

accountant by any entity in the investment company complex and whether the audit committee has considered those non-audit services in evaluating the auditor's independence from the investment company. Since these disclosures exist in some form currently, there should be no significant incremental disclosure burden.

Under the final rules, registrants also will be required to disclose any policies and procedures adopted by an audit committee to be followed for pre-approval of services to be performed by the accounting firm in the event that the audit committee does not expressly pre-approve the particular engagements.<sup>244</sup> In addition, the final rules require registrants to disclose what percentage of fees in each of the categories noted above (audit, audit-related, tax, and other) relate to engagements for which the pre-approval requirement was waived under the *de minimis* exception.<sup>245</sup>

Some companies that file Forms 10-K or 10-KSB are not subject to the proxy disclosure requirements. These companies, therefore, now will be required to present the required disclosures in the Form 10-K or 10-KSB. Foreign private issuers that file Form 20-F and Canadian companies that file Form 40-F generally are not subject to the proxy disclosure requirements and, therefore, will be required to present the required disclosures on Form 20-F or Form 40-F. Some investment companies do not regularly file proxy or information statements. These investment companies will, therefore, now be required to disclose this information in the investment company's annual report on Form N-CSR.

#### *B. Summary of Comment Letters and Revisions to Proposals*

We requested comment on the PRA analysis contained in the proposing release. Two commenters responded generally that they believed the burden estimates seemed unrealistic.<sup>246</sup> However, neither commenter provided supporting data, revised burden hour estimates or other information to support their views. One of these commenters believed that the 25% allocation to outside professionals was unrealistically low.<sup>247</sup> As we have mentioned in many recent releases, we believe that the allocation of 75% of the

burden to internal staff and 25% of the burden to outside professionals accurately reflects current practice for proxy and information statements and annual reports for domestic issuers.<sup>248</sup> In particular, the disclosure requirements regarding principal accountant's fees should involve information that already is readily available to internal staff of the registrant. We have not concluded that our burden hour estimates for purposes of the Paperwork Reduction Act should be changed, although we will continue to monitor registrant response to our burden hour estimates.

In addition, we have made several revisions to the proposals. However, we do not believe these changes will significantly change our previous estimates of the burden on registrants from the amendments.

#### *1. Communication With Audit Committees*

We have made one change to the proposed rules concerning communication with audit committees. We proposed rules that would have required public accounting firms performing the audit for an issuer or investment company to report to the audit committee of the issuer or investment company, prior to the filing of such audit with the Commission, all alternative treatments of financial information within GAAP that have been discussed with management of the issuer or investment company. In response to commenters, the final rules only require reporting of material alternative treatments of financial information within GAAP that have been discussed with management of the issuer or investment company. This change should aid in focusing the reports to audit committees on important matters and not dilute the usefulness with discussion of less important matters. With respect to investment companies, we have added a requirement to disclose all non-audit services provided to the investment company complex that were not pre-approved by the investment company's audit committee. However, we are changing the requirement to discuss these matters from before each filing, which could have been as frequent as

monthly, to annually, with an update, if necessary.

#### *2. Disclosures of Audit and Non-Audit Services*

We have made three minor changes in response to commenters' concerns regarding the rules requiring disclosure of audit and non-audit services. The first change clarifies the audit fee category to specifically include services that normally are provided by the accountant in connection with statutory and regulatory filings. The second change relates to tax fees and specifies that registrants will be required to describe each subcategory of services comprising the fees disclosed under the "tax fees" category, similar to the requirement for the "audit-related fees" category. Finally, the third change relates to the requirement to disclose the percentage of audit fees, audit-related fees, tax fees, and all other fees that were approved by the audit committee. The proposed rule would have required this disclosure for all fees derived from engagements that were: (1) Approved by the issuer's or investment company's audit committee before the accountant was engaged by the issuer or investment company, (2) entered into pursuant to pre-approval policies and procedures established by the audit committee of the issuer or investment company, provided the audit committee was informed of each service, and (3) for which the pre-approval requirement was waived under the *de minimis* exception. The final rules will only require disclosure of the percentage of audit fees, audit-related fees, tax fees, and all other fees for which the pre-approval requirement was waived under the *de minimis* exception.

With respect to investment companies, we have made three changes to the rule. The first change requires the fund to disclose all non-audit fees paid by entities in the investment company complex only to the extent those non-audit services relate to the operations or financial reporting of the investment company. The second change requires investment companies to disclose the aggregate non-audit fees paid to the auditor by any entity in the investment company complex. The third change requires the investment company to disclose if the audit committee has considered whether the provision of non-audit services by the accountant to the investment company complex is compatible with maintaining the accountant's independence.

<sup>244</sup> 17 CFR 210.2-01(c)(7)(A) and (B).

<sup>245</sup> 17 CFR 210.2-01(c)(7)(C).

<sup>246</sup> See, e.g., letter from Deloitte & Touche LLP, dated January 10, 2003; letter from Lynn E. Turner, dated January 13, 2003.

<sup>247</sup> See, e.g., letter from Deloitte & Touche LLP, dated January 10, 2003.

<sup>248</sup> See, e.g., Release No. 33-8098, May 10, 2002, (67 FR 35620); Release No. 33-8106, Jun. 17, 2002, (67 FR 42914); Release No. 33-8124, Aug. 28, 2002, (67 FR 57276); Release No. 33-8128, Sept. 5, 2002, (67 FR 58480); Release No. 33-8138, Oct. 22, 2002, (67 FR 66208); Release No. 33-8144, Nov. 4, 2002, (67 FR 68054); Release No. 34-46778, Nov. 6, 2002, (67 FR 69430); Release No. 33-8154, Dec. 2, 2002, (67 FR 76780); Release No. 33-8160, Dec. 10, 2002, (67 FR 77594); and Release No. 33-8173, Jan. 8, 2003.