

preparing this report and developing its recommendations, the Division considered the input of members of the investing, business, legal, and academic communities.¹⁵⁷

The Commission is adopting the amendments substantially as proposed. The disclosures are designed to build upon existing disclosure requirements to elicit a more detailed discussion of the policies, procedures, and activities of nominating committees as well as the means by which security holders can communicate with boards of directors. We recognize that the amendments will create costs and benefits to the economy. We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of the amendments.

B. Benefits

The primary benefit of the amendments will be to assist security holders in better understanding the policies and procedures that companies maintain to nominate directors and to enable security holders to communicate with directors. In the proposing release, we requested comment on the potential benefits of the proposed rules and have considered the responses. Two commenters in support of the proposals indicated that the rules would provide useful information with little cost.¹⁵⁸ Other commenters believed that the proposed rules would provide little or no benefit.¹⁵⁹ Commenters also suggested that the proposed rules would not provide meaningful disclosure¹⁶⁰ or that the disclosure would be boilerplate.¹⁶¹

To address the commenters' concerns, the amendments are drafted in a manner

designed to avoid boilerplate and to elicit meaningful disclosure. The more precise disclosure requirements will promote more transparent disclosure among a cross-section of public companies because they will have greater certainty as to the required disclosure. In addition, increasing the amount and quality of information available to investors concerning board policies and procedures also may improve investor confidence because investors may be able to identify the degree to which companies are responsive to security holder concerns. One commenter noted that the proposed disclosure would provide potential investors and potential directors with the ability to compare companies before they choose to invest or agree to be considered for directorship.¹⁶² By providing greater transparency of board policies, we anticipate that the new requirements will allow investors to make more informed choices when deciding how to invest.

To the extent that security holders would prefer to invest in companies with boards that maintain policies and procedures that provide greater security holder oversight, companies may have incentives to adopt more meaningful policies and procedures regarding director nominations and security holder communications. The amendments also may encourage companies to consider their existing policies in relation to policies adopted by other companies and could facilitate competition among companies to adopt policies that reduce costs to security holders. For example, if security holder board nominees are given adequate consideration through the nomination process, a security holder may choose to submit its candidate to the nominating committee rather than incur the expense of soliciting proxies to support the nominee. Moreover, disclosure of the manner in which security holders can send communications to the board may encourage a less costly communications process for providing recommendations to the board than the current process embodied in Exchange Act Rule 14a-8.

C. Costs

The amendments will impose new disclosure requirements on companies subject to the proxy rules.¹⁶³ The new requirements are designed to build upon existing disclosure requirements regarding the composition, functions,

policies, and procedures of company nominating committees. Thus, the task of complying with the new disclosure requirements could be performed by the same person or group of persons responsible for compliance under the current rules. One commenter believed that the costs would be different on a company-by-company basis and that the disclosure requirements would not result in substantial additional costs for companies that already disclose and have a security holder communications process.¹⁶⁴ For companies that do not have a system in place, the commenter believed that the proposal would burden company resources by requiring a person to administer the communications system.¹⁶⁵ One commenter believed that both the cost of submitting candidates to the nominating committee and the probable benefits are minimal.¹⁶⁶ This commenter noted that, even if a nominating committee were composed entirely of independent directors, it would not likely nominate a candidate recommended by security holders.¹⁶⁷

For purposes of the PRA, we estimate the annual incremental paperwork burden for all companies to prepare the new disclosure to be approximately 20,868 hours of company personnel time (2.4 hours per company),¹⁶⁸ which translates into an estimated cost of \$1,774,000 (\$204 per company).¹⁶⁹ We also estimate a cost of approximately \$2,086,700 for the services of outside professionals (\$240 per company).¹⁷⁰ The figures above include the estimated burdens for investment companies. For investment companies, we estimate the incremental burden to be 2,548 hours of company personnel time (2.4 hours per company),¹⁷¹ which translates into an estimated cost of \$216,580 (\$204 per company). We also estimate a cost for investment companies of approximately \$255,050 for the services of outside professionals (\$240 per company).¹⁷²

¹⁶⁴ See ABA.

¹⁶⁵ See *id.*

¹⁶⁶ See Robert C. Pozen.

¹⁶⁷ See *id.*

¹⁶⁸ 20,868 hours/ 8,692 companies = 2.4 hours per company.

¹⁶⁹ We estimate the average hourly cost of in-house personnel to be \$85. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (October 2001).

¹⁷⁰ \$2,086,700/8,692 companies = \$240 per company. 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.

¹⁷¹ 2,548 hours/1,058 companies = 2.4 hours per company.

¹⁷² \$255,050/1,058 companies = \$240 per company.

the nomination and election of directors, can be found on our Web site at <http://www.sec.gov>.

¹⁵⁷ On May 1, 2003, the Commission 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). In addition to receiving written comments, the Division spoke with a number of interested parties representing security holders, the business community, and the legal community. Each of the comment letters received, memoranda documenting the Division's meetings, and a summary of the comments are included on the Commission's Web site, <http://www.sec.gov>, in comment file number S7-10-03. Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules (July 15, 2003).

¹⁵⁸ See AFL-CIO; IBT.

¹⁵⁹ See, e.g., CCS1; Eliot Cohen; Phillip Goldstein, Opportunity Partners L.P., Kimball & Winthrop, Inc. ("Goldstein"); James McRitchie, Editor, CorpGov.net and PERSWatch.net, Letter dated August 17, 2003 ("McRitchie1").

¹⁶⁰ See, e.g., J. Robert Brown, Jr., Professor, University of Denver College of Law ("Brown"); BRT; CCS1; Goldstein; Stoecklein.

¹⁶¹ See, e.g., ACB; Brown; Granary; Letter B; McRitchie1; Nappier; Stoecklein; Valero.

¹⁶² See Eleanor Bloxham, President, The Value Alliance and Corporate Governance Alliance.

¹⁶³ 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.