

codes of ethics available to the public and to ensure that interested investors will be able to obtain a copy of the code of ethics if the company does not otherwise make the code publicly accessible. At the same time, we assume that companies will choose the least burdensome means of providing the information.

Although we have made several other modifications to the proposals, they will not affect our estimates of the burden imposed on companies by the new disclosure requirements. These modifications clarify the definitions of certain terms, such as "audit committee financial expert" and "code of ethics," used in the new disclosure items. Although the revision to the audit committee financial expert definition may increase the number of persons who would qualify as an audit committee financial expert, it will not affect the amount of disclosure necessary under the disclosure items. The change to the code of ethics definition similarly will not affect the amount of disclosure required under the new rules. Therefore, we do not believe that these changes affect our previous estimates of the burden on registrants associated with these new disclosure items.

#### *C. Burden Estimates*

All Form 10-K, 10-KSB, 20-F and 40-F respondents will be subject to the new audit committee financial expert and code of ethics disclosure requirements. In the Proposing Release, we estimated that the total burden imposed by the new disclosure items that we are adopting would be one burden hour per year per registrant, of which 75%, or  $\frac{3}{4}$  hour, would be borne by the company internally and 25%, or  $\frac{1}{4}$  hour, would be borne externally by outside counsel retained by the company at a cost of \$300 per hour.<sup>69</sup> We also estimated in the Proposing Release that preparation of a Form 8-K to report changes to, or waivers from, provisions of the code of ethics would impose a burden of 5 hours per form. We estimated that a company will file such a report once every three years. This results in an estimate of  $1\frac{2}{3}$  hours per company per year, of which 75%, or  $1\frac{1}{4}$  hours would be borne by the company internally and 25%, or  $\frac{5}{12}$  of an hour, would be reflected as an outside counsel cost of \$300 per hour.

The new disclosures required when a company elects to post its code of ethics

on its Web site or to undertake to provide copies to persons upon request will result in an additional one or two sentences in the company's annual report. We estimate that this disclosure will add a burden of 6 minutes, or 0.1 hour, per year per company choosing the posting or undertaking option. We do not have data to accurately estimate the number of companies that will make such elections. However, we believe that a significant number of companies currently make their ethics codes available to the public on their Web sites. Therefore, we estimate that 75% of companies subject to the requirements will choose to disclose this information on their Web sites. We further estimate that 10% of companies will choose to undertake to offer copies of its code of ethics upon request.

Compliance with the revised disclosure requirements is mandatory. Responses to the disclosure requirements will not be kept confidential.

#### **IV. Costs and Benefits**

The Sarbanes-Oxley Act requires us to adopt the new audit committee financial expert and code of ethics disclosure requirements. These changes will affect all companies reporting under Section 13(a) and 15(d) of the Exchange Act, including foreign private issuers and small business issuers. We recognize that these requirements will result in costs as well as benefits and that they will have an effect on the economy.

##### *A. Benefits*

One of the main goals of the Sarbanes-Oxley Act is to improve investor confidence in the financial markets. These rules are intended to achieve the Act's goals by providing greater transparency as to whether an audit committee financial expert serves on a company's audit committee and whether the company's principal executive officer and senior financial officers are subject to ethical standards. By increasing transparency regarding key aspects of corporate activities and conduct, the proposals are designed to improve the quality of information available to investors. Greater transparency should assist the market to properly value securities, which in turn should lead to more efficient allocation of capital resources.

The new rules require a company to disclose the name of the audit committee financial expert serving on the audit committee and whether that person is independent of management if the company discloses that it has a financial expert. Investors should benefit from this disclosure by being

able to consider it when reviewing currently required disclosure about all directors' past business experience and making voting decisions.<sup>70</sup> The new rules also require a company to make copies of its code of ethics available to investors. This requirement will allow investors to better understand the ethical principles that guide executives of companies in which they invest.

##### *B. Costs*

The new disclosure items require companies to make disclosure about two matters. First, a company must disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, a company must disclose whether it has adopted a code of ethics that applies to the company's principal executive officer and senior financial officers. A company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A company also will be required to promptly disclose amendments to, and waivers from, the code of ethics relating to any of those officers. This information will be readily available to the company. For purposes of the Paperwork Reduction Act, we estimated these burdens to be \$7,760,000.

As stated above, in limited instances, the new rules require more disclosure than mandated by the Sarbanes-Oxley Act. For example, we expect that companies will incur added costs to disclose the name of the audit committee financial expert, to disclose whether that person is independent and to file or otherwise make available copies of their codes of ethics to investors. Companies electing to disclose changes in, and waivers from, their codes of ethics via their websites in lieu of publicly filing such disclosure on Form 8-K must disclose this election in their annual reports.

The added burden associated with the requirements to name the audit committee financial expert and disclose whether the audit committee financial expert is independent should be minimal.<sup>71</sup> We have added a safe harbor provision to clarify that we do not intend to increase or decrease the current level of liability of audit

<sup>69</sup> Estimates regarding burden within the company, for third party services, and for professional costs were obtained by contacting a number of law firms and other persons regularly involved in completing the forms.

<sup>70</sup> See Item 401 of Regulations S-K and S-B (17 CFR 229.401 and 228.401).

<sup>71</sup> This added burden is included in the Paperwork Reduction Act estimate discussed above.