

Questions Regarding the Application of the Proposals to Funds

1. Should the proposed amendments that would require disclosure regarding the operations of board nominating committees apply to funds? Should the proposed amendments that would require new disclosure concerning the means by which security holders may communicate with members of boards apply to funds? Are there any aspects of the proposed amendments that should be modified in the case of funds?

2. Should we apply the “interested person” standard of Section 2(a)(19) of the Investment Company Act in requiring disclosure regarding the independence of members of a fund’s nominating committee? Should we instead apply a different standard to funds, such as the listing standards of national securities exchanges or national securities associations?

D. General Request for Comment

We request and encourage any interested person to submit comments regarding:

- The proposed amendments that are the subject of this release;
- Additional or different changes; or
- Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of companies, investors, and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments, as well as a discussion of specific alternatives if applicable.

III. Paperwork Reduction Act

A. Background

The proposed amendments to Exchange Act Schedule 14A contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).⁵³ We are submitting the proposal to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.⁵⁴ The titles for the collections of information are:

- (1) “Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)” (OMB Control No. 3235–0059);
- (2) “Information Statements—Regulation 14C (Commission Rules 14c–

1 through 14c–7 and Schedule 14C)”⁵⁵ (OMB Control No. 3235–0057); and

(3) “Rule 20a–1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents and Authorizations” (OMB Control No. 3235–0158).⁵⁶ The first two titles were adopted pursuant to the Exchange Act and set forth the disclosure requirements for proxy and information statements filed by companies to ensure that investors can make informed voting or investing decisions.⁵⁷ The third title was adopted pursuant to the Investment Company Act and concerns the solicitation of proxies, consents and authorizations with respect to securities issued by registered investment companies. The hours and costs associated with preparing, filing, and sending these schedules constitute reporting and cost burdens imposed by each collection of information. 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 control number.

Under the proposals, we would expand the disclosure that is currently required in company proxy or information statements regarding the functions of a company’s nominating committee. In addition, the proposals would require disclosure regarding the policies and procedures regarding security holder communications with the board of directors. Compliance with the proposed 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.

⁵³ Exchange Act Schedule 14C requires disclosure of some items of Exchange Act Schedule 14A. Therefore, while we are not proposing to amend the text of Exchange Act Schedule 14C, the proposed amendments to Exchange Act Schedule 14A must also be reflected in the PRA burdens for Exchange Act Schedule 14C.

⁵⁶ Investment Company Act Rule 20a–1 requires registered investment companies to comply with Exchange Act Regulation 14A or 14C, as applicable. Therefore, the annual responses to Investment Company Act Rule 20a–1 reflect the number of proxy and information statements that are filed by registered investment companies.

⁵⁷ The proxy rules apply only to domestic companies with equity securities registered under Section 12 of the Exchange Act and to investment companies registered under the Investment Company Act [15 U.S.C. 80a *et seq.*]. There is a discrepancy between the number of annual reports by reporting companies and the number of proxy and information statements filed with the Commission in any given year. This is because some companies are subject to reporting requirements by virtue of Section 15(d) of the Exchange Act [15 U.S.C. 78o], and therefore are not covered by the proxy rules. In addition, companies that are not listed on a national securities exchange or Nasdaq may not hold annual meetings and therefore would not be required to file a proxy or information statement.

For purposes of the PRA, we estimate the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals to be approximately 19,557 hours of company personnel time and a cost of approximately \$1,955,000 for the services of outside professionals.⁵⁸ That estimate includes the time and the cost of preparing disclosure that has been appropriately reviewed by executive officers, the disclosure committee, in-house counsel, outside counsel, and members of the board of directors.⁵⁹ Because the current rules already require a company to collect and disclose information about the composition, functions and policies and procedures of its nominating committee, the proposed disclosure should not impose significant new costs for the collection of information.

We derived the above estimates by estimating the total amount of time it would take a company to prepare and review the proposed disclosure. We estimate that over a three-year time period, the annual incremental disclosure burden would be an average of 3 hours per form. This estimate is based on the assumption that companies spend a greater amount of time preparing the disclosure in year one and will become more efficient in preparing the disclosure over the next two years.⁶⁰ This estimate represents the average burden for all companies, both large and small, that are subject to the proxy rules. We expect that the disclosure burden could be greater for larger companies and lower for smaller companies. The estimate also has been adjusted to reflect the fact that not all proxy and information statements involve action to be taken with respect to the election of directors, and therefore would not require companies to provide the proposed disclosure.⁶¹

⁵⁸ For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number.

⁵⁹ In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of \$300 as the cost of outside professionals that assist companies in preparing these disclosures.

⁶⁰ We estimate that it will take 6 hours to prepare the disclosure in year one, 3.13 hours in year two, and 2.03 hours in year three.

⁶¹ We estimate that 20% of all proxy and information statements do not include disclosure about directors. This estimate is based on the proportion of preliminary proxy statements to definitive proxy statements filed in our 2002 fiscal year (2,555/8,639=30%), which has been adjusted downward by 10% to reflect the fact that some preliminary proxy statements contain disclosure about directors. Registrants do not file preliminary proxy statements for security holder meetings where the matters to be acted upon involve only the

⁵³ 44 U.S.C. 3501 *et seq.*

⁵⁴ 44 U.S.C. 3507(d) and 5 CFR 1320.11.