

14a–15 and Schedule 14A)” (OMB Control No. 3235–0059);

(2) “Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)”¹⁸² (OMB Control No. 3235–0057);

(3) “Securities Ownership—Regulation 13D and 13G (Commission Rules 13d–1 through 13d–7 and Schedules 13D and 13G)” (OMB Control No. 3235–0145);

(4) “Form 10–K” (OMB Control No. 3235–0063);

(5) “Form 10–KSB” (OMB Control No. 3235–0420);

(6) “Form 10–Q” (OMB Control No. 3235–0070);

(7) “Form 10–QSB” (OMB Control No. 3235–0416);

(8) “Form 8–K” (OMB Control No. 3235–0060);

(9) “Form N–CSR under the Investment Company Act of 1940 and Securities Exchange Act of 1934, Certified Shareholder Report” (OMB Control No. 3235–0570);

(10) “Form N–SAR under the Investment Company Act of 1940, Semi-Annual Report for Registered Investment Companies” (OMB Control No. 3235–0330); and

(11) “Rule 20a–1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents, and Authorizations” (OMB Control No. 3235–0158).

These regulations, rules and forms were adopted pursuant to the Exchange Act and the Investment Company Act and set forth the disclosure requirements for securities ownership reports filed by investors and proxy and information statements,¹⁸³ periodic reports and current reports filed by companies to ensure that investors are informed and can make informed voting or investing decisions. The hours and costs associated with preparing, filing and sending these schedules and forms

constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Summary of Proposed Amendments

The proposed rules would, under certain limited circumstances, require companies to include in their proxy materials security holder nominees for election as director. Specifically, the proposed rules would create a mechanism for nominees of long-term security holders, or groups of long-term security holders, with significant holdings to be included in company proxy materials where security holders are permitted under state law to nominate directors and where evidence suggests that the company has been unresponsive to security holder concerns as they relate to the proxy process. For purposes of the PRA, we estimate the total annual incremental paperwork burden for operating companies, funds and security holders that would be required under our proposed rules to be approximately 1,793 hours of personnel time for operating companies, funds and security holders and a cost of approximately \$409,000 for the services of outside professionals.¹⁸⁴ As discussed further below, these total costs include all additional disclosure burdens associated with the proposed rules including burdens related to the triggering events, notice requirements and direct access itself.¹⁸⁵ Compliance with the proposed requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

1. Applicability of Proposed Exchange Act Rule 14a–11

a. State Law Considerations

The proposed rules would apply only where the company’s security holders are permitted under state law to nominate a candidate or candidates for election as a director. We do not know

the precise number of states that prohibit security holders from nominating a candidate or candidates for election as director or the number of companies that are permitted to and do/ or (would) include a prohibition against nominating a candidate or candidates in their articles of incorporation or bylaws. We request comment and supporting empirical data, for purposes of the PRA, on any existing, applicable state law provisions that would prohibit security holders or security holder groups from nominating a candidate or candidates for election as director.

b. Nomination Procedure Triggering Events

The proposed security holder nomination procedure would become operative for the company only after the occurrence of one or both of the following two nomination procedure triggering events:

- At least one of the company’s nominees for the board of directors for whom the company solicited proxies received “withhold” votes from more than 35% of the votes cast at an annual meeting of security holders held after January 1, 2004, at which directors were elected (provided, that this event may not occur in the case of a contested election to which Exchange Act Rule 14a–12(c) applies or an election to which the proposed security holder nomination procedure in Exchange Act Rule 14a–11 applies); or

- A security holder proposal submitted pursuant to Exchange Act Rule 14a–8 providing that the company become subject to the security holder nomination procedure in proposed Exchange Act Rule 14a–11(a) was submitted for a vote of security holders at an annual meeting of security holders held after January 1, 2004 by a security holder or group of security holders that held more than 1% of the company’s securities entitled to vote on the proposal for one year as of the date the proposal was submitted and provided evidence of such holding to the company; and (b) that “direct access” proposal received more than 50% of the votes cast on that proposal at that meeting.

Exchange Act Schedule 14A prescribes the information that a company must include in its proxy statement to ensure that security holders are provided material information relating to voting decisions. Exchange Act Schedule 14C prescribes the information that a company that is registered under Section 12 of the Exchange Act must include in its information statement in advance of a security holders’ meeting when it is not

¹⁸² Exchange Act Schedule 14C requires disclosure of some items of Exchange Act Schedule 14A. Therefore, while we are not proposing to amend the text of Exchange Act Schedule 14C, the proposed amendments to Exchange Act Schedule 14A must also be reflected in the PRA burdens for Exchange Act Schedule 14C.

¹⁸³ The proxy rules apply only to domestic companies with equity securities registered under Section 12 of the Exchange Act and to investment companies registered under the Investment Company Act. There is a discrepancy between the number of annual reports by reporting companies and the number of proxy and information statements filed with the Commission in any given year. This is because some companies are subject to reporting requirements by virtue of Section 15(d) of the Exchange Act, and therefore are not covered by the proxy rules. In addition, companies that are not listed on a national securities exchange or traded on the Nasdaq Stock Market may not hold annual meetings and therefore would not be required to file a proxy or information statement.

¹⁸⁴ 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 \$100. 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 and security holders (or security holder groups) in preparing these disclosures.

¹⁸⁵ The paperwork burden for funds will be discussed in the footnotes to Sections III.B.1–3., below.