

problems under Industry Guide 3⁴² ("problematic loans"), its disclosure may consist of a statement, if true, that the loans in question:

(A) Were made in the ordinary course of business;

(B) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons; and

(C) did not involve more than the normal risk of collectibility or present other unfavorable features.⁴³

This minimal disclosure requirement for ordinary, non-problematic insider bank loans is consistent with the exemption that domestic banks currently have under Exchange Act Section 13(k) and with the similar exemptive treatment that we propose for foreign banks. Accordingly, we do not recommend changing this requirement at this time.

For an insider loan failing to meet any of the above conditions, both a foreign and domestic bank must disclose the largest amount outstanding during the period covered, the amount outstanding as of the latest practicable date, the nature of the loan and the transaction in which it was incurred, and the interest rate on the loan.⁴⁴ However, unlike the comparable instructions for domestic issuers, the Form 20-F instructions do not explicitly require a foreign issuer to identify the insider that has received a problematic loan and the insider's relationship to the issuer. Accordingly, we propose to revise the Form 20-F instructions to require a foreign bank to disclose the identity of any director, executive officer or other related party otherwise required to be disclosed by the Form who has received a loan to which the non-problematic loan instruction does not apply, and to describe the nature of the relationship of the loan recipient with the foreign bank. As a result, the same disclosure standards regarding problematic loans to insiders would apply to both domestic banks and foreign banks other than the few Canadian banks that are subject to the Multijurisdictional Disclosure System ("MJDS").

The proposed rules would not affect the disclosure requirements for Form 40-F, the MJDS form used by qualified Canadian issuers to file their Exchange Act annual reports and registration

statements.⁴⁵ We are not proposing to amend Form 40-F since its content, like the content of all of the other MJDS forms, is determined primarily by the applicable Canadian securities administrator.

Comment Solicited

We solicit comment on the adequacy of the disclosure requirements for insider loans by domestic and foreign banks. Should we require more detailed disclosure regarding non-problematic bank loans to insiders as a condition of eligibility for the Section 13(k) bank exemption for domestic and foreign banks? For example, should we require domestic and foreign banks to disclose the aggregate amount and average interest rate of their non-problematic loans to each insider? If not, should we at least require foreign banks to disclose the identity of an insider that has received a problematic loan and the insider's relationship to the foreign issuer, as proposed? Should we require Canadian banks that file on Form 40-F to provide this information about problematic loans to insiders as well?

G. Proposed Effective Date

We propose that the effective date for proposed Rule 13k-1, if adopted, will be the date of its publication in the **Federal Register**. Because of the exemptive nature of the proposed rule, we do not believe that a transition period is necessary to enable foreign issuers and other interested parties to prepare for the new rule. We further propose that the proposed Form 20-F amendment, if adopted, will be 30 days from the date of its publication in the **Federal Register**. Because of the expected minimal revised disclosure resulting from the proposed Form 20-F amendment, we believe that a one month transition period is ample time to enable foreign issuers and others to prepare for the revised form.

Comment Solicited

Are there practical difficulties if the proposed Rule 13k-1 does not become effective on the date that the adopted rule is published in the **Federal Register**? Similarly, are there practical difficulties if the proposed Form 20-F amendment become effective on a date that is later than 30 days after its publication in the **Federal Register**? If you disagree with the proposed effective dates, when should the proposed rule and form amendment become effective, and why?

III. Paperwork Reduction Act Analysis

This rule proposal contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").⁴⁶ We are submitting our proposal to the Office of Management and Budget ("OMB") for review in accordance with the PRA.⁴⁷ The title of the affected collection of information is Form 20-F (OMB Control No. 3235-0288). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 20-F unless it displays a currently valid OMB control number. The disclosure will be mandatory.

Form 20-F sets forth the disclosure requirements for a foreign private issuer's annual report and registration statement under the Exchange Act as well as many of the disclosure requirements for a foreign private issuer's registration statements under the Securities Act. The Commission adopted Form 20-F pursuant to the Exchange Act and the Securities Act in order to ensure that investors are informed about foreign private issuers that have registered securities with the Commission. The hours and costs associated with preparing, filing and sending Form 20-F constitute reporting and cost burdens imposed by this collection of information. We have based our estimate of the effect that the proposed Form 20-F amendment would have on this collection of information primarily on our review of the most recently completed PRA submission for Form 20-F, on the form's requirements, and on actual filings of Form 20-F.

We estimate that currently foreign private issuers file 1,194 Form 20-Fs each year. We also estimate that foreign private issuers incur 25% of the burden required to produce the Form 20-Fs resulting in 769,825 annual burden hours incurred by foreign private issuers out of a total of 3,079,300 annual burden hours. Thus, we estimate that 2579 total burden hours per response are currently required to prepare the Form 20-F. We further estimate that outside firms, including legal counsel, accountants and other advisors, account for 75% of the burden required to produce the Form 20-Fs at an average cost of \$300 per hour for a total annual cost of \$690,500,680.

We estimate that currently 41 foreign banks file annual reports on Form 20-F.⁴⁸ We further estimate that

⁴² Industry Guide 3 provides statistical disclosure requirements for bank holding companies.

⁴³ Instruction 2 to Form 20-F Item 7.B (for foreign banks) and Instruction 3 to Regulation S-K Item 404(c) (for domestic banks).

⁴⁴ Form 20-F Item 7.B.2 and Regulation S-K Item 404(c).

⁴⁵ 17 CFR 249.240f.

⁴⁶ 44 U.S.C. 3501 *et seq.*

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

⁴⁸ Only 41 of the 46 foreign bank reporting companies filed their most recent annual report on