



8011-01p

SECURITIES AND EXCHANGE COMMISSION

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request;

Rules 147(f)(1)(iii) and 147A(f)(1)(iii) Written Representations as to Purchaser Residency

ACTION: Notice.

SUMMARY: The Securities and Exchange Commission (“Commission”) has submitted two sponsored information collection requests (“ICRs”) to the Office of Management and Budget (“OMB”) for review and clearance in accordance with the Paperwork Reduction Act of 1995¹ (“PRA”). The first title is: “Rule 147(f)(1)(iii) Written Representation as to Purchaser Residency.” The second title is: “Rule 147A(f)(1)(iii) Written Representation as to Purchaser Residency.” OMB approval has been requested by April 20, 2017.

ADDRESSES: A copy of these ICRs with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain>.

ICR Reference Numbers 201701-3235-005 and 201701-3235-006 for Rules 147 and 147A, respectively.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to:

Shagufta_Ahmed@omb.eop.gov; and (ii) Pamela C. Dyson, Chief Information Officer,

¹ P.L. 104-13, 44 U.S.C. 3501 et seq.

Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, N.E., Washington, DC 20549 or send an e-mail to: PRA_Mailbox@sec.gov.

SUPPLEMENTARY INFORMATION:

This request should serve to notify the public that the Commission is seeking PRA approval from OMB for the collections of information associated with the final rule amendments to Rule 147² and new Rule 147A³ under the Securities Act of 1933⁴ (“Securities Act”) that were adopted by the Commission on October 26, 2016.⁵

As adopted, both Rule 147(f)(1)(iii) and new Rule 147A(f)(1)(iii) will require the issuer to obtain from the purchaser a written representation as to the purchaser’s residency. In the Proposing Release, the Commission had proposed eliminating the requirement in Rule 147. In response to comments received on the Proposing Release, the Commission decided not to eliminate the requirement in Rule 147 and instead adopted an identical requirement in new Rule 147A(f)(1)(iii).⁶ The representation is not required to be presented in any particular format, although it must be in writing. Representations obtained by the issuer are not required to be kept confidential, and there is no mandatory retention period.

We anticipate that the requirement for issuers to obtain a written representation from each purchaser as to his or her residence, as required under Rule 147(f)(1)(iii) and Rule 147A(f)(1)(iii), could result in somewhat higher compliance costs for issuers to meet these requirements in order to sell securities in an exempt intrastate offering. For purposes of the

² 17 CFR 230.147.

³ 17 CFR 230.147A.

⁴ 15 U.S.C. 77a *et seq.*

⁵ *See* Release No. 33-10238 (Oct. 26, 2016) [81 FR 83494]. New Rule 147A and the amendment to Rule 147 will be effective on April 20, 2017.

⁶ *Id.*

PRA, for each of Rule 147 and Rule 147A, we estimate that the total annual paperwork burden for all affected issuers arising from this collection of information requirement will be approximately 175 hours of issuer (company) personnel time and approximately \$70,000 for the services of outside professionals. We anticipate that the written representation required by purchasers, including the obligation to determinate the state or territory of their residence, as required under Rule 147(f)(1)(iii) and Rule 147A(f)(1)(iii), will result in a burden incurred by purchasers in order to purchase securities in an exempt intrastate offering. For purposes of the PRA, for each of Rule 147 and Rule 147A, we estimate that the total annual paperwork burden for all affected purchasers arising from this collection of information requirements will be approximately 1,750 hours of purchaser time and no cost incurred for the services of outside professionals.

In deriving our estimates, we assume that:

- Approximately 700 issuers⁷ will conduct a Rule 147 and Rule 147A offering each year, respectively, and each issuer will spend an average of fifteen minutes to obtain and collect the written representation from each purchaser in the offering as to his or her state or territory of residence, resulting in 175 issuer burden hours (annual) for each exemption;
- Each of the approximately 700 issuers will retain outside professional firms to spend an average of fifteen minutes helping the issuer comply with this requirement to obtain and collect the written statement of residency from each

⁷ We rely upon the number of offerings under Rules 504 and 505 of Regulation D for the year ended December 31, 2015 as a proxy for the average annual number of offerings under Rule 147 and new Rule 147A. Based on staff analysis of Form D filings, there were 519 new Form D filings reporting reliance on Rule 504 and 179 new Form D filings reporting reliance on Rule 505 in 2015. *See* Figure 1 in Section V.A.1, above. For purposes of these PRA estimates, we estimate that an average of 700 issuers will conduct a Rule 147 and new Rule 147A offering each year, respectively.

purchaser in the offering at an average cost of \$400 per hour, resulting in a cost of \$100 per issuer and an aggregate of \$70,000 (annual) for issuers for each exemption;

- Each Rule 147 and Rule 147A offering will have an average of approximately 10 purchasers of securities, resulting in approximately 7,000 purchasers per year for each exemption; and
- Each purchaser in a Rule 147 and Rule 147A offering will spend an average of approximately fifteen minutes preparing a written statement of residency to provide to the issuer and will incur no cost for the services of outside professionals to satisfy this requirement, resulting in an aggregate of 2.5 hours of purchaser time per offering and purchaser burden hours of 1,750 (annual) for each exemption.

These information collections are subject to the PRA. A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number.⁸ The SEC is seeking OMB approval for these information collections under OMB ICR Reference Numbers 201701-3235-005 and 201701-3235-006 for Rules 147 and 147A, respectively.

⁸ See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within 30 days of publication of this notice in the Federal Register. In order to help ensure appropriate consideration, comments should reference OMB ICR Reference 201701-3235-005 and 201701-3235-006 for Rules 147 and 147A, respectively. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Eduardo A. Aleman
Assistant Secretary

January 23, 2016

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