

period. This disclosure will provide more complete information to investors to assist them in better assessing an issuer, its activities, and its stock price.

The amendments also will provide a uniform disclosure system concerning repurchases. This system should benefit investors and other market participants by providing repurchasing information in a consistent format and in a timely manner. The amendments will also provide investors with useful information concerning the manner in which a company makes repurchases (e.g., through open market purchases, tender offers, in satisfaction of a company's obligations upon exercise of outstanding put options, or other transactions).

Furthermore, the amendments will shed light on currently undisclosed repurchases. Before adoption of these requirements, only certain repurchasing activity had to be disclosed, such as repurchases from company insiders and certain repurchases by closed-end funds. The final rules require comprehensive repurchasing disclosure. For example, the amendments require disclosure of currently undisclosed activity, such as an issuer repurchasing its stock from put option holders who exercised options issued by the company.

Additionally, the disclosure will provide investors and the marketplace with signaling information. An issuer's repurchases may signal information to investors such as an issuer's belief that its stock is undervalued. In the same way, the disclosure could signal information about market trends.

Finally, the disclosure requirement will also provide information about an issuer's use of capital. When registering an offering, an issuer may state various uses of the offering proceeds, including repurchasing. The new periodic disclosure will provide follow-up information to such a registration statement disclosure. It is also a valuable way to confirm whether any of the offering proceeds were used for repurchases. All of these benefits will increase market efficiency.

## 2. Costs

The final rules require issuers to disclose, with respect to their repurchases, the total number of shares (or units) repurchased, the average price per share, the number of shares (or units) that were repurchased pursuant to a publicly announced plan or program and the maximum number (or approximate dollar value) of shares (or units) that may yet be repurchased under the plans or programs. The final rules will increase costs for all reporting

companies that make repurchases. However, these costs may be mitigated somewhat for many issuers that currently collect and publish repurchase information concerning the number of shares repurchased, the total dollar amount paid for the repurchases or the average price paid per share, and/or the number of shares or dollar amount available for repurchase under a particular repurchase program.<sup>122</sup> Although we are not changing our one hour burden estimate reflected in the Proposing Release, we also have slightly reduced the reporting burden by eliminating two proposed disclosure requirements: (1) that issuers disclose the identity of the broker used to effect the disclosed repurchases; and (2) that issuers identify in a footnote to the table each plan or program that the issuer has not purchased under during the period covered by the table and whether the issuer still intends to purchase under that plan or program.<sup>123</sup>

We estimate that it will take an issuer an average of approximately one hour per annual, semi-annual, or quarterly filing to prepare the required disclosure. The estimated cost per registrant of providing this disclosure per filing on Forms 10-Q, 10-QSB, 10-K, 10-KSB and N-CSR is \$169.<sup>124</sup> The estimated cost per issuer of providing this disclosure per filing on Form 20-F is

<sup>122</sup> See for example, *CGS Systems International, Inc. Reports First Quarter 2002 Results*, PR Newswire (April 29, 2002) (publishing the number of shares repurchased, the average price paid per share, and the remaining number of shares available for repurchase under the repurchase program); *Republic Services, Inc. Reports First Quarter Earnings Per Shares of \$0.32*, PR Newswire (April 29, 2002) (publishing the number of shares repurchased, the total dollar amount paid for the repurchases, and the dollar amount remaining under the repurchase program); *Quotesmith.com 1Q Loss 14 Cents a Share*, Dow Jones News Service (April 29, 2002) (publishing the number of shares repurchased and the average price paid per share); *Gartner Reports Profitability Improvement for Fourth Consecutive Quarter*, Business Wire (April 24, 2002) (publishing the number of shares repurchased and the average price paid per share); *Datascope Third Quarter Results*, PR Newswire (April 24, 2002) (publishing the number of shares repurchased and the total dollar amount paid); and *DST Systems, Inc. Announces First Quarter 2002 Financial Results*, PR Newswire (April 24, 2002) (publishing the number of shares repurchased, the average price paid per share, as well as the fact that the repurchasing was done through a private transaction).

<sup>123</sup> In lieu of this disclosure, the final rules require the registrant to disclose each plan or program under which the issuer does not intend to make further purchases.

<sup>124</sup> This calculation is based on an estimate of ¾ burden hour of internal staff time and ¼ burden hour of third-party time and a cost of \$125.00 per hour for internal staff and \$300 per hour for services provided by third parties. The hourly cost estimate is based on consultations with several issuers and law firms and other persons who regularly assist issuers in preparing and filing periodic reports with the Commission.

\$256.<sup>125</sup> The estimated total annual cost of providing this disclosure for all issuers is \$879,870.

## IX. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act<sup>126</sup> and Section 2(c) of the Investment Company Act<sup>127</sup> require us, when engaging in rulemaking and where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act<sup>128</sup> requires the Commission in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rules it adopts under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the Proposing Release, we solicited comment on the proposals' effects on efficiency, competition, and capital formation. Additionally we requested, but did not receive, comments regarding the impact of the proposed amendments on the economy generally pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>129</sup>

We have considered the proposed amendments to Rule 10b-18 in light of the standards of Section 23(a)(2) of the Exchange Act and believe the adopted amendments should not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. With one exception noted below, the amended safe harbor will apply equally to all issuers. Further, Rule 10b-18 is not the exclusive means by which issuers may effect purchases of their common stock. An issuer can purchase its common stock outside the safe harbor without raising a presumption of manipulation. The one area in which issuers may be treated differently is the adopted timing condition amendment. This amendment

<sup>125</sup> This calculation is based on an estimate of ¾ burden hour of third-party time and ¼ burden hour of internal staff time and a cost of \$125.00 per hour for internal staff and \$300 per hour for services provided by third parties. The hourly cost estimate is based on consultations with several issuers and law firms and other persons who regularly assist issuers in preparing and filing periodic reports with the Commission.

<sup>126</sup> 15 U.S.C. 78c(f).

<sup>127</sup> 15 U.S.C. 80a-2(c).

<sup>128</sup> 15 U.S.C. 78w(a)(2).

<sup>129</sup> Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996).