

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to reduce the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collections of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, with reference to File No. S7-45-02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-45-02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning its review of the collections of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collections of information unless it displays a currently valid control number. Compliance with the collections of information requirements is, as described above, in some cases mandatory and in some cases voluntary depending upon the circumstances. There is no mandatory record retention period. Responses to the requirements to make disclosures to the Commission will not be kept confidential.

## VI. Costs and Benefits

We are proposing amendments to section 205.3 and Forms 8-K, 20-F and 40-F to more fully implement Section 307 of the Sarbanes-Oxley Act and recently adopted Part 205. Part 205

affects all attorneys who appear and practice before the Commission in the representation of an issuer and who become aware of evidence of a material violation of the federal securities laws, a material breach of fiduciary duty, or a similar material violation by the issuer or an officer, director, agent or employee of the issuer that has occurred, is ongoing, or is about to occur. We are sensitive to the costs and benefits of our proposal. We discuss these costs and benefits below.

Part 205 imposes an up-the-ladder reporting requirement for attorneys representing an issuer before the Commission who become aware of potential misconduct of which a reasonably prudent investor in the issuer would want to be informed. It is expected that, in the vast majority of instances of such reports, the situation will be addressed and remedied before it causes significant harm to investors. Where the potential impropriety is ongoing and not taken care of internally following a report mandated by the rule, we are proposing an alternative means of providing notice to the Commission and the public. Previously, we have proposed that the attorney, if retained by the issuer, effectuate a "noisy withdrawal" from representation of the issuer and disaffirm to the Commission any tainted documents, which will alert the Commission to investigate the issuer. In this release we are proposing that the attorney would have to inform the issuer and the issuer would be required to inform the Commission.

### A. Benefits

Many commenters on our original proposal noted that a "noisy withdrawal" may violate the attorney-client privilege, chill the zealous advocacy of lawyers and create an incentive for issuers not to seek legal advice on certain matters. Our alternative therefore allows the attorney to withdraw without notifying the Commission. Instead, the issuer must report the attorney's withdrawal to the Commission in a public filing. Thus, the Commission and the public obtain the benefit of the information of the attorney's withdrawal (at least when the issuer acts properly) where a violation of the law is likely, the lawyer may preserve the attorney-client privilege and the issuer has the opportunity to remedy the situation before disclosure is required. In addition, attorneys licensed in foreign jurisdictions would not be required to violate applicable professional obligations. These benefits are difficult to quantify. Interested persons are invited to comment upon this benefits analysis. Are there other

foreseeable benefits? What is the likely economic impact of these benefits? Can the benefits be quantified in any meaningful way? If so, how, and what conclusions should be drawn?

### B. Costs

The proposed form amendments will impose costs on issuers. Issuers would be subject to the additional cost of preparing and filing a brief report to the Commission on Forms 8-K, 20-F or 40-F, as applicable. This may require the issuer to report its own potentially illegal act to the Commission (although an issuer accused of wrongdoing may be less likely to report itself than the withdrawing attorney may be). Investors may treat the news that an attorney has resigned as proof of wrongdoing before any formal proceedings are brought. The issuer's cost of capital may increase. Unlike the "noisy withdrawal" proposal, this proposal would not require the attorney to disaffirm any corporate filings that he or she participated in drafting, which would provide clearer information about what the withdrawal signifies.

Issuers that receive notice that their lawyers have withdrawn for professional considerations will be required to file a Form 8-K (or comparable forms by foreign private issuers). For purposes of the PRA, we estimated that ten issuers will file such a report each year and that each form will impose a burden of five hours. Using estimates derived from our Paperwork Reduction Analysis, we estimate that the incremental impact of our proposals will result in a total cost of \$8,825.<sup>59</sup> In addition, the withdrawing lawyer will be required to notify the issuer and may notify the Commission. For purposes of the PRA, we estimated that lawyers will make ten such required notifications and five such permissive notifications a year, for a combined burden of 60 hours. Assuming a cost of \$300 an hour, this paperwork burden imposes a cost of \$18,000.

Interested persons are invited to comment upon this costs analysis. Are there other foreseeable costs? What is the likely economic impact of these costs? Can the costs be quantified in any meaningful way? If so, how, and what conclusions should be drawn? Interested persons are invited to address

<sup>59</sup> For purposes of the Paperwork Reduction Act, we estimate that the proposals would result in 32.5 burden hours and \$5,250 in external costs. Assuming a cost of \$110/hour for in-house professional staff, the total cost of the burden would be \$8,825. The \$110/hour estimate is derived from *The SIA Report on Management and Professional Earnings for the Securities Industry* (Oct. 2001).