

For purposes of the PRA, we estimate that the highest hourly burden for the company and the security holder to disclose the required information would be 43.5 if the nomination procedure is triggered, notice by the company that the nomination procedure is triggered is provided, notice that the upcoming annual meeting has changed by more than 30 days is provided, notice by the security holder or security holder group that it is seeking to use the procedure is provided, an Exchange Act Schedule 13G is filed and is provided, the company determines to include the proposal and the company provides a statement opposing the security holder nominee or nominees and/or supporting the company nominees, and the security holder also provides such a statement. This translates to a cost of \$2,300, as a monetization of burden, to be carried by the company internally and a cost of \$5,100 to be paid by a third party. A cost of \$7,400 per small entity may not constitute a significant economic impact. That conclusion is based on our analysis of 1,245 small entities available on the Compustat database. We found that the average revenue of those small entities is \$2.07 million per company. Therefore, among larger "small entities," the estimated \$7,400 compliance expense would constitute approximately 0.003% of a small entity's revenues. If small entities are impacted, there may be a greater impact on smaller "small entities."

We encourage written comments regarding this analysis. We solicit comments as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact. We also note that we are considering as an additional element of the proposed rule, and seek comment on, whether proposed Exchange Act Rule 14a-11 should apply only to those companies that are subject to the accelerated deadlines for filing Exchange Act periodic reports, and investment companies registered under Section 8 of the Investment Company Act.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or completely duplicate the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any

significant adverse impact on small entities. In connection with the proposed amendments, we considered the following amendments:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. The clarification, consolidation or simplification of disclosure for small entities; and
3. An exemption for small entities from coverage under the proposals.

The Commission has considered a variety of reforms to achieve its regulatory objectives. As one possible approach, we considered requiring companies to include the security holder's proxy card in the company mailing. Alternatively, we considered amending Exchange Act Rule 14a-8(i)(8)²³⁷ to allow security holder proposals requesting access to the corporation's proxy card for the purpose of making nominations. We also have included a specific request for comment regarding whether only those operating companies that fall within the definition of "accelerated filer" in Exchange Act Rule 12b-2 should be subject to the security holder nomination procedure. We believe that the current proposals are the most cost-effective initial approach to address specific concerns related to small entities, as small entities may be less likely to be impacted by proposed Exchange Act Rule 14a-11 because of their limited receipt of security holder proposals and their ownership makeup.

In addition, an exemption or separate requirements for small entities may not address issues of corporate accountability and security holder rights that may affect small entities as much as they would affect large companies. Accordingly, it may be more appropriate to allow for the nomination procedure at small entities, where there has been evidence indicating ineffectiveness in the proxy process. The establishment of any differing compliance or reporting requirements or timetables or any exemptions for small business issuers may not be in keeping with the objectives of the proposed rules.

H. Solicitation of Comment

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entities that may be affected by the proposals; (ii) the

²³⁷ Exchange Act Rule 14a-8(i)(8) permits a company to exclude a security holder proposal from its proxy statement if the proposal "relates to an election for membership on the company's board of directors or analogous governing body."

existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and (iii) how to quantify the impact of the proposed rules. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, or, in the alternative, a certification under Section 605(b) of the Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,²³⁸ a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on: (a) The potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

VIII. Statutory Basis and Text of Proposed Amendments

The amendments are proposed pursuant to Sections 3(b), 10, 13, 14, 15, 16, 23(a) and 36 of the Securities Exchange Act of 1934, as amended, and Sections 10, 20(a) and 38 of the Investment Company Act of 1940, as amended.

List of Subjects

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

²³⁸ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).