

We believe that complying with Item 12 of Form 8-K would require approximately .5 of a burden hour. We estimate that approximately 14,000 public companies would make an average of four filings per year. We believe the total burden hours associated with Item 12 would be 28,000 hours. We would expect that companies would use in-house personnel to file the Form 8-K.

We have amended Form 20-F (OMB Control Number 3235-0288) to incorporate our amendments to Item 10 of Regulation S-K. While Regulation G provides a limited exception for foreign private issuers, this exception would not apply to their Form 20-F filings or any disclosure of non-GAAP financial measures made in the United States. Accordingly, we do not believe our amendment to Form 20-F would result in an additional collection of information as any burden is already accounted for in Regulation G.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the disclosure requirements is mandatory. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

IV. Cost-Benefit Analysis

The Sarbanes-Oxley Act seeks to enhance the financial disclosure of public companies. In furtherance of this goal, the Sarbanes-Oxley Act has required the Commission, among other things, to adopt rules requiring that if a company publicly discloses non-GAAP financial measures or includes them in a Commission filing, the company must reconcile those non-GAAP financial measures to a company's financial condition and results of operations under GAAP. Moreover, the Sarbanes-Oxley Act requires that any public disclosure of a non-GAAP financial measure not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the non-GAAP financial measure, in light of circumstances under which it is presented, not misleading. Additionally, the Sarbanes-Oxley Act seeks to have companies that report under Sections 13(a) and 15(d) of the Exchange Act disclose to the public on a rapid and current basis information concerning material changes in their financial condition or operations.

New Regulation G and the amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B and Form

20-F will fulfill the statutory directive under Section 401(b) of the Sarbanes-Oxley Act. We recognize that any implementation of the Sarbanes-Oxley Act would likely result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits. While our proposals received significant public comment, no commenter provided any quantitative data on costs or benefits.

A. Benefits

Regulation G and the amendments to our rules are intended to ensure that investors and others are not misled by the use of non-GAAP financial measures. Additionally, the amendments to Form 8-K are intended to create a central depository where investors and other market participants can look to find the latest earnings announcements and releases by public companies and provide enhanced attention to those announcements and releases.

Regulation G and amendments to Item 10 of Regulations S-K and S-B require that any non-GAAP financial measure presented be reconciled with its most directly comparable financial measure prepared in accordance with GAAP. We anticipate that this reconciliation will help investors and market professionals to better evaluate the non-GAAP financial measures presented. We continue to believe that the reconciliation will provide the securities markets with additional information to more accurately evaluate companies' securities and, in turn, result in a more accurate pricing of securities.

B. Costs

We believe that the costs associated with the Regulation G and amendments will be minimal. As noted earlier, no commenter provided any quantitative data in their comment letters to the Commission. We contacted a sample of commenters to gather additional data about the costs associated with reconciling a non-GAAP financial measure with the most directly comparable GAAP financial measure. The commenters stated that, in most cases, for historical measures, registrants have the most directly comparable GAAP financial measure available at the time they prepare or release a non-GAAP financial measure.⁶⁷ In addition, the commenters

stated that the cost of reconciling a non-GAAP financial measure with the most directly comparable GAAP financial measure is not significant for historical measures. Most of the commenters that responded to our inquiries already prepare a reconciliation (either for internal use, external release, or both) between a non-GAAP financial measure and the most directly comparable GAAP financial measure when a non-GAAP financial measure, on an historical basis, is presented. Accordingly, those companies do not expect to incur any significant incremental costs in complying with the proposal in this particular area.⁶⁸

Three commenters in the group that we contacted indicated that they present forward-looking non-GAAP financial measures in earnings releases. Those companies indicated that they do not have the most directly comparable GAAP financial measure available at the time they prepare their non-GAAP measure because they are unable to quantify certain amounts that would be required to be included in the GAAP measure.⁶⁹ However, those companies would be able to explain, at the date the forward-looking non-GAAP financial measure is released, the types of gains, losses, revenues or expenses that would need to be added to or subtracted from the non-GAAP financial measure to arrive at the most directly comparable GAAP measure, even though they cannot quantify all of those items. The companies indicated that if they were to be required to quantify the reconciling items between the non-GAAP forward-looking financial measure and the most directly comparable GAAP financial

where the GAAP measure must be presented. See also footnote 68.

⁶⁸ One company indicated that, for a performance-based non-GAAP financial measure, the company already prepares a reconciliation to net income determined in accordance with GAAP by the date of the earnings release. However, for non-GAAP measures that are liquidity measures, the company does not currently prepare a reconciliation to the most comparable GAAP measure by the date of the company's earnings release because the statement of cash flows is not prepared until later in the financial reporting process. This company estimated that, under the proposal, the company would not necessarily incur significant additional costs to reconcile its non-GAAP liquidity financial measures to GAAP-based cash flow measures, but some salaried employees would be required to work additional hours earlier in the financial reporting process to complete the preparation of the statement of cash flows by the date of the earnings release.

⁶⁹ For example, one company that uses a non-GAAP financial measure derived from net income told us that it excludes realized capital gains and losses, gains and/or losses on dispositions of operations, and accounting changes in preparing its non-GAAP financial measure, because it is unable to forecast with any degree of comfort the amounts that would be recorded under GAAP for these items.

⁶⁷ We continue to believe that, in cases where the GAAP financial measure is not available for historical measures, any costs associated with obtaining the GAAP financial measure would reduce future costs associated with filing other forms, such as the Form 10-Q and Form 10-K