

• Will treatment of section 906 certifications as “furnished” to, rather than “filed” with, the Commission adequately address liability concerns arising from the proposed requirement that issuers include the certifications in the periodic reports to which the certifications relate?

Finally, we request comment on whether any further changes to our rules and forms are necessary or appropriate to implement the objectives of the proposed amendments or the Act.

V. Paperwork Reduction Act

The rules and forms that we are proposing to amend contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).⁵² We do not believe that the proposed amendments with respect to the section 302 certifications would alter the burden estimates for Forms 10-K (OMB Control No. 3235-0063), 10-KSB (OMB Control No. 3235-0420), 10-Q (OMB Control No. 3235-0070), 10-QSB (OMB Control No. 3235-0416), 20-F (OMB Control No. 3235-0288) or 40-F (OMB Control No. 3235-0381) previously submitted to, and approved by, the Office of Management and Budget (the “OMB”). These proposed amendments merely relocate the certifications from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the “Exhibits” section of these reports.

The proposed amendments with respect to the section 906 certifications may alter the burden estimates for these reports and for Form N-CSR (OMB Control No. 3235-0570). Accordingly, we are submitting these proposed amendments to the OMB for review in accordance with the PRA.⁵³ The titles for these collections of information are “Form 10-K,” “Form 10-KSB,” “Form 10-Q,” “Form 10-QSB,” “Form 20-F,” “Form 40-F” and “Form N-CSR.” An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of Proposed Rules

Section 1350 of Title 18 of the United States Code, added by section 906 of the Act, requires each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act to be accompanied by a written statement by the issuer’s chief executive officer and chief financial officer (or the

equivalent thereof) certifying that the report fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act and the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer. By requiring these certifications to be furnished to the Commission as an exhibit to the periodic reports to which they relate, the certifications would become part of the “collection of information” required in each periodic report filed with the Commission. Compliance with the proposed exhibit requirement would be mandatory. Under our rules for the retention of manual signatures, issuers would be required to maintain the original certifications for five years. The information required by the proposed amendments would not be kept confidential.

B. Reporting and Cost Burden Estimates

The compliance burden estimates for the proposed collections of information are based on several assumptions. The reporting requirements of section 13 of the Exchange Act apply to entities that have a class of securities registered under section 12 of the Exchange Act. The reporting requirements of section 15(d) of the Exchange Act apply to entities with an effective registration statement under the Securities Act that are not otherwise subject to the registration requirements of section 12 of the Exchange Act. We estimate that there are approximately 13,200 entities that fit these descriptions.⁵⁴ In addition, we estimate that there are approximately 3,700 registered management investment companies that are required to file reports on Form N-CSR.

The compliance burden associated with the proposed amendments would be the burden of preparing and including the section 906 certifications in periodic reports containing financial statements filed by an issuer, after the issuer’s chief executive and financial officers evaluated the information relevant to making the certification statements. To a large extent, this evaluation is already performed in connection with the section 302 certifications required by Exchange Act Rules 13a-14 and 15d-14 and Investment Company Act Rule 30a-2. We estimate that the proposed

amendments to require the section 906 certifications to be included as an exhibit to the periodic reports to which they relate would result in an increase of two burden hours⁵⁵ per issuer in connection with preparing each quarterly report on Form 10-Q or 10-QSB and annual report on Form 10-K, 10-KSB, 20-F or 40-F. With respect to semi-annual reports on Form N-CSR, because the financial statements of registered management investment companies are not as complex as those of operating companies, we estimate that the proposed amendments relating to the section 906 certifications would result in an increase of one burden hour per portfolio.⁵⁶

In the case of domestic issuers, based on a burden hour estimate of eight hours per respondent per year,⁵⁷ we estimate that, in the aggregate, all respondents will incur approximately 105,384 burden hours⁵⁸ to comply with the proposed amendments. The total burden hours of complying with Forms 10-Q and 10-QSB, revised to include the burden hours expected from the proposed amendments, is estimated to be 3,334,256 hours for Form 10-Q, an increase of 56,304 hours⁵⁹ from the current annual burden of 3,277,952 hours, and 1,497,884 hours for Form 10-QSB, an increase of 22,734 hours⁶⁰ from the current annual burden of 1,475,150 hours. The total burden hours of complying with Forms 10-K and 10-KSB, revised to include the burden hours expected from the proposed amendments, is estimated to be 11,535,739 hours for Form 10-K, an increase of 18,768 hours⁶¹ from the current annual burden of 11,516,971 hours, and 3,619,627 hours for Form 10-KSB, an increase of 7,578 hours⁶²

⁵⁵ This estimate is based on consultations with several law firms and other persons who regularly assist registrants in preparing and filing periodic reports containing financial statements with the Commission.

⁵⁶ Many registered management investment companies have multiple portfolios. However, they prepare separate financial statements for each portfolio. Thus, the burden of the section 1350 certifications is estimated on a portfolio basis rather than a registered management investment company basis.

⁵⁷ Three quarterly reports and one annual report at an estimated two burden hours per report equals eight hours.

⁵⁸ 13,173 companies multiplied by eight burden hours each equals 105,384 hours.

⁵⁹ 28,152 quarterly reports multiplied by two burden hours each equals 56,304 hours.

⁶⁰ 11,367 quarterly reports multiplied by two burden hours each equals 22,734 hours.

⁶¹ 9,384 annual reports multiplied by two burden hours each equals 18,768 hours.

⁶² 3,789 annual reports multiplied by two burden hours each equals 7,578 hours.

⁵² 44 U.S.C. 3501 *et seq.*

⁵³ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

⁵⁴ This estimate is based on the total number of companies that filed annual reports on Form 10-K (9,384) or Form 10-KSB (3,789) during the 2001 fiscal year, which are required of all companies with a class of securities registered under section 12 of the Exchange Act and all companies subject to section 15(d) of the Exchange Act.