

the members of an investment company's nominating committee are "interested persons" of the company as defined in section 2(a)(19) of the Investment Company Act,<sup>131</sup> rather than independent under the listing standards of a national securities exchange or national securities association, as in the case of operating companies.<sup>132</sup> We are requiring disclosure with respect to the section 2(a)(19) test for investment companies because that test is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to "independence" in the case of investment companies. Commenters generally supported the use of this test for independence in the case of investment companies.<sup>133</sup> Similarly, with respect to the instruction that states that in describing a company's process for determining which communications will be relayed to board members, collecting and organizing security holder communications need not be disclosed provided that the company's process is approved by a majority of the independent directors, we are specifying in the case of investment companies that the approval required is of a majority of the directors who are not "interested persons" under section 2(a)(19).<sup>134</sup>

As with operating companies, investment companies will be required to state which one or more of certain categories of persons or entities recommended each nominee who is approved by the nominating committee for inclusion on the company's proxy card.<sup>135</sup> However, in recognition of the fact that investment companies are generally externally managed by an investment adviser, the categories will include the following: security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter. With respect to the disclosure requirement regarding nominees recommended by large, long-term security holders, we are adopting an instruction clarifying that, for a registered investment company, the percentage of securities held by a recommending security holder may be determined by reference to the

company's most recent report on Form N-CSR.<sup>136</sup>

Finally, as with operating companies, we are requiring a registered investment company to provide disclosure regarding material changes to the procedures for security holder nominations of directors. This information will be provided in Form N-CSR.<sup>137</sup>

### III. Paperwork Reduction Act

#### A. Background

The amendments to Exchange Act Schedule 14A contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>138</sup> We published a notice requesting comment on the collection of information requirements in the proposing release, and we submitted these requirements to the Office of Management and Budget for review in accordance with the PRA.<sup>139</sup> The titles for the collections of information are:

- (1) "Proxy Statements—Regulation 14A (Commission Rules 14a-1 through 14a-15 and Schedule 14A)" (OMB Control No. 3235-0059);
- (2) "Information Statements—Regulation 14C (Commission Rules 14c-1 through 14c-7 and Schedule 14C)"<sup>140</sup> (OMB Control No. 3235-0057);
- (3) "Rule 20a-1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents and Authorizations" (OMB Control No. 3235-0158);<sup>141</sup>
- (4) "Form 10-K" (OMB Control No. 3235-0063);
- (5) "Form 10-KSB" (OMB Control No. 3235-0420);
- (6) "Form 10-Q" (OMB Control No. 3235-0070);

<sup>136</sup> See Instruction 1 to new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A. In the case of business development companies, which are not required to file reports on Form N-CSR, the percentage of securities would be determined by reference to the company's reports on Exchange Act Forms 10-K and 10-Q.

<sup>137</sup> See new Item 9 of Form N-CSR. We are renumbering current Items 9 and 10 as Items 10 and 11, and are adopting a conforming change to Rule 30a-2 under the Investment Company Act to reflect the renumbering of Item 10. Because business development companies file reports on Forms 10-K and 10-Q rather than Form N-CSR, they would provide the required disclosure on these forms.

<sup>138</sup> 44 U.S.C. 3501 *et seq.*

<sup>139</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

<sup>140</sup> Exchange Act Schedule 14C requires disclosure of some items of Exchange Act Schedule 14A. Therefore, while we are not amending the text of Exchange Act Schedule 14C, the amendments to Exchange Act Schedule 14A must also be reflected in the PRA burdens for Exchange Act Schedule 14C.

<sup>141</sup> Investment Company Act Rule 20a-1 requires registered investment companies to comply with Exchange Act Regulation 14A or 14C, as applicable. Therefore, the annual responses to Investment Company Act Rule 20a-1 reflect the number of proxy and information statements that are filed by registered investment companies.

(7) "Form 10-QSB" (OMB Control No. 3235-0416);

(8) "Regulation S-K" (OMB Control No. 3235-0071);

(9) "Regulation S-B" (OMB Control No. 3235-0417); and

(10) "Form N-CSR" (OMB Control No. 3235-0570).<sup>142</sup>

These regulations, forms and schedules were adopted pursuant to the Securities Act, Exchange Act and Investment Company Act and set forth the disclosure requirements for annual and quarterly reports and proxy and information statements filed by companies to ensure that investors are informed.<sup>143</sup> The hours and costs associated with preparing, filing, and sending these forms and schedules constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

#### B. Summary of Amendments

Under the amendments, we are expanding the disclosure that currently is required in company proxy or information statements regarding the activities of a company's nominating committee. The new disclosure requirements also will require disclosure in proxy or information statements regarding the policies and procedures regarding security holder communications with boards of directors. We are adopting new requirements for disclosure of company policies with regard to board members' attendance at annual meetings and the number of board members who attended the prior year's annual meeting, as well as disclosure in periodic reports of any material changes to company procedures for security holder nominations. Compliance with the disclosure requirements will be mandatory. There will be no mandatory

<sup>142</sup> The changes to the collections of information entitled "Regulation S-B" and "Regulation S-K" are reflected in our estimates for Forms 10-Q, 10-QSB, 10-K and 10-KSB. Therefore, we are not changing the burden estimates for those titles.

<sup>143</sup> The proxy rules apply to domestic companies with equity securities registered under section 12 of the Exchange Act and to investment companies registered under the Investment Company Act. There is a discrepancy between the number of annual reports by reporting companies and the number of proxy and information statements filed with the Commission in any given year. This is because some companies are subject to reporting requirements by virtue of section 15(d) of the Exchange Act [15 U.S.C. 78o], and therefore are not covered by the proxy rules. In addition, companies that are not listed on a national securities exchange or the Nasdaq Stock Market may not hold annual meetings and therefore would not be required to file a proxy or information statement.

<sup>131</sup> 15 U.S.C. 80a-2(a)(19).

<sup>132</sup> New Paragraph (b)(14)(ii) of Item 22 of Exchange Act Schedule 14A.

<sup>133</sup> See, e.g., ABA; ICI.

<sup>134</sup> See the Instruction to new Paragraph (h)(2)(ii) of Item 7 of Exchange Act Schedule 14A.

<sup>135</sup> See new Paragraph (d)(2)(ii)(f) of Item 7 of Exchange Act Schedule 14A.