

obligations in the ordinary course of managing the company, maintaining adequate internal controls and preparing the financial statements, the amendments may not impose significant incremental costs for the collection and calculation of data.

In assessing the cost of the amendments, we have considered possible unintended consequences. One possible unintended consequence of the amendments is that a registrant's competitors may be able to infer proprietary information from the disclosure. For example, a registrant's competitors may infer that the registrant has adopted a particular strategy based on disclosure about its off-balance sheet arrangements. In addition, a registrant may be discouraged from developing innovative financing techniques if a competitor may be able to copy the technique at little cost. The amendments could impose additional costs to the extent that the disclosure would deter legitimate uses of off-balance sheet arrangements.

F. Foreign Private Issuers

The amendments apply to foreign private issuers the same MD&A disclosure requirements that apply to U.S. companies. Foreign private issuers, however, are not required to file quarterly reports with the Commission. Thus, unless a foreign private issuer files a registration statement that must include interim period financial statements and related MD&A disclosure, it generally will not be required to update the MD&A disclosure more frequently than annually. Therefore, the cost of compliance could be lower for foreign private issuers than for U.S. companies. It is possible, however, that foreign private issuers will incur greater expenses in connection with the required reconciliation to U.S. GAAP, but only if a discussion of the differences in accounting is necessary for an understanding of the financial statements as a whole.

G. Small Business Issuers

The amendments do not require that small businesses provide tabular disclosure about contractual obligations. This information is currently required to be disclosed in various locations in filings. While it would be useful to investors if this information were disclosed in a single location, we believe that excluding small business issuers from this requirement is consistent with the policies underlying the small business issuer disclosure system. Although a small business issuer is not required to provide the

table of contractual obligations in its MD&A, we encourage small business issuers to identify for investors the relevant financial footnotes that contain information about certain contractual obligations.

VI. Effects on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act¹⁷¹ requires us, when adopting rules under the Exchange Act, to consider the anti-competitive effects. In addition, section 23(a)(2) 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. We have considered the amendments in accordance with the standards in section 23(a)(2).

The amendments require disclosure of information that is essential to an understanding of the ways that a company conducts its business and the potential material risks that the company may face as a result. The amendments also enhance the transparency of financial information that is neither readily apparent, nor easily understood, from a reading of the financial statements alone. The amendments are intended to make information about off-balance sheet arrangements and their impact on a public company's financial condition, changes in financial condition and operating results more understandable to investors. The amendments also will provide an overview of a company's known contractual obligations, which will improve an investors' ability to assess the liquidity and capital resource needs of a company over short- and long-term time periods.

In the Proposing Release, we identified two possible areas where the rules could potentially place a burden on competition. First, the amendments could burden competition to the extent that the disclosure may deter legitimate uses of off-balance sheet arrangements. Second, there is a possibility that a company's competitors could be able to infer proprietary or sensitive information from the company's disclosure about its off-balance sheet arrangements. We requested comment regarding the degree to which the proposed disclosure requirements would create competitively harmful effects upon public companies and how to minimize those effects. Three commenters on the Proposing Release expressed concerns about the sensitivity and potential competitive harm that

could result from the disclosure.¹⁷² The likelihood that competitors could infer proprietary information must be weighed against investors' needs for transparency of financial arrangements and resultant risk exposures. The amendments attempt to mitigate competitive harm by requiring disclosure to the extent necessary for an understanding of a registrant's off-balance sheet arrangements and their financial effects. Seven commenters believed that the proposal to require tabular or textual disclosure of contingent liabilities would cause competitive harm to the extent that such disclosure could negatively influence the outcome of the contingency.¹⁷³ We are not adopting that proposal at this time.

Section 2(b) of the Securities Act¹⁷⁴ and section 3(f) of the Exchange Act¹⁷⁵ require us, when engaging in rulemaking that requires us 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 believe the amendments will promote market efficiency by making information about off-balance sheet arrangements, and their impact on the presentation of the company's financial position, more understandable. In addition, information about payments under known contractual obligations will be aggregated and presented in a single location. As a result, we believe that investors may be able to make more informed investment decisions and capital may be allocated on a more efficient basis.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act.¹⁷⁶ This FRFA relates to amendments to Item 303 of Regulation S-K,¹⁷⁷ Item 303 of Regulation S-B,¹⁷⁸ Item 5 of Form 20-F¹⁷⁹ and General Instruction B of Form 40-F.¹⁸⁰ The amendments require public companies to discuss off-balance sheet arrangements and to provide a table of aggregate contractual obligations as of

¹⁷² See, e.g., the letters of AFP, Boeing and Pfizer.

¹⁷³ See, e.g., the letters of AICPA, Eaton, E&Y, D&T, Intel, Troutman and PwC.

¹⁷⁴ 15 U.S.C. 77b(b).

¹⁷⁵ 15 U.S.C. 78c(f).

¹⁷⁶ 5 U.S.C. 603.

¹⁷⁷ 17 CFR 229.303.

¹⁷⁸ 17 CFR 228.303.

¹⁷⁹ 17 CFR 249.220f.

¹⁸⁰ 17 CFR 249.240f.

¹⁷¹ 15 U.S.C. 78w(a)(2).