

regulatory objectives. As one possible approach, we considered requiring companies to include the security holder's proxy card in the company mailing. Alternatively, we considered amending or reinterpreting Exchange Act Rule 14a-8(i)(8)⁶⁶ to allow security holder proposals requesting access to the corporation's proxy card for the purpose of making nominations. As an initial step in our efforts to reform the rules and regulations regarding security holder oversight of the companies in which they invest, the current proposals take a more measured approach by building on existing disclosure requirements.

B. Benefits

The proposed rules would benefit security holders because they will assist security holders in better understanding their rights of ownership by focusing attention on the scope and efficacy of the policies and procedures that companies maintain to nominate directors and to enable security holders to communicate with directors. The more precise disclosure requirements in the proposals will promote more consistent disclosure among a cross-section of public companies because they will have greater certainty as to the required disclosure. In addition, increasing the amount and quality of information available to investors concerning board policies and procedures may improve investor confidence because investors may be able to identify the degree to which companies are responsive to security holder concerns. By providing greater transparency of board policies, we anticipate that the proposals would allow investors to make more informed choices when deciding how to invest.

To the extent that security holders would rather invest in companies with boards that maintain policies and procedures that provide greater security holder oversight, companies may have incentives to adopt more meaningful policies and procedures regarding director nominations and security holder communications. The proposed rules also may encourage companies to consider their existing policies in relation to policies adopted by other companies and could facilitate competition among companies to adopt policies that reduce costs to security holders. For example, if security holder board nominees are given adequate consideration through the nominating

process, a security holder may choose to submit its candidate to the nominating committee rather than incur the expense of soliciting proxies to support the nominee. Moreover, the proposed disclosure of the manner in which security holders can send communications to the board may encourage a less costly communication process for providing recommendations to the board than the current process embodied in Exchange Act Rule 14a-8.

Request for Comment

- We solicit quantitative data to assist our assessment of the benefits of increased disclosure regarding nominating committees and security holder-director communications.
- Are there any public companies that currently provide information to the public regarding their policies and procedures related to the functioning of the nominating committee or security holder communications with directors? If so, is there any data on whether investors find this information to be useful?

C. Costs

The proposed rules would impose new disclosure requirements on companies subject to the proxy rules.⁶⁷ We estimate that complying with the proposed disclosures would entail a relatively small financial burden. The proposed disclosures are designed to build upon existing disclosure requirements to elicit a more detailed discussion of the functions of the nominating committee as well as the means by which security holders can communicate with the board of directors. Thus, the task of complying with the proposed disclosure could be performed by the same person or group of persons responsible for compliance under the current rules. 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.

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 (2.25 hours per company),⁶⁸ which

translates into an estimated cost of \$1,662,000 (\$191 per company).⁶⁹ We also estimate a cost of approximately \$1,955,000 for the services of outside professionals (\$225 per company).⁷⁰ The figures above include the estimated burdens for investment companies. For investment companies, we estimate the incremental burden to be 2,381 hours of company personnel time (2.25 hours per company), which translates into an estimated cost of \$202,385 (\$191 per company). We also estimate a cost for investment companies of approximately \$238,050 for the services of outside professionals (\$225 per company). To the extent that the proposals influence corporate behavior, however, the costs would extend beyond a disclosure burden. For example, companies may incur additional costs in instituting more responsive policies and procedures regarding director nominations and security holder communications. We have not included these costs in our analysis of the additional disclosure requirement, but have sought comment regarding such costs and related matters.

Request for Comment

- What are the direct and indirect costs associated with the proposed rules?
- What are the costs in the first year of compliance versus subsequent years?
- To the extent that the proposals influence corporate behavior, what costs would a company incur to institute responsive policies and procedures regarding director nominations and security holder communications?
- We solicit quantitative data to assist our assessment of the costs associated with increased disclosure regarding nominating committees and security holder-director communications.

D. Small Business Issuers

Although the proposed rules apply to small business issuers, we do not anticipate any disproportionate impact on small business issuers. Like other issuers, small business issuers should incur relatively minor compliance costs, and should find it unnecessary to hire extra personnel. The issues of corporate accountability and security holder rights affect small companies as much as they affect large companies. Thus, we do not

⁶⁶ Exchange Act Rule 14a-8(i)(8) permits a company to exclude a security holder proposal from its proxy statement if the proposal "relates to an election for membership on the company's board of directors or analogous governing body."

⁶⁷ 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.

⁶⁸ 3 hours \times 75% = 2.25 hours.

⁶⁹ We estimate the average hourly cost of in-house personnel to be \$85. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).

⁷⁰ 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.