize their financing strategy and reduce external financing costs as a result of greater flexibility in raising capital. This may lead some reporting companies to switch from private placements to Regulation A. The additional flexibility to alternate between Regulation A and registered offerings may on the margin encourage some private companies to pursue public offerings (either pursuant to Regulation A or to a registration statement) or to become reporting companies. Increased reliance on public offerings may incrementally increase the availability of information about offered securities, the investment opportunities available to non-accredited investors, the efficiency of such investors' capital allocation decisions, and the competition among issuers in public offerings for investor capital.

The ability of reporting companies to use Regulation A may increase competition among issuers for investor capital in the Regulation A market. If investors in the Regulation A market prefer reporting companies due to the additional disclosures they provide, it may adversely affect the ability of non-reporting companies to raise capital under Regulation A. This incremental effect may be limited to the extent that reporting companies using Regulation A may have otherwise raised capital from the same investors in a registered offering. If investors reveal a preference for additional disclosure, non-reporting companies seeking Regulation A financing may register a class of securities under Section 12 or provide Exchange Act disclosures voluntarily in response to market demand for information, although such steps would entail additional costs. Alternatively, Regulation A use by reporting companies may have positive spillovers for non-reporting companies in the Regulation A market if the inflow of reporting companies attracts additional interest from investors, intermediaries, and information providers to the Regulation A market as a whole.

We recognize that many of the issuers likely to rely on the amendments to pursue a Regulation A offering may be reporting companies that would have otherwise pursued a registered offering. We further recognize that the investors likely to invest in the Regulation A securities of reporting companies relying on the amendments may be the same investors that would have invested in registered securities of those issuers prior to the amendments. Therefore, the net aggregate effects of the amendments on efficiency, competition, capital formation, and investor protection may be small.

V. Paperwork Reduction Act

A. Background and Summary

Certain provisions of Regulation A that will be affected by these amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (the ''PRA'').[55] The Commission is submitting the amendment to the Office of Management and Budget (the ''OMB'') for review in accordance with the PRA.[56] The title for the affected collection of information is Regulation A (Form 1–A) (OMB Control No. 3235–0286).

Regulation A provides an exemption from registration for offers and sales of securities for up to $50 million. Regulation A requires issuers to provide certain disclosures; this disclosure is a collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collection is mandatory. Responses to the information collection are not kept confidential and there is no mandatory retention period for the information disclosed.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collections of information. In deriving estimates of these hours and costs, we recognize that the burdens likely will vary among individual issuers based on a number of factors, including the stage of development of the business, the amount of capital an issuer seeks to raise, and the number of years since inception of the business. We believe that some issuers will experience costs in excess of the average and some

[54] *See* General Instruction I.A.3 to Form S–3 and General Instruction I.A.2 to Form F–3.

[55] 44 U.S.C. 3501 *et seq.*

[56] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

issuers may experience less than the average costs.

B. Estimated Number of Regulation A Offerings

Data regarding current market practices may help identify the potential number of offerings that will be conducted in reliance on the final rules. We estimate that there are currently approximately 112 Regulation A offering statements filed by issuers per year. While it is not possible to predict with certainty the number of offering statements that will be filed by issuers relating to offerings made in reliance on amended Regulation A, for purposes of this PRA analysis, we estimate that the number will be 179 offering statements per year. We base this estimate on: (i) The current approximate number of annual Form 1–A filings under the existing rules, plus (ii) 25 percent of the estimated number of registered offerings of securities by reporting companies that were not exchange listed that would have been eligible to be conducted under Regulation A.[57]

For purposes of this PRA analysis, we assume that each offering statement for a unique Regulation A offering that is filed represents a unique issuer, such that approximately 179 issuers are estimated to conduct Regulation A offerings each year under the final rules.

B. PRA Reporting and Cost Burden Estimates

Regulation A requires issuers to file a Form 1–A: Offering Statement with the Commission. Regulation A has one administrative burden hour associated with it, and Form 1–A is currently estimated to take approximately 750 burden hours per response. We do not estimate that the one administrative burden hour associated with Regulation A will change as a result of the final rules. We believe the burden hours associated with Form 1–A will change as a result of the amendments. Because an Exchange Act reporting company is likely to have already prepared much of the information required to respond to Form 1–A for its Exchange Act reporting purposes, we estimate that the burden to prepare and file Form 1–A, as amended, for a reporting company will be approximately 700 hours.[58] This will decrease the burden on average across all issuers in comparison to existing rules, to approximately 731.28 hours. We estimate that the issuer will internally carry 75 percent of the burden of preparation and that outside professionals retained by the issuer at an average cost of $400 per hour[59] will carry 25 percent. However, because we estimate that 67 additional offering statements will be filed per year as a result of the amendments, we estimate that the overall burden hours to prepare and file Form 1–A will increase.

We estimate that compliance with the requirements of Form 1–A will require 130,900 burden hours (179 offering statements × 731.28 hours/offering statement) in aggregate each year, which corresponds to 98,175 aggregated hours carried by the issuer internally (179 offering statements × 731.28 hours/offering statement × 0.75) and aggregated costs of $13,089,912 (179 offering statements × 731.28 hours/offering statement × 0.25 × $400) for the services of outside professionals. As stated above, we estimate that the amendments to Regulation A will not change the one administrative burden hour associated with the review of Regulation A and will require 179 burden hours (179 offering statements × one hour/offering statement) in aggregate each year, which corresponds to 134.25 aggregated hours carried by the issuer internally (179 offering statements × 0.75) and aggregated costs of $17,900 (179 offering statements × 0.25 × $400) for the services of outside professionals. When combined with the estimates for Form 1–A, the administrative burden hour results in an estimated total compliance burden of 732.28 hours per offering statement and an estimated annual compliance burden of 131,078.12 hours (179 offering statements × 732.28 hours/offering statement) and aggregated costs of $13,107,812 (179 offering statements × 732.28 hours/offering statement × 0.25 × $400).

C. Request for Comment

We request comments in order to evaluate: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–29–18. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–29–18 and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–0213. Interested persons are encouraged to send comments to the OMB by March 4, 2019.

VI. Statutory Authority

The amendments contained in this release are adopted under the authority set forth in sections 3(b), 19(a), and 28 of the Securities Act and section 508 of the Economic Growth Act.

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

Text of Amendment

In accordance with the foregoing, title 17 chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L.

[57] *See* Section IV.A.2 (citing approximately 267 non-exchange listed reporting companies with registered securities offerings in 2017 of up to $50 million that may be eligible for Regulation A under the amendments).

[58] By comparison, we estimate the burden per response for preparing Form S–1 to be 671 hours. Such estimate reflects the effect on disclosure preparation time of the ability of certain issuers to forward incorporate by reference into the prospectus contained in a registration statement on Form S–1. *See* Form S–1, at 1.

[59] 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 is the rate we typically estimate for outside services used in connection with public company reporting.

112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 2. Section 230.251 is amended by removing and reserving paragraph (b)(2) and revising paragraph (b)(6) to read as follows:

§ 230.251 Scope of exemption.

* * * * *

(b) * * *

(6) Is not, and has not been, subject to any order of the Commission entered pursuant to Section 12(j) (15 U.S.C. 78l(j)) of the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78a *et seq.*) within five years before the filing of the offering statement;

* * * * *

■ 3. Section 230.257 is amended by adding paragraph (b)(6), removing and reserving paragraph (d)(1), and revising paragraph (e) to read as follows:

§ 230.257 Periodic and current reporting; exit report.

* * * * *

(b) * * *

(6) *Exchange Act reporting requirements.* The duty to file reports under this rule shall be deemed to have been met if the issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o) and, as of each Form 1–K and Form 1–SA due date, has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o) during the 12 months (or such shorter period that the registrant was required to file such reports) preceding such due date.

* * * * *

(e) *Termination of duty to file reports.* If the duty to file reports is deemed to have been met pursuant to paragraph (b)(6) of this section and such status ends because the issuer terminates or suspends its duty to file reports under the Exchange Act, the issuer's obligation to file reports under paragraph (b) of this section shall:

(1) Automatically terminate if the issuer is eligible to suspend its duty to file reports under paragraphs (d)(2) and (3) of this section; or

(2) Recommence with the report covering the most recent financial period after that included in any effective registration statement or filed Exchange Act report.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 4. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 5. Amend Form 1–A (referenced in § 239.90) by revising Item 2 of Part I to read as follows:

Note: The text of Form 1–A does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 1–A

REGULATION A OFFERING STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I—NOTIFICATION

* * * * *

ITEM 2. Issuer Eligibility

☐ Check this box to certify that all of the following statements are true for the issuer(s):

- Organized under the laws of the United States or Canada, or any State, Province, Territory or possession thereof, or the District of Columbia.
- Principal place of business is in the United States or Canada.
- Not a development stage company that either (a) has no specific business plan or purpose, or (b) has indicated that its business plan is to merge with an unidentified company or companies.
- Not an investment company registered or required to be registered under the Investment Company Act of 1940.
- Not issuing fractional undivided interests in oil or gas rights, or a similar interest in other mineral rights.
- Not issuing asset-backed securities as defined in Item 1101(c) of Regulation AB.
- Not, and has not been, subject to any order of the Commission entered pursuant to Section 12(j) of the Exchange Act (15 U.S.C. 78*l*(j)) within five years before the filing of this offering statement.
- Has filed with the Commission all the reports it was required to file, if any, pursuant to Rule 257 during the two years immediately before the filing of the offering statement (or for such shorter period that the issuer was required to file such reports).

* * * * *

By the Commission.

Dated: December 19, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–27980 Filed 1–30–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 270

[Docket ID: DOD–2018–OS–0050]

RIN 0790–AK38

Compensation of Certain Former Operatives Incarcerated by the Democratic Republic of Vietnam

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the Department of Defense (DoD) regulation concerning compensation of certain former operatives incarcerated by the Democratic Republic of Vietnam. The content of this part is obsolete as the claim period expired and the Vietnam Commandos Compensation Commission was disbanded. Therefore, this part is unnecessary, and can be removed.

DATES: This rule is effective on January 31, 2019.

FOR FURTHER INFORMATION CONTACT: Don Syendsen, 703–695–9371.

SUPPLEMENTARY INFORMATION: This part was originally published 15 May 1997 under the National Defense Authorization Act of FY 1997 and established the Vietnam Commandos Compensation Commission within the Office of the Secretary of Defense. The rule authorized a claims process for compensation of Vietnamese operatives who served in certain U.S.-led operations, were captured, and incarcerated in the Democratic Republic of Vietnam. The claim period expired 15 May 2000; payments were completed by July 2001; and, the commission was disbanded.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' therefore, the requirements of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' do not apply.

List of Subjects in 32 CFR Part 270

Claims, Military personnel, Prisoners of war, Vietnam.