

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR PART 249**

**[RELEASE NO. 34-77969; FILE NO. S7-09-16]**

**RIN 3235-AL89**

**FORM 10-K SUMMARY**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim final rule; request for comment.

**SUMMARY:** We are adopting an interim final amendment to implement Section 72001 of the Fixing America's Surface Transportation ("FAST") Act. The interim final amendment provides that a registrant may, at its option, include a summary in its Form 10-K provided that each item in the summary includes a cross-reference by hyperlink to the material contained in the registrant's Form 10-K to which such item relates.

**DATES:** Effective Date: The interim final rule is effective on June 9, 2016.

Comment Date: Comments should be received on or before July 11, 2016.

**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/interim-final-temp.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-09-16 on the subject line; or

- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

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 S7-09-16. This file number should be included on the subject line if e-mail 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 Web site (<http://www.sec.gov/rules/interim-final-temp.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 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** N. Sean Harrison, Special Counsel, at (202) 551-3430, in the Office of Rulemaking, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are adopting an interim final amendment to Form 10-K<sup>1</sup> under the Securities Exchange Act of 1934.<sup>2</sup>

## **I. Introduction**

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<sup>1</sup> 17 CFR 249.310.

<sup>2</sup> 15 U.S.C. 78a *et seq.*

We are adopting an interim final amendment to Form 10-K that implements Section 72001 of the FAST Act,<sup>3</sup> which became law on December 4, 2015. Section 72001 of the FAST Act directs the Commission, not later than 180 days after the date of enactment, to issue regulations to permit “issuers”<sup>4</sup> to submit a “summary page”<sup>5</sup> on Form 10–K, but only if each item on such summary page includes a cross-reference (by electronic link or otherwise) to the material contained in Form 10–K to which such item relates.

## **II. Discussion of Amendment**

Although our current rules do not prohibit a registrant from including voluntary information, such as a summary, in its Form 10-K,<sup>6</sup> we are amending Part IV of Form 10-K<sup>7</sup> to add new Item 16. This new item will expressly allow a registrant, at its option, to include a summary in the Form 10-K. To implement the statutory requirement that each item in the summary be accompanied by an electronic or other cross-reference, new Item 16 requires that each summary topic be hyperlinked to the related, more detailed disclosure item in the Form 10-K.

In light of the varied nature of registrants’ size and operations, we believe that registrants should have the flexibility to determine how best to prepare the summary. Accordingly, the

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<sup>3</sup> Pub. L. No. 114-94, 129 Stat. 1312 (Dec. 4, 2015).

<sup>4</sup> We use the terms “issuer” and “registrant” interchangeably throughout this release to refer to a company that is subject to Section 13 [15 U.S.C. 78m] or 15(d) of the Exchange Act [15 U.S.C. 78o(d)] and is required to file an annual report on Form 10-K.

<sup>5</sup> As used in this release, the term “summary page” should not be construed to mean that the summary needs to be a single page, or of any specific length.

<sup>6</sup> Voluntary information included in Exchange Act filings is subject to the antifraud provisions of the federal securities laws and the officer certifications required by Exchange Act Rules 13a-14(a) and 15d-14(a) [17 CFR 240.13a-14(a) and 240.15d-14(a)].

<sup>7</sup> Part IV of Form 10-K sets forth the requirements for financial statement schedules, exhibits and certain supplemental information to be furnished to the Commission.

amendment does not prescribe the length of the summary (other than to state that the summary shall be brief), specify the Form 10-K disclosure items that should be covered by the summary,<sup>8</sup> or dictate where the summary must appear in the Form 10-K.

We recognize that it might not be practicable or necessary to summarize every Form 10-K disclosure item. The amendment is principles-based and affords a registrant choosing to include a summary the flexibility to decide which items to summarize,<sup>9</sup> as long as the information is presented fairly and accurately.

We are also including an instruction in Item 16 of Form 10-K that addresses information incorporated by reference into the Form 10-K that a registrant may choose to summarize. Exchange Act Rule 12b-23 allows registrants to incorporate information by reference in answer, or partial answer, to any item of an Exchange Act registration statement or report subject to certain conditions.<sup>10</sup> Generally, the incorporated information must be filed as an exhibit to the registration statement or report.<sup>11</sup> Under General Instruction G to Form 10-K, a registrant may incorporate by reference the information required by Parts I or II of Form 10-K from the

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<sup>8</sup> Form 10-K is organized in four parts with each part containing distinct disclosure requirements. Part I (Items 1-4) contains disclosure requirements that relate to, among other things, the registrant's business, risk factors, properties, legal proceedings, and mine safety disclosure, if applicable. Part II (Items 5-9B) contains disclosure requirements that relate to market information, selected financial data, management's discussion and analysis of financial condition and results of operations ("MD&A"), quantitative and qualitative disclosures about market risk, financial statements and supplementary data, a description of changes in and disagreements with accountants on accounting and financial disclosure, controls and procedures and other information. Part III (Items 10-14) contains disclosure requirements that relate to directors and executive officers, management remuneration, beneficial ownership, related party transactions and principal accountants' fees and services and other information. Lastly, Part IV (Item 15, signatures and supplemental information) contains requirements that relate to financial statement schedules and exhibits.

<sup>9</sup> The flexible and non-prescriptive nature of new Item 16 is similar to other principles-based requirements under our rules, such as Item 503 Regulation S-K [17 CFR 229.503] and Item 1001 of Regulation M-A [17 CFR 229.1001]. As set forth below in the Request for Comment, we solicit and encourage comment on whether further guidance on preparing the summary should be provided.

<sup>10</sup> 17 CFR 240.12b-23.

<sup>11</sup> Rule 12b-23(a)(3)(i) [17CFR 240.12b-23(a)(3)(i)] provides an exception that does not require a proxy or information statement incorporated by reference in response to Part III of Form 10-K to be filed as an exhibit.

registrant's annual report to security holders.<sup>12</sup> The information required by Part III of Form 10-K also may be incorporated by reference from a proxy or information statement involving the election of directors, if filed within 120 days of the end of the fiscal year.<sup>13</sup>

As stated above, the interim final amendment to Form 10-K requires the summary to include hyperlinks to the related, more detailed disclosure item in the Form 10-K, regardless of whether the more detailed disclosure appears in the sections of the Form 10-K that follow the summary or in a Form 10-K exhibit. Currently, registrants can hyperlink to different sections within the same document, as well as to specific sections of exhibits that are part of the same filing.

Therefore, the interim final amendment requires registrants electing to prepare a Form 10-K summary that discusses information that is incorporated by reference into the Form 10-K and for which an exhibit is filed with the form to include a hyperlink from the summary to the discussion in the accompanying exhibit. Under the interim final amendment, a registrant choosing to include a summary will only be able to summarize information that is included in the Form 10-K at the time the form is filed, and will not have to file a Form 10-K amendment to summarize Part III information that is incorporated by reference from a proxy or information statement that will be filed after the date that the registrant files its Form 10-K.<sup>14</sup> In that case, however, the registrant must indicate that the summary omits the Part III information.

### **Request for Comment**

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<sup>12</sup> Information incorporated from the annual report to security holders to fulfill the requirements of Part I of Form 10-K must contain the information required by Items 1-3 of Part I of Form 10-K to the extent applicable. See Note 1 to General Instruction G(2) to Form 10-K.

<sup>13</sup> See Note 2 to General Instruction G(2) to Form 10-K.

<sup>14</sup> See Instruction 1 to new Item 16 of Form 10-K. In addition, if the Part III information that is incorporated by reference contains a summary, such as commonly provided in proxy statements for executive compensation disclosure, that summary need not include hyperlinks.

We request and encourage any interested person to submit comments on any aspect of the interim final amendment, other matters that might have an impact on the amendment, and any suggestions for further revisions. In addition, we seek comment on the following:

1. Are companies and investors likely to find a Form 10-K summary useful? If so, should we propose mandating a summary?<sup>15</sup>
2. Would it be helpful to EDGAR users for the Form 10-K summary or a link to the summary to be displayed on a registrant's EDGAR search results landing page?<sup>16</sup>
3. Should we impose a length limitation on the summary? If so, what limitation would be appropriate (e.g., a page limit, word limit, character limit)?
4. Should we provide further guidance on preparation of the summary? For example, should we include language similar to Item 503(a) of Regulation S-K, which covers a prospectus summary?<sup>17</sup>
5. Should we require that the summary appear at the beginning of the Form 10-K? Should we require certain content or a specific format for the Form 10-K summary? For

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<sup>15</sup> In 2008, the Advisory Committee on Improvements to Financial Reporting issued to the Commission a report that, among other things, recommended an executive summary in the forepart of a company's annual report on Form 10-K (with material updates in quarterly reports on Form 10-Q) that would describe concisely the most important themes or other significant matters with which management is primarily concerned, along with a page index showing where investors could find more detailed information in the document. See *Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission* (Aug. 1, 2008), available at <https://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf>.

<sup>16</sup> We are considering ways to further enhance the presentation and usability of the Form 10-K summary. In this regard, we could require registrants to include HTML tags to identify the Form 10-K summary in their EDGAR submissions. This would make it possible for EDGAR to extract the summary from the Form 10-K, so that the information could be included on the registrant's search results EDGAR landing page. This could allow investors to more easily access the information.

<sup>17</sup> Among other provisions, Item 503(a) states "The summary should be brief. The summary should not contain, and is not required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a summary, you still must provide that information in plain English."

example, should we propose to require registrants choosing to prepare a summary to include specified Form 10-K items, such as the MD&A? Are there some items that registrants should not be permitted to include in a summary? If so, which items should be required to be included in, or excluded from, the summary?

6. Should we require registrants that cannot include a summary of the Part III information (because that information will be incorporated by reference from a later filed proxy or information statement involving the election of directors) to file a Form 10-K amendment to update the summary to reflect the Part III information when that information is filed with the proxy or information statement?

7. Are there other cross-reference methods that we should allow in lieu of, or in addition to, hyperlinks?

8. Should we propose to amend other annual reporting forms, such as Form 20-F<sup>18</sup> filed by foreign private issuers, or Form 1-K<sup>19</sup> filed by issuers that have conducted a Regulation A offering,<sup>20</sup> to expressly allow a summary similar to the approach we are adopting for Form 10-K? Would such revisions be useful given that our rules do not prohibit such registrants from voluntarily including a summary in their annual reports?

With respect to any comments, we note that they are of greatest assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

### **III. Procedural and Other Matters**

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<sup>18</sup> 17 CFR 249.220f.

<sup>19</sup> 17 CFR 239.93.

<sup>20</sup> 17 CFR 230.251—230.263.

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a rulemaking in the Federal Register and provide an opportunity for public comment. 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.”<sup>21</sup> Because the amendment conforms the specified form to the requirements of a newly enacted statute, the FAST Act, and involves minimal exercise of discretion, the Commission finds that notice and public comment are unnecessary.<sup>22</sup> As discussed above, Section 72001 of the FAST Act directs the Commission, not later than 180 days after the date of enactment, to issue regulations to permit issuers to submit a summary page on Form 10–K, but only if each item on such summary page includes a cross-reference (by electronic link or otherwise) to the material contained in Form 10–K to which such item relates. The amendment to Form 10-K that we are adopting revises the form to make it consistent with this provision of the FAST Act by expressly providing that a registrant may, at its option, include a summary in its Form 10-K (subject to certain conditions), something that registrants currently are permitted to do under existing rules.

For similar reasons, although the APA generally requires publication of a rule at least 30 days before its effective date, the Commission finds there is good cause for the amendment to take effect on [insert date of publication in the Federal Register].<sup>23</sup>

#### **IV. Economic Analysis**

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<sup>21</sup> 5 U.S.C. 553(b)(3)(B).

<sup>22</sup> This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendment 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 amendment also does 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).

<sup>23</sup> *See* 5 U.S.C. 553(d)(3).



As discussed above, we are amending Form 10-K to implement Section 72001 of the FAST Act. The interim final amendment will provide that a registrant may, at its option, include a summary in its Form 10-K provided that each item in the summary includes a cross-reference by hyperlink to the material contained in the registrant’s Form 10–K to which such item relates. Under the amendment, a registrant will have the flexibility to determine the content of the summary and its length.

We are sensitive to the costs and benefits of the amendment.<sup>24</sup> In this economic analysis, we examine the existing baseline, which consists of the current regulatory framework and market practices, and discuss the potential benefits and costs of the amendment, relative to this baseline, and its potential effects on efficiency, competition, and capital formation. We also consider the potential costs and benefits of reasonable alternatives to the amendment.

Where practicable, we attempt to quantify the economic effects of the amendment; however, in certain cases, we are unable to do so because we lack the necessary data. We do, however, provide a qualitative assessment of the likely economic effects.

#### **A. Introduction**

As discussed above, new Item 16 to Form 10-K provides that a registrant may, at its option, include a summary in its Form 10-K provided that each item in the summary includes a hyperlink to the detailed information in the registrant’s Form 10-K to which such item relates. In light of the varied nature of registrants’ size and operations, the amendment will provide registrants with flexibility in preparing the summary. The amendment does not prescribe the

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<sup>24</sup> Exchange Act Section 23(a)(2) requires us, when adopting rules, to consider the impact that any new rule would have on competition. In addition, Section 3(f) of the Exchange Act directs us, when engaging in rulemaking that requires us 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.

length of the summary, specify the Form 10-K disclosure items that should be covered in the summary, or dictate where the summary must appear in the Form 10-K.

A registrant may decide which items to summarize as long as the information is presented fairly and accurately. A summary should provide more information than a table of contents, which is often included in Form 10-K and generally shows the complete organizational structure of Form 10-K by listing each disclosure item without a summary of the disclosure. A summary with hyperlinked cross-references will allow users to easily locate the corresponding items in Form 10-K where the disclosure is fully presented, with the potential effect of enhancing the ability of investors and other users of the disclosure to process relevant information and/or reducing their processing time and search costs.

#### **B. Baseline and Affected Parties**

The amendment will potentially affect all registrants subject to Section 13 or 15(d) of the Exchange Act that are required to file an annual report on Form 10-K. However, given that current rules do not prohibit a registrant from voluntarily including a summary in its Form 10-K, the amendment likely will not have a substantial impact on the disclosure practices of registrants and on the information processing ability of investors and other users of the disclosure.

In particular, we expect that registrants that do not currently include a summary in their Form 10-Ks will not be likely to begin doing so in response to the amendment. Also, registrants that currently include a summary in their Form 10-K with a hyperlink for each disclosure topic in the summary to the related material contained in their Form 10-K will not be affected by the amendment because this practice will be in compliance with the hyperlink requirement. Among the registrants that are required to file a Form 10-K, the amendment will affect registrants that currently include a summary in their Form 10-Ks and that (1) do not cross-reference items; (2)

use cross-references other than hyperlinks; or (3) use hyperlinks but not for all disclosure topics included in the summary. Under the amendment, if these registrants chose to continue to include a summary in their Form 10-K, they will be required to include hyperlinks to each disclosure topic that is mentioned.

We estimate that, in calendar year 2015, we received 7,844 Form 10-K filings. To draw a baseline indicative of the current disclosure practices among Form 10-K filers, we selected a random sample of 150 of these filings to review. Although small, the random sample was representative of the overall 2015 population of Form 10-K filers and consisted of 42 large accelerated filers, 29 accelerated filers, 27 non-accelerated filers, and 52 smaller reporting companies. None of the filings in the sample included a summary. A large majority (70%) of the 150 sampled filings included a table of contents that was fully hyperlinked to the corresponding items.

Due to the greater complexity of their operations, larger registrants generally have more extensive disclosures that are reflected in lengthier Form 10-Ks and may be more inclined to include a summary to assist investors and other users in navigating their filings.<sup>25</sup> Since we did not find any registrants in the random sample that included a summary in their Form 10-K, we also reviewed the most recent Form 10-K filed by each of the companies on the Fortune 100 list, which includes the largest 100 U.S. companies.<sup>26</sup> Of these companies, we found one large accelerated filer that included a summary in its Form 10-K. This summary provided an overview

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<sup>25</sup> In addition to structural complexity, there may be other reasons for the length of disclosure documents. One study argues that firms may try to obscure mandated earnings-relevant information by burying the results in longer documents. Additionally, litigation risk may create an incentive to disclose information whether it is useful or not. See Tim Loughran & Bill McDonald, *Measuring Readability in Financial Disclosures*, 69 J. of FIN. 1643–1671 (2014).

<sup>26</sup> Eight entities included in the Fortune 100 list are privately-held companies; therefore, no Form 10-K was available for them.

of several disclosure topics with cross-references, but not hyperlinks, to the more detailed discussion contained in the Form 10-K. While we found only one registrant that included a summary in its most recent Form 10-K, we found that a large majority of the companies (87%) included a table of contents that was fully hyperlinked to the corresponding items.

There may be several reasons why a summary is not widely used in Form 10-Ks. As with any other voluntary disclosure, registrants presumably weigh the potential incremental disclosure costs, including any liability considerations, against the potential benefits associated with including a summary in a Form 10-K. Among other factors, the perceived net benefit will depend on the presence of alternative disclosures that serve a similar purpose as a summary and on investor interest in such summary. For example, a table of contents may already provide an outline of the Form 10-K and indicate where investors can find additional information in the document.

In conclusion, based on our analysis of two relatively small samples of Form 10-K filings, it appears that the use of a summary in Form 10-Ks is currently extremely limited. While we cannot draw definite conclusions on the current use of a summary or on the current use of hyperlinks in summaries for the entire population of Form 10-K filers due to the size of the samples in our analysis, we believe that the amendment is likely to affect a limited number of Form 10-K filers that currently opt to include a summary in their Form 10-K. As a result of the hyperlink requirement, these filers will need to include a hyperlink for each disclosure topic that is not currently hyperlinked.

### **C. Potential Economic Effects**

As noted above, Section 72001 of the FAST Act directs the Commission to issue regulations to permit registrants to submit a summary on Form 10-K with cross-references to the

related discussion in the report. In implementing this mandate, the amendment will provide that registrants may include a summary in their Form 10-K if each item in the summary includes a hyperlink to the related material contained in the Form 10-K to which such item relates. Relative to cross-references that supply users with only a page reference to the specific Form 10-K items, hyperlinks will not only supply the location but also allow users to reach that location more easily and quickly.

By presenting an overview of the information contained in Form 10-K, a summary with hyperlinks could make disclosure more effective by enhancing the ability of investors and other users to process relevant information and/or by reducing their processing time and search costs. A summary can be particularly useful to investors and other users in the case of more complex<sup>27</sup> and larger<sup>28</sup> Form 10-Ks. Academic literature has examined the readability of Form 10-Ks and suggested that concisely written documents are more likely to be read, and their information more effectively incorporated into stock prices, compared to longer Form 10-Ks.<sup>29</sup> To the extent that a summary contains a concise overview of the information included in the more detailed disclosure items, the usefulness of the summary for investors may translate into potential positive

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<sup>27</sup> See Feng Li, *Annual Report Readability, Current Earnings, and Earnings Persistence*, 45 J. of ACCT. & ECON. 221–47 (2008). Using the Fog index and word count of Form 10-Ks, the author found that firms with annual reports that are easier to read have more persistent positive earnings and argues that firm managers may try to hide poor future earnings from investors by increasing the complexity of their written documents. The Fog index is a commonly used measure of the readability of a document.

<sup>28</sup> See Loughran & McDonald, *supra* note 25. While word count and file size are highly correlated, the authors found there is evidence that Form 10-K file size (in megabytes) is a better inverse proxy for readability than a commonly used metric of readability like the Fog index. Larger Form 10-Ks are significantly associated with high return volatility, earnings forecast errors, and earnings forecast dispersion, after controlling for other variables such as firm size, book-to-market, past volatility, industry effects, and prior stock performance.

<sup>29</sup> See Haifeng You & Xiao-jun Zhang, *Financial Reporting Complexity and Investor Under-reaction to 10-K Information*, 14 REV. of ACCT. STUD. 559–86 (2009). Using the number of words in a Form 10-K as a measure of financial reporting complexity, the authors found that firms above the annual median word count have a delayed stock market reaction over the following 12 months.

effects on allocative efficiency and capital formation for registrants who opt to include it.<sup>30</sup> This, in turn, may have positive effects on competition for registrants, relative to, for example, registrants who do not opt to include a summary. For example, a summary could increase investors' interest in the business of a registrant because it may attract investors who otherwise would not be inclined to read the more detailed and lengthy information in the full Form 10-K. We note that, if users were to rely only on the summary to make investment decisions without considering the more extensive disclosure provided elsewhere in the Form 10-K or other disclosure documents of the registrant, this could lead to less informed investment decisions with a corresponding decrease in allocative efficiency. Overall, relative to the current baseline, we expect that the amendment will have incremental positive effects on efficiency, competition, and capital formation, although, for the reasons discussed above, we do not expect these effects to be particularly significant.

Permitting registrants to determine the content, length, and location of a summary will enable them to tailor the format and presentation of the summary to best suit the specific aspects of their business and operational and financial results. It also will enable registrants to focus on topics or items they consider important to communicate to investors, subject to the overall requirement to present the summary fairly and accurately.

While a summary is potentially useful for investors and registrants, registrants who include a summary in their Form 10-Ks will incur increased disclosure costs to prepare the summary. As discussed above, given that Form 10-K filers can already voluntarily include a summary, we expect that, as a result of the amendment, registrants will not significantly change

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<sup>30</sup> See Alastair Lawrence, *Individual Investors and Financial Disclosure*, 56 J. of ACCT. & ECON. 130–47 (2013). Using detailed data of individual investors, this study shows that, on average, individuals invest more in firms with clear and concise financial disclosures.

their disclosure practices by electing to include a summary if they currently do not.

Relative to the current baseline, we expect the potential benefits and costs stemming from the amendment to be limited and primarily related to those registrants—and their investors—who already include a summary in their Form 10-K but do not currently hyperlink or hyperlink only in part. Registrants that have voluntarily included a summary in the past and have not hyperlinked the items in the summary to the relevant sections in the Form 10-K will incur compliance costs to add hyperlinks.

There are potential benefits from adding cross-references to the Form 10-K summary. A summary that briefly discusses items in the Form 10-K without any type of cross-references may disconnect the information in the summary from the disclosure contained in other parts of Form 10-K. The required hyperlinks will serve not only as a reminder for investors that a summary complements the more extensive disclosure presented in other parts of the document, but also as a compass for users to navigate the document more easily and quickly. The required hyperlinks will easily direct users to a particular item, allowing users to avoid searching the Form 10-K in its entirety, thereby significantly reducing their search costs.

Relative to other types of cross-references that registrants may currently use, such as a footnote or plain text that points to a certain page number or location in the document, the inclusion of hyperlinks should direct users to relevant parts of Form 10-K more easily and quickly. To the extent that hyperlinks are implemented properly, they are able to automatically take the reader to that document or section. Cross-referencing through hyperlinks should make it easier for users to navigate the disclosure and decrease their search time and costs.

Finally, requiring hyperlinks for all topics in a summary that currently has only partial hyperlinks will prevent registrants from selectively steering investors and other users toward

particular sections in the Form 10-K.

#### **D. Alternatives**

We considered three alternatives to the amendment. First, instead of providing registrants with the option of including a summary in their Form 10-K, we could have required all registrants to include a summary. By requiring a summary, investors and users could more extensively benefit from the potential usefulness of the summary. In particular, as discussed above, a summary could enhance investors' ability to process relevant material information in the filing. To the extent that a required summary contains useful and concise information, it could translate to potential positive effects on allocative efficiency for a greater number of registrants than under a voluntary approach. These potential benefits could be particularly relevant in the case of registrants with more complex operations that typically file larger reports that investors may find more time-consuming to read. They may be less relevant in the case of smaller registrants that typically have simpler operations and shorter Form 10-Ks. Consequently, requiring a mandatory summary for all registrants may impose additional compliance costs that are not justified by the overall benefits to investors and registrants, although the flexibility to determine the format of the summary could mitigate these additional compliance costs.

Second, instead of providing registrants with the flexibility to determine length, content, and location of the summary in Form 10-K, we could have prescribed a specific format of the summary. This could achieve consistency across filings and may enable users to compare the summaries of multiple registrants more efficiently. A specific format may also ease the preparation of a summary for some registrants, thereby encouraging them to provide a voluntary summary in their Form 10-Ks. At the same time, prescribing a specific format may discourage registrants from including a summary in their Form 10-K if they find the format not useful for



their specific circumstances. Further, if the prescribed format includes sections that are unnecessary to effectively assess the registrant, it could detract from, rather than facilitate, investors' ability to process information efficiently.

Third, instead of requiring hyperlinks, we could have required registrants to use any type of cross-references, electronic or otherwise, to the extent that it would serve the function of locating the corresponding material in the Form 10-K.<sup>31</sup> This alternative would allow greater flexibility to registrants to use either hyperlinks or non-electronic cross-references, such as footnotes or plain text that points to a certain page number or other location in the document, or a combination of the two types in the summary. However, to the extent that registrants choose to use non-electronic cross-references under this alternative, the ability of investors to navigate the disclosure contained in the Form 10-K would be diminished relative to the proposal.

## **V. Paperwork Reduction Act**

### **A. Background**

Certain provisions of Form 10-K that will be affected by the interim final amendment contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").<sup>32</sup> The Commission is submitting the interim final amendment to the Office of Management and Budget ("OMB") for review in accordance with the PRA.<sup>33</sup>

The title for the collections of information is:

"Form 10-K" (OMB Control No. 3235-0063).

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<sup>31</sup> Section 72001 of the FAST Act requires that each item on the summary page include a "cross-reference" to the material contained in the Form 10-K, but the statute does not mandate any particular type of cross-reference.

<sup>32</sup> 44 U.S.C. 3501 *et seq.*

<sup>33</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

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 collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. Form 10-K was adopted under the Exchange Act and sets forth the disclosure requirements for annual reports filed by registrants to help investors make informed investment decisions. The hours and costs associated with preparing and filing Form 10-K constitute reporting and cost burdens imposed by each collection of information.

#### **B. Summary of the Amendment**

As described in more detail above, we are adopting an interim final amendment to Form 10-K to implement Section 72001 of the FAST Act. We are amending Form 10-K to add new Item 16. This new item will explicitly allow a registrant, at its option, to include a summary in the Form 10-K. Each disclosure topic included in the summary is required to contain a hyperlink to the related, more detailed disclosure item in the Form 10-K. Under the interim final amendment, a registrant has the flexibility to determine the content and the length of the summary.

#### **C. Burden and Cost Estimates Related to the Amendment**

We anticipate that new Item 16 of Form 10-K will increase the burdens and costs for companies that elect to prepare a summary. We derived our burden hour and cost estimates by estimating the average amount of time it would take a registrant to prepare and review the summary, as well as the average hourly rate for outside professionals who assist with such preparation. In addition, our burden estimates are based on several assumptions.

First, we assumed that registrants that elect to prepare a summary will not summarize every item in the Form 10-K. Therefore, to estimate the average burden hours of the interim final amendment, we have looked to the burden estimates carried internally by registrants for Form 10,<sup>34</sup> an Exchange Act registration form that requires many of same item disclosures as does Form 10-K. For purposes of the PRA, we have estimated the total burden per response for preparing and filing Form 10 to be 215 hours and that 25% of that burden (53.75 hours) is carried internally by the registrant. We estimate that the burden to prepare the Form 10-K summary would be less than that required to prepare the Form 10 because the summary would call for less information than required by Form 10. We estimate that the average incremental burden for a registrant to prepare the summary would be 50 hours. This estimate represents the average burden for all registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the size and complexity of their operations. We believe that some registrants will experience costs in excess of this average in the first year of compliance with the amendments and some registrants may experience less than the average costs.

Second, we assumed that 10% of Form 10-K filers would elect to prepare a summary. The number of registrants that would choose to do a summary, however, is uncertain. We request comment and supporting empirical data, for purposes of the PRA, on the number of registrants that are expected to prepare a summary as a result of the interim final amendment.

The table below shows the total annual compliance burden, in hours and in costs, of the collection of information resulting from the interim final amendment.<sup>35</sup> The burden estimates

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<sup>34</sup> 17 CFR 249.210.

<sup>35</sup> For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take an issuer to prepare and review a Form 10-K summary. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. For purposes of the PRA, we estimate that 75% of the burden of preparation of Form 10-K is carried by the registrant internally and that 25% of the burden of preparation is carried by outside professionals retained by the registrant at an average cost of \$400 per hour.<sup>36</sup>

Table 1. Incremental Paperwork Burden under the interim final amendment.

	Estimated number of affected responses (A)	Incremental Burden Hours/Form (B)	Total Incremental Burden Hours (C)=(A)*(B)	75% Company (D)=(C)*0.75	25% Professional (E)=(C)*0.25	Professional Costs (F)=(E)*\$400
Form 10-K Summary	814 <sup>37</sup>	50	40,700	30,525	10,175	\$4,070,000

#### D. 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

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<sup>36</sup> 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 will be an average of \$400 per hour. This estimate is based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

<sup>37</sup> This number is our estimate of the number of registrants that will choose to include a summary in their Form 10-K.

collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.<sup>38</sup> Specifically, we request comment on the estimated number or percentage of registrants that are likely to include a summary in their Form 10-K.

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. S7-09-16. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7-09-16 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 [insert 30 days after publication in the Federal Register.]

## **VI. Statutory Authority**

The amendment contained in this release is being adopted under the authority set forth in Sections 3, 12, 13, 15(d), and 23(a) of the Exchange Act, and Section 72001 of the FAST Act.

### **List of Subjects**

#### **17 CFR Part 249**

Reporting and recordkeeping requirements, Securities.

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<sup>38</sup> We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

**TEXT OF THE INTERIM FINAL AMENDMENT**

For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

**PART 249 — FORMS, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for Part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; 12 U.S.C. 5461 et seq.; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112-106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001 Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

2. Amend Form 10-K (referenced in §249.310) by adding new Item 16 to Part IV to read as follows:

**Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 10-K**

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**Part IV**

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**Item 16. Form 10–K Summary.**

Registrants may, at their option, include a summary of information required by this form, but only if each item in the summary is presented fairly and accurately and includes a hyperlink

to the material contained in this form to which such item relates, including to materials contained in any exhibits filed with the form.

*Instruction:* The summary shall refer only to Form 10-K disclosure that is included in the form at the time it is filed. A registrant need not update the summary to reflect information required by Part III of Form 10-K that the registrant incorporates by reference from a proxy or information statement filed after the Form 10-K, but must state in the summary that the summary does not include Part III information because that information will be incorporated by reference from a later filed proxy or information statement involving the election of directors.

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By the Commission.

June 1, 2016

Brent J. Fields  
Secretary