

proposed requirements. Such disclosure would need to appear in its proxy or information statement for shareholders' meetings at which elections for directors are held. The disclosure also would need to appear in, or be incorporated by reference into, the annual reports of these companies filed with the Commission. In addition, a foreign private issuer that availed itself of the board of auditors exception would need to file a brief exhibit. We have proposed an exemption from these proposed disclosure requirements for exchange-traded UITs and issuers relying on the multiple listing exemption. We call these proposed changes the "Exemption Disclosure."

Under our proposals, listed issuers also would be required to disclose the members of their audit committee, or that their entire board of directors is acting as their audit committee, in their annual reports. We call these proposed changes the "Identification Disclosure."

Finally, we are proposing several updates to existing disclosure requirements regarding audit committees to reflect our proposals and changes made by the Sarbanes-Oxley Act. We call these proposed changes the "Disclosure Updates."

These disclosure changes are designed to alert investors of basic information about an issuer's audit committee, including the identity of the issuer's audit committee, whether the issuer is availing itself of an exemption and whether the members of the audit committee are independent. Compliance with the revised disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential. We do not believe that the imposition of these proposed disclosure changes would alter significantly the number of respondents that file on the affected forms.

In addition to the above, we propose to direct the SROs to require a listed issuer to notify the applicable SRO promptly after an executive officer of an issuer becomes aware of any material noncompliance by the listed issuer with the proposed requirements. We believe that any burden imposed by this collection of information would be minimal. For the most part, we believe that listed issuers are already required to make the type of disclosure contemplated by the proposal, either pursuant to existing SRO rules or as a requirement of existing listing agreements. We therefore believe that any reporting and recordkeeping requirements imposed by this aspect of

the proposals are "usual and customary" activities for listed issuers.<sup>118</sup>

#### *B. Revisions to PRA Reporting and Cost Burden Estimates*

For purposes of the PRA, we estimate that the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals would be approximately 685 hours of personnel time and a cost of approximately \$99,600 for the services of outside professionals. We derived these estimates first by estimating the total amount of time it would take for a company to prepare the proposed disclosure. The Disclosure Updates simply update the disclosure requirements to reflect our proposals and changes to terminology made by the Sarbanes-Oxley Act. We do not believe these changes would change the burden required by this disclosure. The Exemption Disclosure would require only a minimal additional statement by issuers that avail themselves of one of our proposed exemptions. In addition, foreign private issuers availing themselves of the board of auditors exception would need to file a brief exhibit. We estimate that the Exemption Disclosure would add 0.25 hours per affected filing. The Identification Disclosure would require a company to disclose either the members of its audit committee, or a brief statement that the board of directors of the issuer is acting as the audit committee. We estimate that the Identification Disclosure would add 0.25 hours per affected filing.

The Exemption Disclosure and Identification Disclosure apply only to listed issuers. Accordingly, not all issuers would be required to make the proposed disclosure. We estimate that there are approximately 7,250 issuers that are listed on a national securities exchange or traded on the Nasdaq National Market or the Nasdaq Smallcap Market.<sup>119</sup> Each of these listed companies, except exchange-traded UITs, would be required to at least provide the basic Identification Disclosure in their annual report. Some of these listed issuers also would need to make the Exemption Disclosure.<sup>120</sup>

<sup>118</sup> See 5 CFR 1320.3(b)(2).

<sup>119</sup> We derived this estimate from the Standard & Poors Research Insight Compustat Database and the Commission's annual report.

<sup>120</sup> With respect to investment companies, the independence exemptions would not be available. A general exemption would be applicable to UITs, but UITs would be excluded from Exemption Disclosure requirements. We anticipate that only a negligible number of investment companies would fall under the other general exemptions. Accordingly, we anticipate that the reporting burden imposed by the Exemption Disclosure

Further, since the disclosure in the annual report may be incorporated by reference from an issuer's proxy or information statement, we assume that the disclosure would appear in a maximum of one report per affected issuer. As the information would appear in Part III of an issuer's Form 10-K or 10-KSB (which can be incorporated by reference from the issuer's proxy statement if where directors are to be elected), or in Item 8 of Form N-CSR, which may also be incorporated by reference, we assume that affected issuers will follow the general practice of most issuers of including the disclosure in their proxy or information statement where directors are elected and incorporating by reference the disclosure into their annual report. Accordingly, we are reducing the number of affected reports on Forms 10-K, 10-KSB and N-CSR to account for this assumption.<sup>121</sup> Further, we assume that the Identification Disclosure is already required in these proxy or information statements,<sup>122</sup> and the burden hours for this disclosure by these filers therefore has already been assigned to Schedules 14A and 14C. Accordingly, we estimate that the Identification Disclosure will not affect the burden for Schedules 14A and 14C.

The tables below illustrate the incremental annual compliance burdens of the collections of information in hours and in cost for annual reports and proxy and information statements under the Exchange Act. The burden was calculated by multiplying the estimated number of affected responses by the estimated average number of hours each entity spends preparing the proposed disclosure. We have based our estimates on the number of affected responses on the actual number of filers during the 2002 fiscal year and our estimates of the number of listed issuers that may be affected by the disclosure changes.<sup>123</sup> For Exchange Act annual reports and proxy and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company

requirements on listed investment companies would be negligible.

<sup>121</sup> Foreign private issuers are exempt from the requirements to provide proxy materials, so we assume no adjustment to the number of affected annual reports on Forms 20-F and 40-F.

<sup>122</sup> See Item 7(d)(1) of Schedule 14A.

<sup>123</sup> We estimate that 5% of listed issuers would be required to provide disclosure regarding the new issuer exemption in proposed Exchange Act Rule 10A-3(b)(iv)(A) and 20% of listed issuers would be required to provide disclosure regarding use of the holding company exemption in proposed Exchange Act Rule 10A-3(b)(iv)(B).