

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, 249, 270 and 274

[Release Nos. 33-8340; 34-48825; IC-26262; File No. S7-14-03]

RIN 3235-AI90

Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting new disclosure requirements and amendments to existing disclosure requirements to enhance the transparency of the operations of boards of directors. Specifically, we are adopting enhancements to existing disclosure requirements regarding the operations of board nominating committees and a new disclosure requirement concerning the means, if any, by which security holders may communicate with directors. These rules require disclosure but do not mandate any particular action by a company or its board of directors; rather, the new disclosure requirements are intended to make more transparent to security holders the operation of the boards of directors of the companies in which they invest.

DATES: *Effective Date:* January 1, 2004.

Compliance Dates: Registrants must comply with these disclosure requirements in proxy or information statements that are first sent or given to security holders on or after January 1, 2004, and in Forms 10-Q, 10-QSB, 10-K, 10-KSB, and N-CSR for the first reporting period ending after January 1, 2004. Registrants may comply voluntarily with these disclosure requirements before the compliance date.

Comments: Comments regarding the "collection of information" requirements, within the meaning of the Paperwork Reduction Act of 1995, of Regulations S-B and S-K, and Forms 10-Q, 10-QSB, 10-K, 10-KSB, and N-CSR should be received by January 1, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method—U.S. mail or electronic mail—only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW.,

Washington, DC 20549-0609.

Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-14-03. This number should be included in the subject line if sent via electronic mail. Electronically submitted comment letters will be posted on the Commission's Internet Web site (<http://www.sec.gov>). We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT:

Lillian C. Brown, at (202) 942-2920, Andrew Thorpe, at (202) 942-2910, or Andrew Brady, at (202) 942-2900, in the Division of Corporation Finance, or with respect to investment companies, Christian L. Broadbent, at (202) 942-0721, in the Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Item 401¹ of Regulation S-B² and Item 401³ of Regulation S-K⁴ under the Securities Act of 1933,⁵ Items 7 and 22 of Schedule 14A⁶ under the Securities Exchange Act of 1934,⁷ Rule 30a-2⁸ under the Investment Company Act of 1940,⁹ Forms 10-Q¹⁰ and 10-QSB¹¹ under the Exchange Act, and Form N-CSR¹² under the Exchange Act and the Investment Company Act. Although we are not adopting amendments to Schedule 14C¹³ under the Exchange Act, the amendments will affect the disclosure provided in Schedule 14C, as Schedule 14C requires disclosure of some items of Schedule 14A. Similarly, although we are not adopting amendments to Forms 10-K¹⁴ and 10-KSB¹⁵ under the Exchange Act, the amendments to Item 401 of Regulations S-B and S-K will affect the disclosure under Forms 10-K and 10-KSB, as those forms require disclosure of the

information required by Item 401 of Regulations S-K and S-B.

I. Background

On August 8, 2003, we proposed new disclosure standards intended to increase the transparency of nominating committee functions and the processes by which security holders may communicate with boards of directors of the companies in which they invest.¹⁶ The disclosure standards that we adopt today are, in most respects, those proposed on August 8, 2003. Overall, most commenters supported new disclosure standards relating to nominating committee functions and security holder communications with directors;¹⁷ however, as noted below, we received a number of comments and suggestions with regard to specific components of the proposed disclosure standards.¹⁸ We have revised some elements of the proposed disclosure standards in response to these comments and suggestions.

The requirements we proposed on August 8, 2003,¹⁹ and are adopting today, follow in many respects the recommendations made by the Division of Corporation Finance in a report provided to the Commission on July 15, 2003.²⁰ This report resulted from our April 14, 2003 directive to the Division to review the proxy rules relating to the election of corporate directors.²¹ In preparing the report and developing its recommendations, the Division considered the input of members of the investing, business, legal, and academic communities.²² The majority of these

¹⁶ See Release No. 34-48301 (August 8, 2003) [68 FR 48724]. Comments received in response to the proposals, as well as a summary of these comments ("Summary of Comments") may be found in File No. S7-14-03 and on our Web site at <http://www.sec.gov>.

¹⁷ See Summary of Comments—File No. S7-14-03.

¹⁸ See *id.*

¹⁹ See Release No. 34-48301 (August 8, 2003).

²⁰ The Division also recommended that we propose amendments to the proxy rules regarding the inclusion in company proxy materials of security holder nominees for election as directors. Our proposals regarding this issue were included in a separate release. See Release No. 34-48626 (October 14, 2003) [68 FR 60784]. As such, this adopting release does not address that issue directly. The Division's Staff Report to the Commission, detailing the results of its review of the proxy process related to the nomination and election of directors, can be found on our Web site at <http://www.sec.gov>. Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Division of Corporation Finance (July 15, 2003).

²¹ See Press Release No. 2003-46 (April 14, 2003).

²² On May 1, 2003, we solicited public views on the Division's review of the proxy rules relating to the nomination and election of directors. See Release No. 34-47778 (May 1, 2003) [68 FR 24530]. In addition to receiving written comments, the

¹ 17 CFR 228.401.

² 17 CFR 228.10 *et seq.*

³ 17 CFR 229.401.

⁴ 17 CFR 229.10 *et seq.*

⁵ 15 U.S.C. 77a *et seq.*

⁶ 17 CFR 240.14a-101.

⁷ 15 U.S.C. 78a *et seq.*

⁸ 17 CFR 270.30a-2.

⁹ 15 U.S.C. 80a-1 *et seq.*

¹⁰ 17 CFR 249.308a.

¹¹ 17 CFR 249.308b.

¹² 17 CFR 249.331 and 17 CFR 274.128.

¹³ 17 CFR 240.14c-101.

¹⁴ 17 CFR 249.310.

¹⁵ 17 CFR 249.310b.