

average, the estimated \$416 compliance expense would constitute approximately .02% of a small entity's revenues. We encourage written comments regarding this analysis. We solicit comments as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

#### *F. Duplicative, Overlapping or Conflicting Federal Rules*

We believe that there are no rules that conflict with or completely duplicate the proposed rules. There is a partial overlap with current disclosure requirements about nominating committees in proxy and information statements. This overlap is necessary because the proposed disclosures are designed to build upon existing disclosure requirements to elicit a more detailed discussion. The current requirements do not include much of the information specifically targeted for inclusion in the proposed rules.

#### *G. Significant Alternatives*

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of disclosure for small entities;

(c) The use of performance rather than design standards; and

(d) An exemption for small entities from coverage under the proposals.

The Commission has considered a variety of reforms to achieve its 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) to allow security holder proposals requesting access to the corporation's proxy card for the purpose of making nominations. We believe that the current proposals are the most cost-effective initial approach to address specific concerns related to small entities because the proposals build on existing disclosure requirements.

We have drafted the proposed disclosure rules to require clear and straightforward disclosure of a company's policies and procedures regarding the nomination of directors and security holder communications. Separate disclosure requirements for small entities would not yield the disclosure that we believe to be necessary to achieve our objectives. In addition, the informational needs of investors in small entities are typically as great as the needs of investors in larger companies. Therefore, it does not seem appropriate to develop separate requirements for small entities involving clarification, consolidation or simplification of the proposed disclosure.

We have used design rather than performance standards in connection with the proposals for two reasons. First, based on our past experience, we believe the proposed disclosure would be more useful to investors if there were enumerated informational requirements. The proposed mandated disclosures may be likely to result in a more focused and comprehensive discussion. Second, 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, more precise disclosure requirements would improve the Commission's ability to enforce the proposed rules. Therefore, adding to the disclosure requirements in existing proxy and information statements appears to be the most effective method of eliciting the disclosure.

#### *H. Solicitation of Comments*

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entities that may be affected by the proposals; (ii) the existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, or in the alternative, a certification under Section 605(b) of the Regulatory Flexibility Act, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

### **VII. Small Business Regulatory Enforcement Fairness Act**

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),<sup>89</sup> a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on: (a) The potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

### **VIII. Statutory Basis and Text of Proposed Amendments**

The proposed amendments to Items 7 and 22 of Schedule 14A are being proposed pursuant to Sections 3(b), 12, 14, 23(a) and 36 of the Securities Exchange Act of 1934, as amended, and Sections 20(a) and 38 of the Investment Company Act of 1940, as amended.

#### **List of Subjects in 17 CFR Part 240**

Reporting and recordkeeping requirements, Securities.

#### **Text of the Proposed Amendments**

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

### **PART 240—GENERAL RULES AND REGULATION, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78l, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

2. Amend § 240.14a-101 by:

- a. Revising paragraph (d)(2) of Item 7;
- b. Revising the reference "paragraphs (a) through (d)(2)" in paragraph (e) of Item 7 to read "paragraphs (a) through (d)(1) and (d)(2)(ii)(D)";
- c. Adding paragraph (h) to Item 7;

<sup>89</sup> Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).