

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 retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

### C. Responses to Request for Comments

We requested comment on the PRA analysis contained in the proposing release. While we received only two comment letters specifically addressing our PRA analysis, we received several comment letters responding to the proposals in general.<sup>144</sup> Although we are adopting the disclosure amendments substantially as proposed, we have made some additions and subtractions to the disclosure requirements in the final rules that will have the net effect of reducing the amount of required disclosures. In response to comments, we are adding a requirement for companies to provide updates in periodic reports regarding material changes to the procedures for security holder nominations. We also are adding a requirement for companies to describe in proxy and information statements their policies regarding director attendance at annual meetings and the number of directors who attended the prior year's annual meeting. After considering the comments, we are not adopting certain of the proposed disclosure requirements. For example, the amendments will not require companies to describe:

- The material terms of their nominating committee charters;
- Any specific standards for the overall structure and composition of the board of directors;
- The specific reasons for the nominating committee's determination not to include a security holder candidate as a nominee; and
- Any material action taken by the board of directors as a result of communications from security holders.

The majority of commenters did not comment on the hours and cost burdens

for companies that will result from the amendments; however, we received two comment letters that specifically addressed the paperwork burdens in the proposing release.<sup>145</sup> One commenter noted that given the number of unlisted companies, it is difficult to estimate the compliance burden.<sup>146</sup> One commenter believed that the proposing release underestimated the disclosure burden for the proposed rules, and that the burden could be as high as 12 hours for the first year and 4 hours for following years.<sup>147</sup>

The actual paperwork burden for some companies could be 5 hours per schedule; however, in devising the estimates we considered a number of factors. For example, large companies may incur a greater paperwork burden than small companies, the pre-existing disclosure requirements may enable companies to streamline the collection of information necessary for the new disclosure, and the amendments contain more simplified disclosure requirements from the proposals, which will lower the paperwork burden. After considering these factors, we do not believe that 5 hours per schedule is an accurate burden estimate. However, after considering the comments indicating that we may have underestimated slightly the burden, we are not reducing our burden estimates for proxy and information statements, even though the amendments will reduce the amount of disclosure from that which would have been required by the proposals.

### D. Paperwork Burden Estimates

As a result of the changes described above, the reporting and cost burden estimates for the collections of information have changed. While we are not changing the paperwork burden estimates for proxy and information statements, we are adding collection of information requirements in periodic reports under the Exchange Act.

#### 1. Proxy and Information Statements

For purposes of the PRA, we estimated the annual incremental

paperwork burden for proxy and information statements under the new disclosure requirements to be approximately 19,557 hours of company personnel time and a cost of approximately \$1,955,700 for the services of outside professionals.<sup>148</sup> That estimate included the time and the cost of preparing disclosure that has been appropriately reviewed by executive officers, the disclosure committee, in-house counsel, outside counsel, and members of the board of directors.<sup>149</sup> Because the current rules already require a company to collect and disclose information about the composition, functions, policies and procedures of its nominating committee, we factored the pre-existing burdens into our estimates for the new disclosure requirements.

We derived the paperwork burden estimates by estimating the total amount of time it will take a company to prepare and review the disclosure. We estimated that, over a three-year time period, the annual incremental disclosure burden will be an average of 3 hours per schedule. This estimate was based on two assumptions:

- Companies spend a greater amount of time preparing the disclosure in year one and will become more efficient in preparing the disclosure over the following two years;<sup>150</sup> and
- Not all proxy and information statements involve action to be taken with respect to the election of directors, and therefore will not require companies to provide the disclosure.<sup>151</sup>

This estimate represents the average burden for all companies, both large and small, that are subject to the proxy rules. We expect that the disclosure burden could be greater for larger companies and lower for smaller companies. Table 1, below, illustrates the incremental annual compliance burden of the collection of information in hours and in cost for proxy and information statements under the Exchange Act and Investment Company Act.

<sup>144</sup> See discussion of comments in Part II of this release and Summary of Comments—S7–14–03.

<sup>145</sup> See ABA; Stoecklein Law Group ("Stoecklein").

<sup>146</sup> See ABA.

<sup>147</sup> See Stoecklein. Using those numbers as inputs into our model, the annual incremental disclosure burden over a three-year time period would be an average of 5 hours per schedule. Accordingly, using the commenter's assumptions, the annual incremental paperwork burden for all companies to prepare the disclosure would be approximately 32,595 hours of company personnel time and a cost of approximately \$3,259,500 for the services of outside professionals.

<sup>148</sup> For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number.

<sup>149</sup> In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of \$300 as the cost of outside professionals that assist companies in preparing these disclosures.

<sup>150</sup> We estimated that it will take 6 hours to prepare the disclosure in year one, 3.13 hours in year two, and 2.03 hours in year three.

<sup>151</sup> We estimate that 20% of all proxy and information statements do not include disclosure about directors, and therefore would not include the disclosure required by the amendments. This

estimate is based on the proportion of preliminary proxy statements to definitive proxy statements filed in our 2002 fiscal year (2,555/8,692=29%), which has been adjusted downward by 9% to reflect the fact that some preliminary proxy statements contain disclosure about directors. This estimate is based on the rationale that preliminary proxy statements are less likely to contain disclosure about directors because registrants do not file preliminary proxy statements for security holder meetings where the matters to be acted upon involve only the election of directors or other specified matters. See Exchange Act Rule 14a–6 [17 CFR 240.14a–6].