

amendment may foster enhanced liquidity to the marketplace thereby benefiting investors, as issuers will be a source of buying power during this time. We believe investors should be further benefited by limiting the expanded timing condition to highly liquid issuers thereby minimizing the impact of repurchases by less liquid issuers near the close of trading.

The adopted amendments also reflect our view that a uniform pricing condition should benefit brokers and dealers who effect repurchases for several issuers by making the price condition easier to apply to several issuers on a given day. Next, the adopted amendments make certain riskless principal transactions eligible for the safe harbor, benefiting issuers and broker-dealers who wish to execute Rule 10b-18 repurchases in this manner. We believe that this amendment should similarly allow the markets to establish a security's price based on independent market forces without undue issuer influence, because the open market leg of the transaction must meet the conditions of Rule 10b-18.

We anticipate that the amendment to include block purchases in calculating the 25% ADTV should simplify an issuer's volume calculation because block purchases would no longer need to be subtracted. We also expect that the adopted amendments providing an alternative volume limit of one block per week should benefit small issuers who believed that a complete elimination of the block exception would make the safe harbor entirely unavailable to them. We anticipate that the one block per week limitation should place a reasonable limit on this activity while providing liquidity to investors. Moreover, the inclusion of block purchases in the 25% volume limitation will establish a reasonable limit on the amount of repurchasing activity that is safe harbor protected, which, in turn, prevents issuers from dominating the market for their common stock. Share prices that are established by independent market forces rather than an issuer's substantial repurchasing activity will promote investor confidence and market integrity. Next, we believe that the adopted amendment to the volume condition following a market-wide trading suspension should benefit issuers by increasing their Rule 10b-18 repurchasing flexibility. This adopted amendment should also benefit investors and the marketplace by providing enhanced liquidity. Moreover, the increased liquidity may reduce issuers' transaction costs.

Lastly, we expect that the adopted amendments concerning after-hours repurchases should benefit issuers by providing a longer time period throughout the day in which to effect Rule 10b-18 repurchases. We expect that this may provide additional liquidity for investors effecting after-hours transactions. Further, the adopted modification to the one broker or dealer condition for after-hours sessions should also provide additional Rule 10b-18 flexibility to issuers.

2. Costs

Rule 10b-18 is an optional safe harbor rather than a prescriptive rule. As such, issuers are not required to comply with its conditions. Thus, any costs related to complying with the safe harbor and the adopted amendments are assumed voluntarily. We assume that issuers will rely on Rule 10b-18 only if the anticipated benefits from doing so exceed any anticipated costs. We believe that the adopted Rule 10b-18 amendments should impose negligible costs, if any, on issuers, and should not compromise investor protection. As an aid in evaluating costs and reductions in costs, the Proposing Release sought comments concerning the public's views as well as any supporting information. Specifically, we requested comment as to whether the proposed amendments would impose greater costs on issuers than the current Rule. We received few comments regarding costs and those that we did receive concerned the treatment of blocks and mergers.

The adopted amendments with respect to block purchases allow issuers to choose to purchase one block per week in lieu of the 25% ADTV limit. Rather than a complete elimination of the block exclusion, the amended volume condition allows issuers to elect between purchasing one block per week or purchasing within the 25% ADTV limit. We anticipate that large issuers will continue to rely on the 25% volume limitation as their liquidity levels will enable them to effect repurchases in an amount that equates with their needs without dominating the market for their common stock. We understand that some issuers of less liquid common stock may not have a sufficient ADTV to purchase even one 5,000-share block within the safe harbor using the 25% limit. We anticipate that these issuers will rely on the one block per week exception. We further expect that this exception should mitigate the concerns of small issuers that the inability to purchase any blocks within the safe harbor would increase costs. In light of the comments we solicited in the Proposing Release, we expect that

certain issuers will choose this block purchase alternative and we anticipate that this may reduce costs, as blocks may be less costly for issuers to acquire. Next, we anticipate that including block purchases in the ADTV calculation should reduce costs associated with the calculation because it will reduce the burden of, and the potential error associated with, subtracting block purchases.

Additionally, the adopted amendments concerning the merger exclusion will permit for some post merger announcement repurchases to be eligible for the safe harbor. The Commission did not adopt a blanket prohibition with respect to safe harbor repurchasing post-merger announcement. Some commenters believed that such an amendment would reduce liquidity, and affect capital allocation strategies, among other things. Instead, the adopted amendments allow for certain post merger announcement repurchases while excluding those where there is a heightened incentive to manipulate. For example, certain repurchases that reflect an issuer's repurchases during the three-month period prior to a merger announcement are safe harbor eligible, subject to the 25% ADTV limit. We expect that the allowance for certain safe harbor repurchasing post merger announcement should mitigate any adverse effect on issuer costs.

B. Costs and Benefits of the Adopted Disclosure Amendments

1. Benefits

The amendments to Regulations S-K and S-B and Forms 10-K, 10-KSB, 10-Q, 10-OSB, 20-F and N-CSR will provide several important benefits to investors and the securities markets as a whole. The new repurchase disclosure requirement may prevent undetected manipulation by deterring repurchase program announcements by issuers that do not intend to effect repurchases but would benefit from a post announcement increase in the price of their common stock. The disclosure requirement will increase market transparency by providing investors with information that otherwise has not been readily available. Issuers use their discretion in deciding whether and when to effect repurchases. Moreover, issuers may not repurchase all, or even any, of the shares they are authorized to repurchase. Before adoption of these rules, investors and market participants have not had ready access to information that would help them determine the amount of repurchasing effected by a registrant in any given time