

proposing an additional amendment to Exchange Act Rules 13a-11(b) and 15d-11(b) that would subject registered investment companies to Form 8-K filing requirements for the purpose of meeting any filing obligations that arise under proposed section 205.3(e).

We solicit comments on all aspects of this proposal and the effects it would have on issuers and the benefits it would provide to investors. We ask the following additional questions: (1) Is Form 8-K the appropriate form to use for this type of disclosure or should the Commission adopt a new form exclusively for such reports; (2) should issuers be permitted to make such reports in their periodic filings, such as Form 10-Q⁴⁵ or Form 10-K;⁴⁶ (3) is two business days the appropriate amount of time in which to require issuers to make the filing? What other amount of time might be more appropriate and what factors should we consider in determining the right amount of time under this rule? Should the time calculation use calendar days or U.S. business days; (4) should we exclude registered investment companies from proposed requirements to disclose under section 205.3(e)? If so, what would be the rationale for the exclusion? If we exclude registered investment companies, should we require them to meet their filing obligations under proposed § 205.3(e) in some other manner, *e.g.*, by filing a new form specifically for registered investment companies, Form N-CSR,⁴⁷ or some other means? With regard to the proposed Form 8-K filing requirement, we request public comment on the applicability of this requirement to registered investment companies, as well as feasible alternatives that would reduce the reporting burdens on registered investment companies. In addition, we request comment on the utility to investors of the reports to the Commission in relation to the costs to registered investment companies and their affiliated persons of providing those reports.

2. Proposed Amendments to Forms 20-F and 40-F for Foreign Private Issuers

With the globalization of the U.S. capital markets, there has been a marked increase in the number of companies from non-U.S. jurisdictions registering securities with the Commission. At present, there are over 1,300 foreign

private issuers⁴⁸ from 59 countries that are filing reports with the Commission under the Exchange Act, as compared with approximately 400 issuers from less than 30 countries in 1990. The Commission realizes that the application of Section 307 and the rules we are proposing under Part 205 to foreign law firms, multijurisdictional law firms, foreign lawyers employed by those law firms and foreign registrants, raises a number of significant and difficult issues. We are requesting comment on a broad range of questions in this area, including whether foreign law firms and foreign lawyers should be exempt from Part 205.

Foreign private issuers that are subject to the periodic reporting requirements under the Exchange Act generally are not required to file current reports on Form 8-K.⁴⁹ Rather, many of the disclosures required of foreign private issuers are made on either Form 20-F or Form 40-F (in the case of some Canadian issuers), which are integrated forms used both as registration statements for purposes of registering securities of qualified foreign private issuers under Section 12 of the Exchange Act⁵⁰ or as annual reports under Section 13(a)⁵¹ or 15(d)⁵² of the Exchange Act.

Our rules pertaining to attorney conduct apply to attorneys for foreign private issuers, and we believe that foreign private issuers should have the same reporting duties as those proposed for domestic issuers in the alternative proposed section 205.3(e). Accordingly, we propose to require foreign private issuers to file a report on either Form 20-F or 40-F, as applicable, in order to make these disclosures. The proposal to amend these forms is designed to respond to comments we received from foreign attorneys and regulators stating that the original proposed “noisy withdrawal” requirement may conflict with foreign standards of attorney conduct. The proposed amendments to these forms would require an issuer to report to the Commission an attorney’s written notice of withdrawal or failure to receive an appropriate response. The foreign private issuer would be required to make the disclosure by filing the form within two business days of the attorney’s written notice. The proposed amendments provide that a filing for this purpose may consist only of the facing page of the form, the information

required under the appropriate item of the form, and a signature page; issuers would not be required to file a complete Form 20-F or 40-F each time they made a disclosure of an attorney’s written notice.⁵³

We solicit comments on all aspects of this proposal and the effects it would have on foreign private issuers and the benefits it would provide to investors. Furthermore, we ask the following additional questions: (1) Is it appropriate to require a filing on Form 20-F or 40-F in order to meet these new disclosure requirements, or should we require that this disclosure be made on some other form? Would it be more appropriate to require that this disclosure be made on Form 6-K?⁵⁴ Should the Commission create a separate disclosure form (similar to Form 8-K) for these reports by foreign private issuers; (2) will there be any additional consequences to requiring that this disclosure be made on Form 20-F or 40-F; (3) would this type of mandatory disclosure requirement impose undue burdens on foreign companies that have chosen to register their securities in the United States? What might those burdens be? Would it discourage foreign companies from registering their securities in the United States? If so, would a broad exception for foreign companies disadvantage U.S. companies? Would such an exception lead U.S. companies to relocate offshore; (4) is two business days the appropriate amount of time to allow foreign private issuers to make the required filing? What other amount of time might be more appropriate and what factors should we consider in determining the right amount of time under this rule? Should the time calculation use calendar days or U.S. business days? Would it be sufficient to require foreign private issuers to report this information on an annual basis in their annual reports on Form 20-F or 40-F; (5) should we allow any exceptions for certain foreign private issuers to this new proposed rule in light of the differing regulatory regimes for foreign attorneys and foreign private issuers? Which foreign private issuers would need such an exception and when should it be granted? How would

⁵³ Similarly, the report would not need to be certified by the issuer’s principal executive officer or principal financial officer under Exchange Act Rules 13a-14 and 15d-14 [17 CFR 240.13a-14 and 240.15d-14].

⁵⁴ 17 CFR 249.30b. *See generally* Release No. 33-8106, “Proposed Rule: Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date”, for a discussion of the types of information reported on Form 6-K and for our solicitation of comment as to whether the requirements of that form should be otherwise modified.

beneficiaries from engaging in transactions involving issuer equity securities held in their plan accounts.

⁴⁵ 17 CFR 308a.

⁴⁶ 17 CFR 310.

⁴⁷ 17 CFR 249.331 and 17 CFR 274.128.

⁴⁸ The term “foreign private issuer” is defined in Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)].

⁴⁹ *See* Exchange Act Rules 13a-11(b) and 15d-11(b) [17 CFR 240.13a-11(b) and 240.15d-11(b)].

⁵⁰ 15 U.S.C. 78l.

⁵¹ 15 U.S.C. 78m(a).

⁵² 15 U.S.C. 78o(d).