

On balance, we believe these estimates are reasonable.

To the extent that the new disclosures influence corporate behavior, however, the costs would extend beyond a disclosure burden. For example, companies may incur additional costs in instituting more responsive policies and procedures regarding director nominations and security holder communications. We have not included these costs in our analysis of the additional disclosure requirement, but have sought comment regarding such costs and related matters. After considering the comments, which are summarized below, we continue to believe that the amendments provide useful information to investors. The amendments do not require a company to adopt any particular policies and procedures. To the extent that a company voluntarily incurs the expense of adopting more responsive board policies, we believe that those costs are justified by the benefits of such policies.

In response to our request for comment, one commenter noted that the initial cost of implementing and maintaining procedures would be high.¹⁷³ This commenter identified the indirect cost of the increase in the amount of time that must be spent monitoring corporate activities, which may detract from effective management of the company.¹⁷⁴ The commenter identified costs such as legal fees associated with structuring and reviewing policies, the cost of management time related to structuring policies, fees paid to accountants for managerial and financial statement creation and review, opportunity costs related to missed business opportunities, and other costs.¹⁷⁵

One commenter believed that the rules could be "extremely costly, time-consuming and potentially disruptive."¹⁷⁶ This commenter explained that the rules could increase significantly the number of communications that are sent to board members and the more corporate directors must divide their time, the less effectively they will discharge their competing functions.¹⁷⁷ Two commenters believed that the disclosure requirements would increase the burden on boards and discourage service.¹⁷⁸

D. Small Business Issuers

Although the new rules apply to small business issuers, we do not anticipate any disproportionate impact on small business issuers. Like other issuers, small business issuers should incur relatively minor compliance costs to fulfill their disclosure obligations, and should find it unnecessary to hire extra personnel. Several commenters supported requiring small companies to provide the disclosure.¹⁷⁹

Other commenters recommended granting outright relief to small businesses or deferring application of the rules to small businesses until the Commission evaluates the impact of the rules.¹⁸⁰ One commenter suggested that small companies that have established procedures could comply voluntarily.¹⁸¹ These commenters sought relief for small businesses for several reasons. One commenter recommended that we not apply the rules to small businesses because it will "waste the money of small publicly held companies, create confusion * * * and provide no useful service to security holders."¹⁸² This commenter noted that there does not appear to be a significant number of instances where major security holders of small publicly held companies were unable to communicate with boards of directors, particularly because major security holders are in management and/or on the board.¹⁸³ Further, this commenter was of the view that, because major unaffiliated security holders potentially can impact the trading price of small business securities, management and the board "take the views of major unaffiliated security holders very seriously."¹⁸⁴ This commenter also noted that the board and security holders will not agree on every aspect of running the company and it is not clear why small businesses need to set up a procedure for every communication with security holders.¹⁸⁵

One commenter noted that increasing the incremental cost to small businesses by a certain number of hours and assuming that the staff is available already is flawed.¹⁸⁶ One commenter believed that the benefits of increased disclosure would not outweigh a small business issuer's need to reduce

expenses.¹⁸⁷ This commenter noted that, as regulatory requirements increase, small businesses will have to hire additional staff or reduce the number of hours spent managing the company.¹⁸⁸

After reviewing these comments, we are convinced that issues relating to corporate accountability and security holder rights affect small companies as much as they affect large companies. The concerns raised by the commenters addressed primarily the cost of establishing and maintaining new board policies and procedures—not the cost of the disclosure required by the amendments. A small business issuer is not required to adopt new policies and procedures under the amendments. Thus, we do not believe that applying the rules to small business issuers would be inconsistent with the policies underlying the small business issuer disclosure system.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act¹⁸⁹ requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The amendments are intended to make information about the functions of a company's nominating committee of the board of directors, as well as the ability of security holders to communicate with the board of directors, more transparent to investors. We anticipate that the new rules will provide increased information upon which to evaluate the functioning of boards of directors and make investment decisions. The rules may affect competition because they will allow companies to consider their existing policies in relation to policies adopted by other companies. As a result, companies may compete to adopt policies that effectively balance security holder and director interests and, therefore, attract investors.

We have identified one possible area where the rules could potentially place a burden on competition. The new disclosure will enable investors to compare companies' policies and procedures for director nominations and communications with directors. To the

¹⁷⁹ See CalPERS; CII; Granary; Letter B; McRitchie2; SERS; SIF; Trillium.

¹⁸⁰ See ABA; Archer; Foley; Stoecklein.

¹⁸¹ See ABA.

¹⁸² See Archer.

¹⁸³ See *id.*

¹⁸⁴ See *id.*

¹⁸⁵ See *id.*

¹⁸⁶ See *id.*

¹⁸⁷ See Stoecklein.

¹⁸⁸ See *id.*

¹⁸⁹ 15 U.S.C. 78w(a)(2).

¹⁷³ See CIR.

¹⁷⁴ See *id.*

¹⁷⁵ See *id.*

¹⁷⁶ See Foley.

¹⁷⁷ See *id.*

¹⁷⁸ See CIR; Foley.