

soliciting proxies from its security holders, including the taking of corporate action by written authorization or consent of security holders. Exchange Act Rule 14a-8 requires the company to include a security holder proposal in its Exchange Act Schedule 14A or 14C unless the security holder has not complied with the procedural requirements in Exchange Act Rule 14a-8 or the proposal falls within one of the 13 substantive bases for exclusion in Exchange Act Rule 14a-8. Investment Company Act Rule 20a-1 requires registered investment companies to comply with Exchange Act Regulation 14A or 14C, as applicable.¹⁸⁶

For purposes of the PRA, we estimate the total annual incremental paperwork burden for operating companies and security holders or security holder groups to prepare the disclosure that would be required under this portion of the proposed rules to be approximately 648 hours of personnel time and a cost of approximately \$64,800 for the services of outside professionals.¹⁸⁷ These burdens and costs include the new disclosure requirement that the company notify security holders that it has received a proposal seeking direct access by a more than 1% security holder who has held the securities for at least one year. They also include the burdens and costs associated with the Exchange Act Rule 14a-8 security holder proposal process, including the security holder or security holder groups' preparation of the security holder proposal, the company's preparation of a no-action request, if applicable, and the company's preparation of the statement of opposition if the proposal is included in the proxy materials.¹⁸⁸ Because

Exchange Act Rule 14a-8 already requires companies to have a process for reviewing security holder proposals, the proposed amendments should not impose new incremental burdens and costs on companies in connection with such reviews or with training personnel.

We believe that the annual incremental PRA burden due to the triggering events is likely to arise from the submission of Exchange Act Rule 14a-8 security holder proposals by holders of 1% or more of a company's securities providing that the company become subject to the security holder nomination procedure in proposed Exchange Act Rule 14a-11. We estimate that the number of such proposals would be 54.¹⁸⁹ We estimate an annual incremental disclosure burden of 1 hour for each company to disclose that it has received a security holder proposal seeking direct access by an over 1% security holder who has held the securities for one year, for a total of 54 hours. We estimate that the annual incremental disclosure burden for the proponent's preparation of the proposal and the Exchange Act Rule 14a-8 no-action process would average 15 hours per proposal, for a total of 810 hours.¹⁹⁰

We do not believe that there would be any increased paperwork burden under this portion of the proposed rules for the triggering event related to company nominees for directors who receive over 35% "withhold" votes.

We estimate that this total burden of 864 hours would result in 648 hours of internal time and \$64,800 of outside costs.

2. Notice Requirements

Proposed Exchange Act Rule 14a-11 would require each company to disclose the following:

- Each company would be required to disclose the security holder vote with regard to any of the nomination procedure triggering events in its quarterly report on Exchange Act Form

proxy materials. Similarly, we recognize that a company is not obligated to provide a statement of opposition.

¹⁸⁹ We estimate that 5% of the total number of security holder proposals received will be direct access proposals. Based on an IRRRC estimate that there will be 1,070 security holder proposals submitted in 2003, this corresponds to 54 proposals.

¹⁹⁰ We estimate an annual incremental disclosure burden of approximately 25 hours for each Exchange Act Rule 14a-8 no-action request that a company makes. The Division of Corporation Finance received 465 Exchange Act Rule 14a-8 proposals in the 2002 proxy season. Based on the statistic provided by IRRRC that 802 security holder proposals were filed in the 2002 proxy season, we estimate that companies will seek no-action relief on 58% of the proposals received 58% of 25 hours would correlate to 15 hours for each security holder proposal that a company receives.

10-Q or 10-QSB for the period in which the matter was submitted to a vote of security holders; where the nomination procedure triggering event occurred during the fourth quarter of the fiscal year, on Exchange Act Form 10-K or 10-KSB; or semi-annually on Investment Company Act Form N-CSR, in the case of a fund;¹⁹¹ and

- Each company would be required to include in that Exchange Act Form 10-Q, 10-QSB, Exchange Act Form 10-K or 10-KSB, or Investment Company Act Form N-CSR, information disclosing that it would be subject to the security holder nomination procedure as a result of such vote, if applicable.

If the company did not hold an annual meeting during the previous year, or if the date of the current year's annual meeting has been changed by more than 30 days from the previous year's annual meeting, the company would be required to disclose the date by which security holders must submit their notice to require that the company include the security holder's nominee on the company's proxy card.

For purposes of the PRA, we estimate the annual incremental paperwork burden for companies to prepare the disclosure that would be required under this portion of the proposed rules to be approximately 86 hours of company personnel time and a cost of approximately \$8,700 for the services of outside professionals.¹⁹² This estimate includes the company's cost to disclose the security holder vote with regard to a security holder proposal seeking direct access,¹⁹³ the company's cost to disclose

¹⁹¹ We are proposing that funds be required to provide disclosure on Form N-CSR regarding each matter submitted to a vote of security holders and to delete as duplicative Item 77C of Form N-SAR, which currently requires similar disclosure. We estimate that 281 matters submitted for a vote of security holders were disclosed on Item 77C of Form N-SAR during the most recent 12 months. We estimate that the removal of Item 77C will decrease the PRA burden for Form N-SAR by 0.5 hours per filing, or 140.5 hours total. This burden of 140.5 hours will be added to Form N-CSR under our proposals, together with the proposed new disclosure regarding the nomination procedure triggering events.

¹⁹² For funds, we estimate that 14 funds will be required to provide disclosure on Form N-CSR regarding a direct access security holder proposal each year, which we estimate would average approximately 0.5 burden hours, for a total of 7 hours. We estimate that 14 funds will need to disclose on Form N-CSR that they are subject to the security holder nomination procedure, which we estimate would average approximately 1 burden hour, for 14 hours total. Hence, the total burden would be 21 hours (7 hours + 14 hours), corresponding to 16 hours of fund personnel time and \$1,500 for the services of outside professionals. This burden would be added to the PRA burden of Form N-CSR.

¹⁹³ Item 4 of Part II of Exchange Act Forms 10-Q and 10-QSB and Item 4 of Part I of Exchange Act

¹⁸⁶ The annual responses to Investment Company Act Rule 20a-1 reflect the number of proxy and information statements that are filed by funds.

¹⁸⁷ For funds, we estimate that 14 Exchange Act Rule 14a-8 security holder proposals seeking direct access will be submitted by holders of 1% or more of a fund's securities each year. We estimate that the incremental disclosure burden will be 1 hour for each fund to disclose on Exchange Act Schedule 14A that it has received a direct access security holder proposal by a more than 1% security holder who has held the securities for at least one year, for a total of 14 hours. We estimate that the annual incremental disclosure burden for the proponent's preparation of the proposal and the Exchange Act Rule 14a-8 no-action process would average 15 hours per proposal, for a total of 210 hours (14 proposals × 15 hours). Hence, the total burden would be 224 hours (14 hours + 210 hours), corresponding to 168 hours of personnel time and \$16,800 of costs for services of outside professionals. This burden would be added to the PRA burden of Rule 20a-1.

¹⁸⁸ We recognize that a company that receives a security holder proposal has no obligation to make a no-action request under Exchange Act Rule 14a-8 unless it intends to exclude the proposal from its