

IRFA of the Proposing Release, we estimated that approximately 3 issuers that conducted repurchases in 2000 had assets of less than \$5 million. Presently we estimate that approximately 4 issuers, other than investment companies, that conducted repurchases in 2002 had assets of less than \$5 million.¹³³ We estimate that approximately 7 closed-end funds are small entities that conducted repurchases in 2002. We sought comment on the number of issuers engaged in repurchases of their stock that are small entities. We also sought comment regarding the number of issuers that would make the proposed disclosures following open market and privately negotiated purchases each quarter and the number of those issuers that are small entities. No commenters responded with the requested data.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Rule 10b-18 adopted amendments will not impose any new reporting, record keeping, or other compliance requirements. The amendments to Regulations S-K, S-B, Forms 10-K, 10-KSB, 10-Q, 10-QSB, 20-F and N-CSR add a new disclosure item for issuer purchases of equity securities. As stated in Section X. C above, approximately 11 issuers who conducted repurchase programs in 2002 were small entities. We believe no additional skills beyond those currently possessed by issuers (and broker-dealers) will be necessary to prepare the forms in accordance with the adopted disclosure amendments or to comply with the adopted Rule 10b-18 amendments.

E. Agency Action To Minimize the Effect on Small Entities

As required by the Regulatory Flexibility Act, we have considered alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or

timetables that take into account the resources available to small entities;

- The clarification, consolidation, or simplification of filing or posting requirements;
- The use of performance rather than design standards; and
- An exemption from coverage of the amendments, or any part of them, for small entities.

With respect to the adopted Rule 10b-18 amendments, we believe that the establishment of different requirements for small entities, other than the timing amendment, is neither necessary nor practicable, because the safe harbor amendments provide a voluntary safe harbor. The adopted timing amendment allows issuers of more liquid securities to remain in the market effecting Rule 10b-18 repurchases for 20 minutes more per day than issuers of less actively traded securities. We did not believe it is appropriate to provide safe harbor eligibility near the close of trading for less liquid securities as such activity potentially could affect the closing price of security through undue issuer influence. Such activity could diminish investor confidence that common stock prices are set by independent market forces and erode market integrity.

The Rule 10b-18 amendments should not adversely affect small entities because they do not impose any new reporting, record keeping or compliance requirements. Therefore, it is not feasible to further clarify, consolidate or simplify the safe harbor for small entities. Further, it does not seem necessary to develop separate requirements for small entities with respect to the adopted amendments to Regulations S-K, S-B, Forms 10-K, 10-KSB, 10-Q, 10-QSB, 20-F and N-CSR, because we think all issuers, including issuers that are small entities, already have this information readily available or would not meet objectives.

XI. Statutory Basis and Text of Adopted Amendments

The Rule amendments are being adopted pursuant to Sections 2, 3, 9(a)(6), 10(b), 12, 13(e), 15, 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c), 78o(d) and 78w(a), and Sections

8, 23, 24(a), 30, 31, and 38 of the Investment Company Act, 15 U.S.C. 80a-8, 80a-23, 80a-24(a), 80a-29, 80a-30, and 80a-37.

List of Subjects

17 CFR Part 228

Reporting and record keeping requirements, Securities, Small businesses.

17 CFR Parts 229 and 249

Reporting and record keeping requirements, Securities.

17 CFR Part 240

Brokers, Dealers, Issuers, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and record keeping requirements, Securities.

■ For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The general authority citation for part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

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■ 2. Section 228.703 is added to read as follows:

§ 228.703 (Item 703) Purchases of equity securities by the small business issuer and affiliated purchasers.

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the small business issuer or any "affiliated purchaser," as defined in § 240.10b-18(a)(3) of this chapter, of shares or other units of any class of the small business issuer's equity securities that is registered by the small business issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 781).

¹³³ The source of this data is Compustat.