

We requested comment on these costs, but received none.

We note that we have modified our proposed rules to provide two alternatives to the code of ethics filing requirement. An investment company may either post its code of ethics on its website if it discloses that it intends to do so in its report on Form N-CSR or N-SAR, or undertake in its report on Form N-CSR or N-SAR to provide investors with a copy of its code of ethics upon request. These alternatives should allow registrants to choose the most cost-efficient method to meet the new requirements.

We believe that the additional audit committee financial expert and code of ethics requirements are necessary to implement the purposes of the Sarbanes-Oxley Act and will impose minimal additional burden on companies. For example, we expect that investment 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. Investment companies electing to disclose their codes of ethics, and changes in and waivers from their codes of ethics, via their websites in lieu of publicly filing such disclosure on Form N-CSR or N-SAR must disclose this election in their reports on Form N-CSR or N-SAR. Such costs do not include the costs imposed on investment companies by the Sarbanes-Oxley Act itself. Rather, they reflect the costs of our requirements beyond the requirements of the Sarbanes-Oxley Act.

Total Cost Calculations

For purposes of the PRA,¹⁰⁸ with respect to Form N-SAR, we further estimate that the removal of the certification requirement will remove an incremental 41,010 hours from the current total burden hours or \$6,151,500¹⁰⁹ and the disclosure of the code of ethics and audit committee financial experts will add an incremental 2 burden hours to the current total burden hours or \$259.¹¹⁰

With respect to Form N-CSR, all respondents will incur an incremental increase of 35,139 burden hours¹¹¹ or \$5,152,782¹¹² and \$3,513,900 in outside legal costs¹¹³ to comply with the amendments. The current total burden hours of Form 12b-25 will incrementally increase by 420 hours or \$15,468¹¹⁴ to comply with the amendments.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹¹⁵ In addition, Section 2(c) of the Investment Company Act,¹¹⁶ Section 2(b) of the Securities Act¹¹⁷ and Section 3(f) of the Exchange Act¹¹⁸ require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We

rates for the deputy general counsel. This wage rate includes 35% for overhead. See Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001).

¹¹¹ 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours × .75 = 35,139 hours.

¹¹² 35,139 hours × \$146.64 = \$5,152,782. This estimated wage rate of \$146.64 is a blended rate, based on published hourly wage rates for a deputy general counsel outside of New York City (\$129.81) and our estimated wage rate for principal executive and financial officers (\$150.00). We estimate that principal executive and financial officers would spend 5 hours certifying the annual reports on Form N-CSR and a deputy general counsel would spend 1 hour completing the code of ethics and audit committee financial expert disclosures. This yields a weighted wage rate of \$146.64 $((\$129.81 \times \frac{1}{6}) + (\$150.00 \times \frac{5}{6})) = \146.64 . This weighted wage rate includes 35% for overhead. See Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001).

¹¹³ 43,150 hours for certification + 1,851 hours for audit committee financial expert disclosure + 1,851 hours for code of ethics disclosure = 46,852 hours × .25 of outside counsel × \$300 per hour = \$3,513,900.

¹¹⁴ 420 hours × \$36.83 = \$15,468. We estimate that an attorney with an hourly wage rate of \$36.83 completes Form 12b-25. This wage rate includes 35% for overhead. See Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001).

¹¹⁵ 15 U.S.C. 78w(a)(2).

¹¹⁶ 15 U.S.C. 80a-2(c).

¹¹⁷ 15 U.S.C. 77b(b).

¹¹⁸ 15 U.S.C. 78c(f).

received no comments relating to this specific section.

The new rules and rule and form amendments are intended to more fully implement the intent of Section 302 of the Sarbanes-Oxley Act that we adopt rules requiring the principal executive and financial officers of investment companies to certify the accuracy of their periodic reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act. Also, the amendments are intended, in part, to increase transparency regarding the competence of the audit committee and the application of codes of ethics to a company's principal executive officer and senior financial officers. We believe that the amendments will benefit investors by providing them with greater confidence in the accuracy and completeness of the disclosure contained in the annual and semi-annual reports that they receive from management investment companies, including the financial statements. However, the magnitude of the effect of the amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that most management investment companies currently are required to comply with the certification requirements in recently adopted amendments to Form N-SAR, which we are removing as part of the amendments we are adopting today.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's rules and rule and form amendments under the Exchange Act and the Investment Company Act that will require registered management investment companies to file certified shareholder reports on Form N-CSR with the Commission, will designate these certified reports as reports that are required under Sections 13(a) and 15(d) of the Exchange Act, and will implement Sections 406 and 407 of the Sarbanes-Oxley Act. Initial Regulatory Flexibility Analyses ("IRFAs"), which were prepared in accordance with 5 U.S.C. 603, were published in the release proposing Form N-CSR and in the release proposing rules to implement Sections 406 and 407 of the Sarbanes-Oxley Act.

The rule amendments require each registered management investment company's principal executive and financial officers to certify the information contained in these reports in the manner specified by Section 302

¹⁰⁸ See Section IV above.

¹⁰⁹ 41,010 hours × \$150 = \$6,151,500. The estimate cost savings is derived from the estimated reduction in burden hours, and an estimated hourly wage rate for principal executive officers of \$150.00. The hourly wage rates for principal executive and financial officers are not published. We arrived at \$150.00 based on other hourly wage rates published and consultations with individuals who are familiar with the hourly wage rates. This wage rate includes 35% for overhead. See Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001).

¹¹⁰ 2 hours × \$129.81 = \$259. The hourly wage rate of \$129.81 is based on published hourly wage