

any exceptions we might grant affect the benefits to investors that would otherwise accrue from the application of this rule to foreign private issuers; (6) would the disclosure requirements of proposed paragraph (e) effect a waiver of the attorney-client privilege by a foreign private issuer or present other special problems for foreign private issuers under applicable foreign law?

IV. General Request for Comments

The Commission requests comments on the rules and amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

V. Paperwork Reduction Act

The proposed rules and form amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").⁵⁵ We are submitting the proposed rules and form amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.⁵⁶ The title for the proposed collection of information with respect to the proposed amended Rule 205.3 is "Notifications Under Part 205." The titles for the collections of information with respect to the proposed form amendments are "Form 20-F" (OMB Control No. 3235-0288), "Form 40-F" (OMB Control No. 3235-0381) and "Form 8-K" (OMB Control No. 3235-0060).

The Commission has adopted rules to impose an up-the-ladder reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee or agent of the issuer. The information collections in the proposed amendments to the rules are necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the proposed rule. Specifically, the collections of information are intended to ensure that in the rare cases in which issuers do not act appropriately after being informed of possible violations, the information would be communicated to the public and the Commission, so that the Commission could take appropriate action. The collection of information is, therefore, an important component of the Commission's program to discourage

violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

The respondents to the proposed collections of information would be lawyers, issuers, and officers, directors and committees of issuers. We cannot estimate with precision how many attorneys will be subject to the "noisy withdrawal" requirements, if adopted. There are approximately 18,200 issuers that may employ or retain attorneys that would be subject to the rule.⁵⁷ These issuers may employ in-house attorneys, outside counsel, or a combination of both. We believe, however, that it will be the rare occasion when, as a last resort, a disclosure will be made to the Commission. In the vast majority of cases, we expect that problems will be resolved at the corporate level, and the Commission will not be notified. We therefore estimate for the purposes of the PRA that approximately 10 attorneys, CLOs, CEOs, or QLCCs will make one disclosure to the Commission per year. Depending on the circumstances, the disclosure could consist of a notice of withdrawal (and, in some cases, a similar notice to the issuer and a CLO's notice to successor attorneys), a notice of material violations, a notice of discharge, a notice of disaffirmation, a disaffirmation, or some combination thereof. The burden hours for the disclosure will obviously vary depending on the circumstances. We believe that none of the components of the disclosure, however, would require a significant amount of time to compile. We therefore estimate, for purposes of the PRA, that on average, each disclosure would require 10 burden hours. Under these assumptions, this aspect of the collection of information would impose approximately 100 annual burden hours. Assuming half the burden hours will be incurred by outside counsel at a rate of \$300 per hour, the total cost would be \$15,000.

Lawyers under the alternative proposal would not be required to report out, but they would be required, if they do not receive an appropriate response to a report of a material violation, to notify the issuer in writing that their withdrawal is based on

professional considerations or that they believe that the issuer has not provided an appropriate response in a reasonable time period to their report. In addition, in the cases where a lawyer provides notice to an issuer, the CLO will be required to notify the successor attorney of the predecessor lawyer's withdrawal. For purposes of the PRA, we estimate that 10 lawyers or CLOs will make such written notifications each year and that each notification will require one hour. Proposed § 205.3(f) permits, but does not require, a withdrawing attorney to notify the Commission if the issuer does not comply with proposed § 205.3(e). For purposes of the PRA, we estimate that five lawyers will make a voluntary submission under § 205.3(f) and that each report would impose a burden of 10 hours.

We therefore estimate that this collection of information will have a total annual burden of 100 hours if the "noisy withdrawal" proposal is adopted and a total annual burden of 60 hours if the alternative proposal is adopted.

As we stated above, we estimate that there are approximately 18,200 issuers that would be subject to the proposed rule. We cannot estimate with precision how many issuers will be subject to the alternative rule's requirements or, if adopted, how frequently they will be required to notify the Commission that their attorney has notified them that they withdrew or that they did not receive an appropriate response to a report of a material violation. Under those circumstances, the issuer must file a form with the Commission. We estimate for the purposes of the PRA that approximately eight U.S. issuers, one Canadian issuer and one foreign private issuer per year will make one disclosure to the Commission. We estimate, for purposes of the PRA, that on average, each disclosure would require five burden hours. Under these assumptions, this aspect of the collection of information would impose approximately 40 annual burden hours to file Form 8-K, five hours to file Form 40-F and five hours to file Form 20-F. We assume that 25% of the burden hours for issuers that file on Form 8-K, and 75% of the burden hours for issuers that file on Form 20-F or 40-F, will be incurred by outside counsel at a rate of \$300 per hour.⁵⁸ Using these assumptions, we estimate this aspect of these collections of information would result in a cost of \$5,250.

⁵⁷ This estimate is based, in part, on the total number of operating companies that filed annual reports on Form 10-K (8,484), Form 10-KSB (3,820), Form 20-F (1,194) or Form 40-F (134) during the 2001 fiscal year, and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (100). In addition, we estimate that approximately 4,500 investment companies currently file periodic reports on Form N-SAR.

⁵⁸ This allocation of the burden is consistent with our recent PRA submissions for Exchange Act Reports. See, e.g., Release No. 33-8098 (May 10, 2002) [67 FR 35620].

⁵⁵ 44 U.S.C. 3501 *et seq.*

⁵⁶ 44 U.S.C. 3507(d) and 5 CFR 1320.11.