

reporting requirements that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the reporting requirements for small entities; (c) an exemption from coverage of the requirements, or any part thereof, for small entities; and (d) the use of performance rather than design standards.

The Act does not contain any exemption or other limitation for small entities. We believe that utilizing different reporting or other compliance requirements for small entities would seriously undermine the effective functioning of the proposed reporting regime. The proposed rule is designed to help restore investor confidence in the reliability of the financial statements of the companies they invest in—if small entities were not subject to such requirements, investors might decline to invest in their securities. Further, we see no valid justification for imposing different standards of conduct upon small law firms than would apply to others who choose to appear and practice before the Commission. We also believe that the proposed reporting and recordkeeping requirements will be at least as well understood by small entities as would be any alternate formulation we might propose to apply to them. Therefore, it does not seem necessary or appropriate to develop separate requirements for small entities. We nevertheless solicit comment on whether small entities should be subject to different requirements.

H. Solicitation of Comments

Interested persons are invited to comment upon any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments concerning: (1) The number of law practices that constitute small entities; (2) the number of small entities that may be affected by proposed section 205.3; (3) the existence or nature of the potential impact of the proposed rule on small entities; and (4) how to quantify the impact of the proposed revisions. 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, if the proposed rule is adopted, and will be placed in the same public file as comments on the proposed rule itself.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of

1996 (“SBREFA”),⁶⁵ we must advise the OMB as to whether the proposed rule constitutes a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results or is likely to result in an annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease); a major increase in costs or prices for consumers or individual industries; or significant adverse effects on competition, investment, or innovation. Where a rule is “major,” its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Statutory Basis and Text of Proposed Amendments to Parts 205, 240 and 249

The proposals contained in this document are being proposed under the authority in Sections 3, 307, and 404 of the Sarbanes-Oxley Act of 2002,⁶⁶ Sections 7, 10 and 19 of the Securities Act of 1933,⁶⁷ Sections 3(b), 4C, 12, 13, 15 and 23 of the Securities Exchange Act of 1934,⁶⁸ Sections 30, 38 and 39 of the Investment Company Act of 1940,⁶⁹ and Section 211 of the Investment Advisers Act of 1940.⁷⁰

List of Subjects

17 CFR Part 205

Standards of conduct for attorneys.

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations to read as follows:

PART 205—STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS APPEARING AND PRACTICING BEFORE THE COMMISSION IN THE REPRESENTATION OF AN ISSUER

1. The authority citation for Part 205 continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–3, 78w, 80a–37, 80a–38, 80b–11, 7202, 7245, and 7262.

⁶⁵ Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

⁶⁶ 15 U.S.C. 7202, 7245, 7262.

⁶⁷ 15 U.S.C. 77g, 77j and 77s.

⁶⁸ 15 U.S.C. 78c(b), 78d–3, 78l, 78m, 78o and 78w.

⁶⁹ 15 U.S.C. 80a–29, 80a–37, 80a–38.

⁷⁰ 15 U.S.C. 80b–11.

2. Amend § 205.3 by:

- a. Redesignating paragraph (d) as paragraph (g); and
- b. Adding new paragraphs (d), (e) and (f).

The additions read as follows:

§ 205.3 Issuer as client.

* * * * *

(d) *Actions required where there is no appropriate response within a reasonable time.*

(1) Where an attorney who has reported evidence of a material violation under paragraph (b) of this section rather than paragraph (c) of this section:

(i) Does not receive an appropriate response, or has not received a response in a reasonable time,

(ii) Has followed the procedures set forth in paragraph (b)(3) of this section, and

(iii) Reasonably concludes that there is substantial evidence of a material violation that is ongoing or is about to occur and is likely to cause substantial injury to the financial interest or property of the issuer or of investors:

(A) An attorney retained by the issuer shall withdraw from representing the issuer, and shall notify the issuer, in writing, that the withdrawal is based on professional considerations.

(B) An attorney employed by the issuer shall cease forthwith any participation or assistance in any matter concerning the violation and shall notify the issuer, in writing, that he or she believes that the issuer has not provided an appropriate response in a reasonable time to his or her report of evidence of a material violation under paragraph (b) of this section.

(2) An attorney shall not be required to take any action pursuant to paragraph (d)(1) of this section if the attorney would be prohibited from doing so by order or rule of any court, administrative body or other authority with jurisdiction over the attorney, after having sought leave to withdraw from representation or to cease participation or assistance in a matter. An attorney shall give notice to the issuer that, but for such prohibition, he or she would have taken such action pursuant to this paragraph (d)(1) or (d)(2), and such notice shall be deemed the equivalent of such action for purposes of this part.

(3) An attorney employed or retained by an issuer who has reported evidence of a material violation under this part and reasonably believes that he or she has been discharged for so doing shall notify the issuer's chief legal officer (or the equivalent thereof) forthwith.

(4) The issuer's chief legal officer (or the equivalent thereof) shall notify any attorney retained or employed to replace