

measure, it would be very difficult and may result in the company deciding not to provide the non-GAAP financial measure to the public. Regulation G requires that, for forward-looking measures, the reconciliation between non-GAAP and GAAP financial measures must be quantitative "to the extent available and without unreasonable efforts." Accordingly, we do not believe Regulation G will impose significant additional costs on registrants with respect to reconciling forward-looking non-GAAP and GAAP financial measures.

We continue to estimate that public companies would have to comply with Regulation G six times a year. There are roughly 14,000 public companies. Using our estimates from the Paperwork Reduction Act section, we would expect that it would take a junior accountant roughly .5 hours to complete the required reconciliation and ensure there are no material misstatements. Accordingly, we have estimated that the total burden hours needed to comply with Regulation G would be 42,000 hours. Using cost data from the Securities Industry Association's Report on Management & Professional Earnings in the Securities Industry 2001 (SIA Report)<sup>70</sup> and adding an additional 35% for costs associated with overhead, we find that, on average, a junior accountant would earn \$26 an hour. We believe the salary of a junior accountant is appropriate for our estimates because, in most cases, we would expect the most directly comparable GAAP measure to be available. Therefore, we have estimated the total costs associated with complying with Regulation G to be \$1,092,000.

Most commenters had concerns with our amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B and our requirement to file their earnings release, if any, on Form 8-K. Commenters generally opposed the prohibitions of Item 10 as they would apply to their earnings release. Commenters particularly opposed the prohibition against presenting a non-GAAP per share measure. Accordingly, we have made two modifications to our proposals. First, Item 10 would no longer prohibit the presentation of a non-GAAP per share measure.<sup>71</sup> Second, the earnings release would no longer be required to be filed on Form 8-K but, rather, it would be required to be furnished to the

Commission under Form 8-K. The change from filing to furnishing has two consequences. First, a company's earnings releases would no longer be subject to Item 10 prohibitions. Second, the earnings release would no longer be subject to Section 18 of the Exchange Act.

With regard to other filings with the Commission, Item 10 would continue to apply. Because the costs associated with providing a reconciliation are already being accounted for in Regulation G, we do not believe adding the same requirement to Item 10 of Regulation S-K and Item 10 of Regulation S-B incurs any incremental cost to the registrant. To account for the required reconciliation in both Regulation G and Item 10 of Regulation S-K and Item 10 of Regulation S-B would result in double counting. Additionally, because companies currently are expected to disclose the purposes for which the registrant's management uses the non-GAAP financial measure and why it believes that presentation of the non-GAAP financial measure provides useful information to investors, this aspect of the rule would not increase costs already properly being borne by registrants. Accordingly, we do not believe our amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B would result in any additional costs not already included in Regulation G or current filing requirements.

With regard to the required submission on Form 8-K, we continue to believe that personnel in finance, investor relations or corporate communications departments would most likely submit the earnings announcements or releases, as most earnings announcements are disseminated via press release. We have estimated that the actual time required to submit an earnings announcement or release on Form 8-K to be .5 hour. In estimating this time burden we note that most press releases are fairly short in length, making the actual process of filing easier. We also note that the software necessary to file a Form 8-K is available free of charge from the Commission. We have estimated that public companies would be required to comply with the required submission on Form 8-K roughly four times a year. Assuming 14,000 public companies and a total burden of .5 hour for the filing, we estimate that companies will spend 28,000 hours complying with our Form 8-K amendment. Again using the SIA Report, and adding an additional 35% for costs associated with overhead, we find that a Corporate Communications Manager, on average, earns \$56.00 an

hour. Accordingly, we have estimated the total salary cost associated with our amendments to Form 8-K to be \$1,568,000.

Finally, our amendments to Form 20-F would incorporate 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 filing or any disclosure of non-GAAP financial measures made in the United States. Accordingly, the costs associated with our amendment to Form 20-F are already accounted for in our cost estimates for Regulation G.

## V. Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. § 605(b), the Commission has certified that Regulation G and our amendments to Item 10 of Regulation S-B, Item 10 of Regulation S-K and Form 8-K under the Securities Act and the Exchange Act will not have a significant economic impact on a substantial number of small entities. This certification, including the basis for the certification, was included in the proposing release. We solicited comments on the potential impact of the amendments on small entities, but received none.

## VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act<sup>72</sup> requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. 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<sup>73</sup> and Section 3(f) of the Exchange Act<sup>74</sup> require us, when engaging in rulemaking, to consider or determine whether an action is necessary or appropriate in the public interest, and consider whether the action will promote efficiency, competition, and capital formation.

We requested comment on any anti-competitive effects of the proposals. We did not receive any comments regarding any anti-competitive effects of the proposal. We do not believe that Regulation G or our amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B, Form 8-K or Form 20-F will have a quantifiable effect on

<sup>70</sup> The cost estimates are based on the SIA Report for employees based outside the New York City metropolitan area.

<sup>71</sup> However, see the guidance on the use of per share measures in footnote 11.

<sup>72</sup> 15 U.S.C. § 78w(a)(2).

<sup>73</sup> 15 U.S.C. § 77b(b).

<sup>74</sup> 15 U.S.C. § 78c(f).