

that it would be subject to the security holder nomination procedure, if applicable, and the company's cost to disclose the date of the annual meeting if the company did not hold an annual meeting during the prior year or if the date of the meeting changed by more than one year. This estimate includes the time and the cost of preparing disclosure that has been appropriately reviewed by executive officers, the disclosure committee, in-house counsel, outside counsel, and members of the board of directors.

As noted above, we estimate that 54 companies would receive a direct access security holder proposal, which we estimate would average approximately 0.5 hours burden hours, for a total of 27 hours. We estimate that 73 companies would need to disclose that they are subject to the security holder nomination procedure, which we estimate would average approximately 1 burden hour, for 73 hours annually.¹⁹⁴ We estimate that 3 of these 73 companies would need to file the Exchange Act Form 8-K because the company did not hold an annual meeting during the prior year or the date of the annual meeting has changed more than 30 days from the prior year.¹⁹⁵ We estimate 5 burden hours to prepare, review and file the Exchange Act Form 8-K, for a total of 15 hours.

This total burden of 115 hours corresponds to 86 hours of internal time and \$8,700 in outside costs.

3. Exchange Act Rule 14a-11 Nomination Procedure

To be eligible to submit a nomination in accordance with proposed Exchange Act Rule 14a-11, a security holder or group of security holders would be required to:

- Beneficially own, either individually or in the aggregate, more than 5% of the company's securities

Forms 10-K and 10-KSB currently require that companies disclose the results of the voting on all matters submitted to a vote of security holders during the period covered by the report. Because security holders would be allowed to submit a direct access proposal under Exchange Act Rule 14a-8 as a result of the proposed rules, there would be an annual incremental disclosure burden to disclose the vote on this proposal.

¹⁹⁴ Our best estimate is that 11% of U.S. exchange-traded companies have director withhold votes of more than 35%, which corresponds to approximately 57 companies. We combine this estimate with our estimate that 30% of companies will receive direct access proposals from holders of more than 1% of the companies' securities that will pass, which corresponds to 16 proposals.

¹⁹⁵ Based on a review of 1,255 companies' annual meeting dates, we estimate that 375% of companies' annual meeting dates changed by more than 30 days from the prior year. 3.75% of 73 companies would correspond to roughly 3 companies that would be required to file a Form 8-K. Source: IRRC.

that are eligible to vote for the election of directors at the next annual meeting of security holders (or, in lieu of such an annual meeting, a special meeting of security holders), with each of the securities used for purposes of calculating that ownership having been held continuously for at least two years as of the date of the nomination and intend to continue to own those securities through the date of that annual or special meeting;

- Be eligible, as to the security holder or each member of the security holder group, to report beneficial ownership on Exchange Act Schedule 13G and have filed an Exchange Act Schedule 13G or an amendment to Exchange Act Schedule 13G reporting their beneficial ownership as a passive or institutional investor (or group), which Schedule must include a certification that the security holder or security holder group has held more than 5% of the subject securities for at least two years;¹⁹⁶ and

- Provide notice to the company of its intent to require that the company include that security holder's nominee(s) on the company's proxy card and make certain representations and provide information about the candidate or candidates.

Unless the company determines that it is not required to include a nominee from a nominating security holder or nominating security holder group in its proxy materials, the company would be required to include information regarding the security holder nominee in the company's proxy statement. In addition, if the company chooses to include statements supporting company nominees and/or opposing the nominating security holder's nominees, nominating security holders would be afforded the same opportunity. If the company determines that it is not required to include a nominee in its proxy materials, it must provide notice of its determination.

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 668 hours of personnel time and a cost of approximately \$282,600 for the services of outside professionals.¹⁹⁷

¹⁹⁶ A nominating security holder or security holder group of a mutual fund would be required to file information reporting the security holder or security holder group's beneficial ownership as part of the security holder's notice to the fund, pursuant to proposed Exchange Act Rule 14a-11(c)(11).

¹⁹⁷ For funds, we estimate that the proposed access rule would be triggered in 14 funds each year, and in 9 of these funds at least one security

This estimate includes the security holder or security holder group's preparation of the nominating security holder or nominating security holder group's notice to the company of its intent to require that the company include that security holder's nominee on the company's proxy card; the security holder or security holder group's preparation and filing of an Exchange Act Schedule 13G and the related certification; and the security holder or security holder group's preparation of a statement of support for its candidate or candidates and/or opposition to the company's nominees, if applicable. This estimate also includes the company's preparation and review of the information to be included in the proxy materials if a nominee is to be included in the proxy materials, and the company's preparation and review of its statement of opposition to the security holder's nominee, if applicable. If the company determines that the security holder's nominee can be excluded from the proxy materials, this annual incremental burden also includes the company's preparation of the notice as to why the nominee is not eligible.

We estimate that the proposed access rule would be triggered in 73 companies, and in 45 of these companies at least one security holder or security holder group would make a nomination.¹⁹⁸ Further, we estimate that, in companies where a nomination is made, an average of 2 security holders

holder or security holder group will make a nomination. Further, we estimate that, in funds where a nomination is made, an average of 2 security holders or groups will submit a nomination. We estimate that the disclosure burden for each of these 18 security holders or groups to provide notice of its intent to require that the fund include the security holder's nominee on the fund's proxy card would be approximately 4 hours, for a total of 72 hours. We also estimate that the disclosure burden for these 18 security holders or groups to review and file an Exchange Act Schedule 13G (in the case of a closed-end fund) or the portion of the notice to the fund requiring disclosure of beneficial ownership similar to Exchange Act Schedule 13G (in the case of a mutual fund) and the accompanying certification would be approximately 12 hours, for a total of 216 hours. This burden would be added to the PRA burden of Rule 20a-1.

¹⁹⁸ Based on data on the size of institutional shareholdings, we estimate that approximately 50% of companies that receive over 35% of withhold votes for one of their nominees would have an individual security holder or security holder group with 5% of the shares outstanding that would be able to make a nomination. This would correspond to 29 companies. We estimate that all of the companies that receive a direct access proposal that passes will have an individual security holder or security holder group with 5% of the shares outstanding since security holders who submit an access proposal would likely do so only if they are confident that a group will make a nomination. This would correspond to 16 companies.