

- Identification of board members to whom communications can be sent;
- The process, if any, for determining which communications will be passed on to board members; and
- A description of material actions taken as a result of security holder communications with the board?

3. As noted above, the proposed disclosure standards are intended to provide security holders with specific, detailed information that we believe is important. Are there alternative means to better achieve our objectives? For example, would it be more appropriate to include a broader, less detailed disclosure standard? Would any of the detailed disclosure requirements within the proposed standard result in disclosure that is unnecessarily detailed for the purpose of providing security holders with important information regarding the process of communicating with the board? If so, please describe specifically the basis for that conclusion.

4. Security holders who desire to communicate directly with individual directors, committees, and independent members of boards are often uncertain of the procedures to follow to contact directors. As such, we have proposed requiring disclosure with regard to security holder communications with board members. If no director accepts communications individually, should the company disclose why? Should companies be required to disclose the process they use to record and keep security holder communications?

5. We have proposed requiring disclosure of the means by which companies “filter” security holder requests to communicate with board members. Should there be disclosure of the specific person who determines which communications are sent to board members? Should there be disclosure of whether management plays a role in “filtering” the security holder communications that are intended for directors?

6. We have proposed requiring disclosure regarding any material actions taken in response to security holder communications. Are there any categories of communications or actions that should be excluded from coverage of the rule? For example, should the rule only apply to formal petitions to the entire board? Should this rule address specifically security holder proposals under Exchange Act Rule 14a-8? For example, should the rule make clear that disclosure is not required with regard to communications relating to proposals under Exchange Act Rule 14a-8? Alternatively, should those communications be included

specifically within the disclosure requirement?

7. Do companies currently provide a means for allowing security holders to communicate with board members? If so, how effective have these methods been in improving board accountability, board responsiveness, and corporate governance policies? Is it easier for larger minority security holders to communicate with board members?

8. Because not all companies would be subject to any listing requirements that would allow security holders to communicate with board members, would a disclosure requirement alone be sufficient with regard to companies not subject to those listing requirements?

9. Should communications with board members that are addressed in the disclosure requirements be limited to independent directors or extend to the entire board?

10. We are using the term “communications” very broadly to discourage companies from taking a formalistic view as to disclosure regarding which communications are relayed and considered. We do not, however, intend this disclosure standard to require disclosure regarding communications with the board of directors from management of the company, employees of the company, or other agents of the company, where such persons happen also to be security holders. Should we include a specific limitation on the term “communications” in this disclosure standard? If so, how do we prevent companies from taking an unduly restrictive view of the term “communications” for purposes of this disclosure standard?

11. The proposed rules relating to communications are disclosure standards only and would not require companies to establish procedures for security holders to communicate with directors. Should we nonetheless provide guidance to companies or otherwise address what we would view as appropriate procedures for companies to implement with regard to security holder communications with board members? If so, what procedures would be most appropriate and why? What would be the cost to companies of implementing and maintaining such procedures? How much time would directors and other company personnel be required to expend in implementing and maintaining such procedures? What other unintended burdens or other consequences would fall on directors as a result of such procedures? Could we give useful guidance in this area and, if so, how?

C. Investment Companies

We are proposing to apply the new disclosure requirements regarding board nominating committees and security holders’ communications with members of boards to proxy statements of investment companies (“funds”).⁴⁸ Funds are currently required to comply with Exchange Act Schedule 14A when soliciting proxies, including proxies relating to the election of directors.⁴⁹ Item 22(b)(14)(iv) of Exchange Act Schedule 14A requires funds to disclose the same information about nominating committees that is currently required for operating companies by Item 7(d)(2).⁵⁰ As with operating companies, the enhanced disclosure provided by the amendments may benefit fund security holders by improving the transparency of the nominating process and board operations, as well as increasing security holders’ understanding of the funds in which they invest.

The proposals would require disclosure as to whether or not the members of a fund’s nominating committee are “interested persons” of the fund as defined in Section 2(a)(19) of the Investment Company Act,⁵¹ rather than independent under the listing standards of a national securities exchange or national securities association, as in the case of operating companies.⁵² We are requiring disclosure with respect to the Section 2(a)(19) test for members of nominating committees for funds because that test is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to “independence” in the case of funds.

⁴⁸ See proposed Paragraphs (e) of Item 7 and (b) of Item 22 of Exchange Act Schedule 14A.

⁴⁹ See Investment Company Act of 1940 Rule 20a-1[17 CFR 270.20a-1] (requiring funds to comply with Regulation 14A [17 CFR 240.14a-1 “14a-101”], Schedule 14A, and all other rules and regulations adopted pursuant to Section 14(a) of the Exchange Act [15 U.S.C. 78n] that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78l]).

⁵⁰ Funds are subject to Items 7 and 22(b) of Exchange Act Schedule 14A when soliciting proxies regarding the election of directors. Currently, in lieu of the disclosure required by Paragraphs (a)-(d)(2) of Item 7, funds must provide the information required by Item 22(b). See Paragraph (e) of Item 7. The Commission’s proposals would amend Paragraph (e) of Item 7 to apply the disclosure requirements regarding nominating committees in Paragraph (d)(2) of Item 7 to funds, and would delete the current disclosure requirement regarding nominating committees in Paragraph (b)(14)(iv) of Item 22 as duplicative.

⁵¹ 15 U.S.C. 80a-2(a)(19).

⁵² Proposed Item 22(b)(14)(ii) of Exchange Act Schedule 14A.