

incremental paperwork burden for all companies to prepare the disclosure required under the amendments to be approximately 366,337 hours of company personnel time and the incremental cost to be approximately \$44,795,000 for the services of outside professionals.<sup>153</sup> That estimate includes the time and the cost of in-house preparation of the disclosure, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.<sup>154</sup> It does not include the full cost of establishing systems to collect and monitor the information because a registrant must already do so to prepare its financial statements, comply with current disclosure requirements and maintain adequate internal controls.

We derived the paperwork burden estimates by estimating the total amount of time it will take a company to prepare each item of the disclosure. We estimate that in the first year, the off-balance sheet disclosure will take 14.5 hours for annual reports and proxy statements (11 hours in-house personnel time and a cost of approximately \$1100 for professional services), 16 hours for registration statements (4 hours in-house personnel time and a cost of approximately \$3600 for professional services) and 10 hours for quarterly reports (7.5 hours in-house personnel time and a cost of approximately \$750 for professional services). We estimate that in the first year, the disclosure of contractual obligations will take 7.5 hours for annual reports and proxy statements (5.5 hours in-house personnel time and a cost of approximately \$600 for professional services), 8.5 hours for registration statements (2 hours in-house personnel time and a cost of approximately \$1900 for professional services) and 3 hours for each quarterly report (2.25 hours in-house personnel time and a cost of approximately \$225 for professional services). Our estimates for the preparation time for all of the disclosure items in the first year are 22 hours for annual reports and proxy statements (16.5 hours in-house personnel time and a cost of approximately \$1650 for professional services), 24.5 hours for registration statements (6 hours in-

house personnel time and a cost of approximately \$5500 for professional services) and 13 hours for quarterly reports (9.75 hours in-house personnel time and a cost of approximately \$975 for professional services). The paperwork burden estimate for preparing one annual report and three quarterly reports is 61 hours (46 hours in-house personnel time and a cost of approximately \$4600 for professional services).

Because the paperwork burden estimates reflect a three-year period, we averaged the first year estimates with later year estimates to account for the fact that registrants would become accustomed to the disclosure requirements after the first year and therefore spend less time preparing the disclosure over the two subsequent years. The submission to OMB also reduced the burden to account for issuers that do not engage in off-balance sheet arrangements and for issuers that include identical MD&A sections in more than one filing covering the same period (e.g., Form 10-K and Form S-1).

#### C. Responses to Request for Comments

We requested comment on the PRA analysis contained in the Proposing Release and received the following responses. Two commenters believed that the average estimate of 37 hours per registrant underestimated the compliance burden.<sup>155</sup> One commenter provided an estimated burden of approximately 150 to 190 hours to implement the rule.<sup>156</sup> Another commenter believed that compliance with the proposed requirement to include a tabular or textual disclosure of contractual obligations and contingent liabilities and commitments would require most companies to implement tracking and monitoring systems for contractual obligations and commitments (which would cost approximately \$75,000 to \$125,000 for software, with annual personnel costs of \$90,000 to \$125,000, plus an additional \$25,000 for other costs).<sup>157</sup>

We believe that registrants already must collect the information required by the amendments in order to prepare their financial statements, meet their existing disclosure requirements and to maintain adequate internal controls. For example, U.S. GAAP currently requires registrants to disclose information about guarantees, contractual obligations under leases and long-term debt.<sup>158</sup>

Current MD&A rules require disclosure of the registrant's material commitments for capital expenditures as of the end of the latest fiscal period.<sup>159</sup> We also believe that the treasury functions of most registrants track and monitor payments due under purchase obligations for internal control and budgeting purposes. Therefore, the paperwork burden in our estimate reflects the time it will take to draft and review the required disclosures, but not to initially collect the information.

Accordingly, we are not changing our initial estimates that have been submitted to OMB. In response to the commenters' concerns that the Proposing Release underestimated the paperwork burden, we are not reducing our estimates even though we have refined the definition of "off-balance sheet arrangements," specified the particular contractual obligations to be included in the table and eliminated the table or text of contingent liabilities or commitments.

### V. Cost-Benefit Analysis

#### A. Background

In accordance with the directive in section 401(a) of the Sarbanes-Oxley Act,<sup>160</sup> the Commission is adopting amendments to disclosure rules regarding a company's off-balance sheet arrangements. The amendments require disclosure to improve investors' understanding of a company's overall financial condition, changes in financial condition and results of operations. The amendments require companies that are reporting, raising capital in the registered public markets or asking shareholders for their votes to provide information about their off-balance sheet arrangements and an aggregate overview of their known contractual obligations in tabular format.

#### B. Objectives of Amendments

The amendments seek to improve transparency of disclosure regarding a company's off-balance sheet arrangements and to provide an overview of aggregate contractual obligations. We believe that improvement in the quality of information in these areas is necessary for investors to better understand a company's current and future financial position and current and future sources of liquidity. Moreover, because

Interpretation No. 45, paragraph 13. See also, FASB SFAS No. 13, *Accounting for Leases* (Nov. 1976); SFAS No. 47, *Disclosure of Long-Term Obligations* (March 1981); and SFAS No. 129, *Disclosure of Information about Capital Structure* (Feb. 1997).

<sup>159</sup> See Item 303(a)(2)(i) of Regulation S-K [17 CFR 229.303(a)(2)(i)].

<sup>160</sup> Pub. L. 107-204 Sec. 401(a) [15 U.S.C. 78m(j)].

<sup>153</sup> For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest \$1,000.

<sup>154</sup> 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. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriters' counsel and underwriters.

<sup>155</sup> See, e.g., the letters of CSC and Eaton.

<sup>156</sup> See, e.g., the letter of FTNC.

<sup>157</sup> See, e.g., the letter of Troutman.

<sup>158</sup> See, FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975), paragraph 12 and FASB