

in a manner that does not require an update each time another section 16 report is filed as to that issuer.

One commenter stated that a failure to maintain EDGARLink as a filing option once the new system is in place would require third-party software providers to implement the new requirements outside the normal development cycle and, as a result, could place a considerable strain on their resources.¹²⁰ As we noted earlier, due to technical and resource limitations, we cannot maintain parallel systems.

One commenter suggested that we make minor changes to the current EDGARLink approach rather than provide a new system in order to avoid overly burdensome costs to disseminators. We believe that approach would be inconsistent with our goal of establishing a user-friendly system. One commenter stated that if the new system is not user-friendly, we should not underestimate the costs.

VI. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act¹²¹ requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, section 2(b) of the Securities Act,¹²² section 3(f) of the Exchange Act¹²³ and section 2(c) of the Investment Company Act require us, when engaging in rulemaking where we are 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.

The adopted amendments regarding mandated electronic filing and Web site posting are intended to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information.¹²⁴ This should improve investors' ability to make

informed investment and voting decisions. Informed investment and voting decisions generally promote market efficiency and capital formation.

In the Proposing Release, we considered the amendments in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, the proposed amendments would impose a burden on competition. We also requested comment on whether, if adopted, the proposed amendments would promote efficiency, competition and capital formation. Finally, we requested commenters to provide empirical data and other factual support for their views if possible.

While several commenters stated that various aspects of the proposed amendments would result in undue burdens, only one commenter addressed anti-competitive effects. According to this commenter, the new on-line filing system would curtail the private sector business that provides software programs that facilitate insider filings. This commenter further asserted that this private sector business would innovate if not given an early disincentive from developing efficient filing systems. We believe that it is very important for insiders to have a user-friendly system that they can use relatively easily to fulfill their filing obligations. We further believe that such a system will not discourage significantly private sector businesses that develop filing software because these businesses can provide features the new on-line system does not.

VII. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.¹²⁵ This FRFA relates to amendments regarding mandated electronic filing and Web site posting of Forms 3, 4 and 5.¹²⁶

A. Need for the Amendments

An issuer's insiders use Forms 3, 4 and 5 to report beneficial ownership of and trading in equity securities of the issuer. Consistent with the will of Congress, the adopted mandated electronic filing and Web site posting amendments generally conform the amended rules and forms to the mandated electronic filing and Web site posting requirements provided by the amendments to section 16(a) enacted in

section 403 of the Sarbanes-Oxley Act. In addition, we believe the proposed amendments will benefit investors, filers and the Commission.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Act Analysis ("IRFA") appeared in the Proposing Release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, and how to quantify the impact of the proposals. We received no comment letters responding to the request.

C. Small Entities Subject to the Amendments

The mandated electronic filing and Web site posting amendments will affect small entities that either are insiders that are not natural persons or are issuers with a corporate Web site that have a class of equity securities registered under Exchange Act section 12.

Exchange Act Rule 0-10(a)¹²⁷ defines an entity, other than an investment company, to be a "small business" or "small organization" if it had total assets of \$5 million or less on the last day of its most recent fiscal year. As of March 30, 2003, we estimated that there were approximately 8840 insiders¹²⁸ and fewer than 2500 issuers that have a class of equity securities registered under Exchange Act section 12, other than investment companies, that may be considered small entities. The mandated electronic filing amendments will apply to all of these insiders. The mandated Web site posting amendments will apply to all of these issuers with corporate Web sites.

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year. As of June, 2002, we estimate that there were 36 closed-end investment companies, and 29 business development companies, that are "small entities" for purposes of the Regulatory Flexibility Act that possibly could be affected by the amendments.

¹²⁷ 17 CFR 240.0-10(a).

¹²⁸ We estimated the number of small entity non-investment company insiders based on our estimates of the total number of insiders; the percentage of these insiders that are greater than ten percent holders; the percentage of these greater than ten percent holders that are non-natural persons; and the percentage of these non-natural persons that are small entities.

¹²⁰ As noted earlier, five commenters suggested that insiders remain able to file through the EDGARLink system during at least the initial few months of the new system.

¹²¹ 15 U.S.C. 78w(a)(2).

¹²² 15 U.S.C. 77b(b).

¹²³ 15 U.S.C. 78c(f).

¹²⁴ We believe there will be a *de minimis* impact from adoption of the proposed amendments regarding the elimination of magnetic cartridge transmission and Form ET.

¹²⁵ 5 U.S.C. 603.

¹²⁶ As previously noted, we believe there will be a *de minimis* impact from adoption of the proposed amendments regarding the elimination of magnetic cartridge transmission and Form ET.