

**SUPPORTING STATEMENT FOR FINAL RULES UNDER THE SECURITIES  
EXCHANGE ACT OF 1934 AND  
INVESTMENT COMPANY ACT OF 1940**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq.

**A. JUSTIFICATION**

**1. NECESSITY OF INFORMATION COLLECTION**

In Securities Act Release 33-9136, the Commission adopted amendments to the federal proxy rules and related rules to facilitate the nomination of directors by shareholders.

Regulation 14A (Commission Rules 14a-1 through 14a-20 and Schedule 14A) governs the solicitation of proxies and information required to be included in proxy statements on Schedule 14A. Regulation 14C (Commission Rules 14c-1 through 14c-7 and Schedule 14C) governs the distribution of information statements pursuant to Section 14(c) of the Securities Exchange Act of 1934 (“Exchange Act”). Rule 20a-1 was adopted under Section 20(a) of the Investment Company Act of 1940 (“Investment Company Act”) and requires registered investment companies to comply with Regulation 14A or 14C, as applicable.

Form 8-K provides the disclosure requirements for current reports under Section 13 or 15(d) of the Exchange Act, filed pursuant to Rule 13a-11 or Rule 15d-11, and for reports of nonpublic information required to be disclosed by Regulation FD.

Regulation 13D (Commission Rules 13d-1 through 13d-7 and Schedules 13D and 13G (OMB Control No. 3235-0145) governs the information required to be included in Schedules 13D and 13G. These schedules provide disclosure requirements for securities beneficial ownership reports filed by investors to help investors make informed voting or investing decisions.

Form ID requires registrants, third party filers, or their agents, to whom the Commission has not previously assigned a Central Index Key code, to request certain access codes to permit filing electronically on the Commission’s electronic database EDGAR.

In Securities Act Release No. 33-9136, the Commission adopts new Regulation 14N for filings required by certain nominating shareholders on a new collection of information in Schedule 14N. Schedule 14N would require filing of certain information with the Commission by shareholders who submit nominees for director pursuant to applicable state law, a company’s governing documents, or the Commission’s proposed Exchange Act Rule 14a-11.

## **2. PURPOSE OF THE INFORMATION COLLECTION**

The disclosure requirements in Regulation 14A, and corresponding Schedule 14A, apply to solicitations of a proxy with respect to securities registered under section 12 of the Exchange Act in connection with a shareholder meeting. The information contained in the Schedule 14A must be filed with the Commission before soliciting a shareholder vote on the election of directors and the approval of other corporate action. These disclosure requirements provide investors with important information about the issues on which shareholders are asked to vote. The disclosure requirements in Regulation 14C, and corresponding Schedule 14C, apply to information statements companies must provide to shareholders in connection with an annual meeting.

Rule 20a-1 under the Investment Company Act is intended to ensure that investors in securities of registered investment companies are provided with appropriate information upon which to base informed decisions regarding the actions for which registered investment companies solicit proxies. Without Rule 20a-1, registered investment company issuers would not be required to comply with the rules and regulations adopted under Section 14(a) of the Exchange Act, which are applicable to issuers that are not registered investment companies, including the provisions relating to the form of proxy and disclosure in proxy statements.

The beneficial ownership requirements in Sections 13(d) and 13(g) of the Exchange Act, and corresponding Regulations 13D and 13G and Schedules 13D and 13G, provide investors and the issuer with information about accumulations of securities that may have the potential to change or influence control of the issuer. This statutory and regulatory framework establishes a comprehensive reporting system for gathering and disseminating information about the ownership of equity securities. The beneficial ownership reporting provisions require, subject to exceptions, that any person who acquires more than 5% of a class of equity securities registered under Section 12 of the Exchange Act, and other specified equity securities, report the acquisition on Schedule 13D within 10 days. Under certain conditions, certain persons holding more than 5% of a class of such securities may file a short-form Schedule 13G in lieu of Schedule 13D.

Form 8-K is the form used by companies to file current reports when specific extraordinary corporate events occur. Generally, a company is required to file a Form 8-K within four business days of when the corporate event occurs. This form is intended to provide investors with “real time” access to information concerning important corporate events.

New Schedule 14N would provide notice to the company of a shareholder’s intent to require that the company include that shareholder’s or group’s nominee or nominees for director in the company’s proxy materials. The shareholder notice on Schedule 14N also would be filed with the Commission. Schedule 14N would contain disclosures

intended to assist shareholders in making an informed voting decision with regard to any nominee or nominees put forth by a nominating shareholder or group, by allowing shareholders to gauge the nominating shareholder's interest in the company, longevity of ownership, and intent with regard to continued ownership in the company.

### **3. ROLE OF IMPROVED TECHNOLOGY AND OBSTACLES TO REDUCING BURDEN**

All of the above forms are filed or, in the case of new Schedule 14N, will be filed electronically with the Commission using the Commission's Electronic Data Gathering and Retrieval (EDGAR) system.

### **4. EFFORTS TO IDENTIFY DUPLICATION**

We are not aware of any rules that conflict with or substantially duplicate the proposed rules.

### **5. EFFECT ON SMALL ENTITIES**

The amendments will apply to all companies subject to the proxy rules, including small entities. However, to minimize the burden on small entities, we are delaying implementation for companies that meet the definition of smaller reporting company in Exchange Act Rule 12b-2. The amendments will become effective for these companies three years after the date that the rules become effective for companies other than smaller reporting companies. We believe that a delayed compliance date for smaller reporting companies will allow those companies to observe how the amendments operate for other companies and may allow them to better prepare for the implementation of the rules. We estimate that there are approximately 1,209 issuers that may be considered small entities. The amendments may affect each of these issuers that may be considered small entities, to the extent companies and shareholders take advantage of the proposed rules.

The disclosure standards do not vary based on the size of the issuer.

### **6. CONSEQUENCES OF LESS FREQUENT COLLECTION**

Less frequent collection would frustrate the statutory intent of Section 13(d) of the Exchange Act because it would provide investors with less information about matters on which they are voting. Similarly, less frequent collection would frustrate the intent of Regulations and Rule 20a-1 under the Investment Company Act 14A and 14C because investors would have less information on which to base voting decisions about shareholder-nominees for director (as well as the nominating shareholders) submitted to be included in a company's proxy materials. Less frequent collection on Form ID would frustrate implementation of the proposed rules because shareholders would not be able to submit filings such as proposed Schedule 14N electronically on the Commission's EDGAR electronic database. Less frequent collection on Form 8-K would frustrate implementation of the proposed rules because shareholders would not have the

information needed to timely submit nominees pursuant to the proposed rules and shareholders of series investment companies would lack the information to know whether they own sufficient shares to be eligible to submit director nominees under the proposed rules. Less frequent collection of proposed Schedule 14N would provide investors with less information about nominating shareholders and their nominees which could result in less-informed voting decisions.

**7. INCONSISTENCIES WITH GUIDELINES IN 5 C.F.R. 1320.5(d)(2)**

None.

**8. CONSULTATION OUTSIDE THE AGENCY**

The Commission has amended Regulation 14A, Schedule 14A, Regulation 14C and Schedule 14C, Form ID, Regulation 13D and 13G and Schedules 13D and 13G, Form 8-K and Rule 20a-1 several times since their adoption. Proposed amendments are published for public comment. The Commission solicited comment on the amendments. The Commission also solicited comment on new Schedule 14N.

The Commission requested comment on the PRA analysis in the Proposing Release. Three commenters (Business Roundtable, Sullivan & Cromwell and The Society of Corporate Secretaries and Governance Professionals) addressed the burden estimate in the proposing release for a company that is associated with including a nominee in its proxy materials. This burden is reflected in the PRA cost and burden hour estimates for Schedule 14A. In its comment letter and based on its survey of its members, Business Roundtable estimated that the preparation of a notice to the nominating shareholder, inclusion of related disclosure in the company's proxy materials, and preparation of its own statement regarding the shareholder nominee will require an average of 99 hours of personnel time. In the Proposing Release, the Commission estimated the burden for these three actions to be 30 hours. While the Commission was persuaded that the burden to companies of preparing a statement with regard to the shareholder nominee may require more than the 20 hours estimated in the Proposing Release, the Commission believes that 99 hours may represent the high end of the range for all three actions. In light of this information, the Commission believes it is appropriate to increase the estimate for preparing a statement with regard to the shareholder nominee and the Commission believes it is adequate to double the estimate of this component from 20 to 40 hours to reflect the average burden across all companies. Thus, the Commission estimates that the internal burden associated with these three actions would be 50 hours.

In the proposing release, the Commission estimated that the burden for a company to prepare a notice to a shareholder of its intent to exclude a nominee and to seek no-action relief from the staff regarding the exclusion would be 65 hours. In its comment letter, Sullivan & Cromwell asserted that our burden estimate of 65 hours for a company that determines not to include a nominee in its proxy materials does not account for "significant" costs and the "enormous" amount of time that management and the board will likely spend on the proxy contest itself. In its letter, the Business Roundtable

provided data from a survey of its own members indicating that the average burden associated with preparing and submitting a single no-action request to the Commission staff in connection with a shareholder proposal is approximately 47 hours and associated costs of \$47,784. Although the letter did not specify as much, assuming these costs correspond to legal fees, which the Commission estimates at an hourly cost of \$400, the Commission estimates that this cost is equivalent to approximately 120 hours (\$47,784/\$400). The Commission believes this estimate is high and believes the revised number discussed below is a better estimate because it attempts to reflect the burden across all companies. For purposes of the PRA, the Commission assumes that submitting the notice and reasons for excluding a shareholder nominee to the staff will be comparable to preparing a no-action request to exclude a proposal under Rule 14a-8. While it appears, based on commenters' estimates, that associated costs may have increased since 2003, based on estimates provided by other commenters on the costs of preparing and submitting a no-action request (see, e.g., letter from Sullivan & Cromwell), the Commission estimates that the burden to submit the notice and reasons for excluding a shareholder nominee and request no-action relief would be approximately 116 hours.

For a more detailed description of how the Commission responded to comments received on the PRA analysis, see the adopting release at pages 263-305. In particular, see footnotes 790, 815, 817 and the related text.

**9. PAYMENT OR GIFTS TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY**

The information in each of the collections of information discussed above is made publicly available.

**11. JUSTIFICATION FOR SENSITIVE QUESTIONS**

Not applicable.

**12/13. ESTIMATES OF HOUR AND COST BURDENS**

The paperwork burden estimates associated with the amendments include the time and cost of preparing and reviewing disclosure, filing documents or otherwise publicizing information, and retaining records. These estimates represent the average burden for all companies, both large and small. For each estimate, we calculate that a portion of the burden will be carried by the company internally, and the other portion will be carried by outside professionals retained by the company. The portion of the burden carried by the company internally is reflected in hours, while the portion of the burden carried by outside professionals retained by the company is reflected as a cost. We estimate these costs to be \$400 per hour. The burdens have been calculated by multiplying the estimated number of additional annual responses we believe will be generated by the

estimated average number of hours each entity will spend complying with the requirements of the rules.

We have revised the PRA burden and cost estimates for the amendments that were originally submitted to the OMB in connection with the proposed rules based on changes to the rules between the proposing and adopting release in response to commenters and upon further consideration of our estimates. We derived our new burden hour and cost estimates by estimating the total amount of time it would take a company to prepare and review the information collections contained in the final rules. This estimate represents the average burden for all companies.

### Regulation 14A/14C

We estimate that the burden hours associated with Regulations 14A and 14C are carried 75% by the company internally, and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of \$400 per hour.

New Rule 14a-11 will require any subject company to include disclosure about a nominating shareholder's or group's nominee(s) for election as director in the company's proxy materials when the conditions in the rule are met. Under the rules as adopted, shareholders or groups beneficially owning at least 3% of the voting power of the company's securities entitled to be voted at the meeting for at least three years would be eligible to submit a nominee for election as director to be included in the company's proxy materials subject to certain limitations on the overall number of shareholder nominees for director. We estimate that in 2009 there were 175 contested elections and board-related shareholder proposals. We believe starting with this number indicates shareholders or groups of shareholders who have shown an interest in using currently available means under our rules to influence governance matters. The number of contested elections and board-related shareholder proposals, however, does not reflect the additional eligibility requirements that are being adopted in new Rule 14a-11. For example, Rule 14a-11 requires that a shareholder or group of shareholders satisfy an ownership threshold of at least 3% of the company's voting power; that amount of securities must have been held continuously for at least three years as of the date the nominating shareholder or group submits notice of its intent to use Rule 14a-11; and the nominating shareholder or group must execute a certification that it is not holding the securities with the purpose, or with the effect, of changing control of the company or to gain a number of board seats that exceeds the maximum number of nominees that the company could be required to include under Rule 14a-11. As a result of the additional eligibility requirements and certifications required by Rule 14a-11, we believe it is reasonable to significantly reduce the number of contested elections and board-related shareholder proposals for purposes of estimating the number of shareholders or groups of shareholders who may submit a nomination pursuant to Rule 14a-11. For the reasons noted above, we discounted the 175 contested elections and board-related shareholder proposals by approximately 75% to reflect the much more stringent eligibility requirements under new Rule 14a-11 as compared to Rule 14a-8. This would result in 45

companies (other than registered investment companies) receiving nominees annually. Based on this estimate, proposed Rule 14a-11 would add an average incremental burden of 3,669 burden hours of company time and a cost of approximately \$489,100 for the services of outside professionals for reporting companies (other than registered investment companies). This estimate is the sum of the burden hours associated with each of the following components:

- The company's preparation of a written notice to the nominating shareholder or group if it determines to include the shareholder's nominee (5 hours/response);
- The company's inclusion in its proxy statement and form of proxy of the name of, and other related disclosures, concerning, a person or persons nominated by a shareholder or shareholder group (5 hours/response);
- The company's preparation of its own statement regarding the shareholder nominee or nominees (40 hours/response); and
- If a company determines that it may exclude a shareholder nominee submitted pursuant to the proposed rule, the company's preparation of a written notice to the nominating shareholder or group followed by written notice of the basis for its determination to exclude the nominee to the Commission's staff (116 hours/response).

The burden associated with proposed Rule 14a-11 would be allocated to Regulation 14A (90%) and Regulation 14C (10%) for reporting companies (other than registered investment companies).<sup>1</sup> The number of annual responses on Schedules 14A and 14C will not change, and remain at 7,300 and 680, respectively. Thus, for reporting companies (other than registered investment companies) 3,302 burden hours (90% of 3,669) would be allocated to Schedule 14A, and 367 burden hours (10% of 3,669) would be allocated to Schedule 14C. The costs for services of outside professionals would be allocated \$440,190 to Schedule 14A and \$48,910 to Schedule 14C.

We also are proposing an amendment to Rule 14a-8(i)(8) that would prohibit companies from excluding certain shareholder proposals that under the current rules are excludable. Because the amendment would narrow the scope of the exclusion in this rule and prohibit companies from excluding certain proposals that are currently excludable, we anticipate an increase in the number of shareholder proposals. In the case of reporting companies (other than registered investment companies), we anticipate that the amendment to Rule 14a-8 will result in an increase of 64 proposals annually from 2009. The total burdens associated with Rule 14a-8(i)(8) are 15,000 burden hours of company time and \$2,000,000 for services of outside professionals. This burden will be added to Schedules 14A (90%) and 14C (10%) and is comprised of the following components:

- We estimate the annual incremental burden for the shareholder to prepare the proposal to be 10 burden hours per proposal, for a total of 640 burden hours. This

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<sup>1</sup> Exchange Act Schedule 14C requires disclosure of some items of Exchange Act Schedule 14A. Therefore, while we are not proposing to amend the text of Schedule 14C, the proposed amendments to Schedule 14A also must be reflected in the PRA burdens for Schedule 14C. The proposed amendments will be reflected in the total burden hours for Schedule 14C, but will not affect the hours per response.

- corresponds to 480 hours of shareholder time and \$64,000 for the services of outside professionals.
- We estimate that 90% of companies that receive a shareholder proposal will seek to exclude the proposal from their proxy materials, which corresponds to 110 such proposals per year. We estimate that the annual incremental burden for the company's submission of a notice of its intent to exclude the proposal would average 116 hours per proposal. This would correspond to 9,570 hours of company time and \$1,276,000 for the services of outside professionals.
  - We also estimate that the annual incremental burden for the proponent's participation in the Rule 14a-8 process would average 60 hours per proposal, for a total of 4,950 hours of shareholder time and \$660,000 for services of outside professionals.

### Schedule 14N

A nominating shareholder or group submitting a nominee pursuant to either proposed Rule 14a-11, a company's governing documents, or applicable state law, would be required to file proposed Schedule 14N to disclose information about the nominating shareholder or group and the nominee(s), and the company would be required to include certain information regarding the nominating shareholder or group and nominee(s) in the company's proxy materials unless the company determines that it is not required to include the nominee(s) in its proxy materials.

#### *Schedule 14N filed in connection with Rule 14a-11*

We estimate that 75% of the burden of preparation of Schedule 14N will be borne internally by the nominating shareholder or group, and that 25% will be carried by outside professionals. We estimate that compliance with proposed Schedule 14N will result in 47 hours per response for nominees submitted pursuant to Rule 14a-11. We arrived at this figure because we estimate that the burden of preparing the information in Schedule 14N would be one-third of the disclosures typically required by a Schedule 14A filing, which would result in approximately 34 burden hours (we currently estimate the burden per response for preparing a Schedule 14A filing to be 101.50 hours). For purposes of this analysis, we estimate that the 34 burden hours will be added to the 12.4 hours associated with filing a Schedule 13G, resulting in a total of approximately 47 burden hours per filing.

We estimate that compliance with the requirements of Schedule 14N submitted pursuant to Rule 14a-11 will require 4,230 burden hours in aggregate each year for nominating shareholders of reporting companies (other than registered investment companies), which corresponds to 3,173 hours of shareholder time (calculated as 45 notices x 47 hours/notice x 2 nominees/shareholder x .75) and costs of \$423,000 (45 notices x 47 hours/notice x 2 nominees/shareholder x .25 x \$400) for the services of outside professionals. In the case of registered investment companies, we estimate that compliance with the requirements of Schedule 14N submitted pursuant to Rule 14a-11 will require 564 burden hours (6 responses x 47 hours/response x 2 nominees) in



aggregate each year, which corresponds to 423 hours of shareholder time (6 responses x 47 hours/response x 2 nominees x .75) and costs of \$56,400 for the services of outside professionals (6 responses x 47 hours/response x 2 nominees x .25 x \$400).

*Schedule 14N submitted in connection with state law or a company's governing documents*

We estimate that approximately 30 nominating shareholders, or shareholder groups, of reporting companies (other than registered investment companies) would submit a nomination pursuant to applicable state law or a company's governing documents. We estimate that the burden associated with filing a Schedule 14N in connection with a nomination made pursuant to an applicable state law provision or a company's governing documents is 40 hours per filing.

We estimate compliance with the requirements of Schedule 14N for nominating shareholders or groups submitting nominations pursuant to an applicable state law provision or the company's governing documents would result in 2,400 aggregate burden hours (30 notices x 40 hours/notice x 2 nominees/shareholder) each year for nominating shareholders, broken down into 1,800 hours of shareholder time and costs of \$240,000 for services of outside professionals. In the case of registered investment companies, we estimate that approximately 12 nominating shareholders or groups would submit a nomination pursuant to an applicable state law provision or a company's governing documents. Thus, we estimate compliance with Schedule 14N would result in 960 burden hours (12 notices x 40 hours/notice x 2 nominees/shareholder) each year, which corresponds to 720 hours of shareholder time and costs of \$96,000 for services of outside professionals.

*Statement of support for nominee*

Whether Schedule 14N is filed because a shareholder submits a nominee or nominees pursuant to Rule 14a-11, or a company's governing documents or applicable state law, the proposed rules would permit nominating shareholders to prepare a statement of support for the nominee. We estimate the disclosure burden for the nominating shareholder or group to prepare such a statement of support to be 10 burden hours per nominee. We also assume that all nominating shareholders who submit a nominee or nominees and are required to file a Schedule 14N will prepare a statement of support for the nominee(s). We estimate that 93 statements<sup>2</sup> would be filed, resulting in an aggregate burden of 1,395 hours (93 statements x 10 hours/response x 2 x .75) and \$186,000 (93 x 10 x 2 x .25 x \$400) for services of outside professionals.

The total burden for Schedule 14N also would include the burden to the nominating shareholder or group associated with responding to a company's request to exclude a nominee pursuant to Rule 14a-11. We estimate that the annual incremental

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<sup>2</sup> This estimate is the sum of 51 statements related to Schedule 14Ns filed pursuant to Rule 14a-11, and 42 statements related to Schedule 14Ns filed in connection with a nominee submitted pursuant to a company's governing documents or applicable state law.

burden for the nominating shareholder's or group's participation in the Rule 14a-11 exclusion process would average 60 hours per nomination. We estimate that 6 reporting companies (other than registered investment companies) who receive a shareholder nominee for director pursuant to Rule 14a-11 would make a determination that they are not required to include a nominee in their proxy materials because the nominee is ineligible under Rule 14a-11. This would result in 360 total burden hours (6 responses x 60 hours/response), corresponding to 270 hours of shareholder time and costs of \$36,000 for services of outside professionals. We estimate that one registered investment company that receives a shareholder nominee for director pursuant to Rule 14a-11 would make a determination that it is not required to include the nominee in its proxy materials because the nominee is ineligible under Rule 14a-11. For nominating shareholders or groups of registered investment companies, this will result in 60 total burden hours (1 response x 60 hours/response), corresponding to 45 hours of shareholder time and \$6,000 for services of outside professionals. The burden associated with Schedule 14N would increase by 420 burden hours (360 total burden hours for reporting companies other than registered investment companies + 60 total burden hours for registered investment companies = 420 total burden hours); the number of responses, however, would not increase because shareholders who respond to a company's determination to exclude their nominees already would be counted in the number of shareholders who submit a Schedule 14N in connection with Rule 14a-11. That is, 6 of the 162 responses by reporting companies other than registered investment companies and one of the 6 responses by registered investment companies would have an additional burden of responding to a company's request to exclude a nominee pursuant to Rule 14a-11.

We are adopting two new exemptions from the proxy rules for solicitations by shareholders or groups in connection with a nomination pursuant to Rule 14a-11. The first exemption addresses written and oral solicitations by shareholders that are seeking to form a nominating shareholder group, provided that certain requirements are met.<sup>3</sup> Solicitations made in reliance on this exemption would be required to be filed under cover of Schedule 14N with the appropriate box marked on the cover page. We estimate that 34 of the submissions made to companies (other than registered investment companies) pursuant to Rule 14a-11 will be by groups of shareholders formed for purposes of satisfying the eligibility requirements of the rule. We estimate that 31 (90% of 34) of these groups will avail themselves of Rule 14a-2(b)(7). In the case of reporting companies (other than registered investment companies), this will result in an aggregate burden of 31 hours (31 solicitations x 1 hour/solicitation), which corresponds to 23 hours of shareholder time (31 solicitations x 1 hour/solicitation x 0.75) and \$3,100 for the services of outside professionals (31 solicitations x 1 hour/solicitation x 0.25 x \$400). In the case of registered investment companies, we estimate that five of the submissions made pursuant to Rule 14a-11 will be by groups of shareholders formed for purposes of satisfying the eligibility requirements of the rule. We estimate that all of these groups will avail themselves of Rule 14a-2(b)(7) (90% of 5 rounds up to 5). This will result in an aggregate burden of 5 hours (5 solicitations x 1 hour/solicitation), which corresponds to 4 hours of shareholder time (5 solicitations x 1 hour/solicitation x 0.75) and \$500 for the services of outside professionals (5 solicitations x 1 hour/solicitation x 0.25 x \$400).

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<sup>3</sup> See new Rule 14a-2(b)(7).

These burden hours would be added to the PRA burden of Schedule 14N.

The second new exemption will apply to written and oral solicitations by or on behalf of a nominating shareholder or group that has met the requirements of Rule 14a-11 in favor of shareholder nominees or for or against company nominees.<sup>4</sup> Although nominating shareholders or groups will not be required to engage in written solicitations, if the nominating shareholder or group does so, the exemption will require inclusion in any written soliciting materials filed under cover of Schedule 14N of a legend advising shareholders to look at the company's proxy statement when available and advising shareholders how to find the company's proxy statement. For purposes of this analysis, we assume that 50% of nominating shareholders or groups ultimately included in a company's proxy statement will solicit in favor of their nominee or nominees outside the company's proxy statement. In the case of reporting companies (other than registered investment companies), this will result in an aggregate burden of 20 hours (20 solicitations x 1 hour/solicitation), which corresponds to 15 hours of shareholder time (20 solicitations x 1 hour/solicitation x 0.75) and \$2,000 for services of outside professionals (20 solicitations x 1 hour/solicitation x 0.25 x \$400). These burden hours would be added to the PRA burden of Schedule 14N. In the case of registered investment companies, this will result in an aggregate burden of 3 hours (3 solicitations x 1 hour/solicitation), which corresponds to 2 hours of shareholder time (3 solicitations x 1 hour/solicitation x 0.75) and \$300 for services of outside professionals (3 solicitations x 1 hour/solicitation x 0.25 x \$400). These burden hours would be added to the PRA burden of Schedule 14N.

We assume that all nominating shareholders or groups will prepare a statement of support for the nominee or nominees, and we estimate the disclosure burden for the nominating shareholder or group to prepare a statement of support for its nominee or nominees to be approximately 10 burden hours per nominee. In the case of companies other than registered investment companies, this results in an aggregate burden of 900 (45 statements x 10 hours/statement x 2 nominees/shareholder), which corresponds to 675 hours of shareholder time (45 statements x 10 hours/statement x 2 nominees/shareholder x 0.75) and \$90,000 for services of outside professionals (45 statements x 10 hours/statement x 2 nominees/shareholder x 0.25 x \$400) for shareholders of reporting companies (other than registered investment companies). For registered investment companies, this will result in an aggregate burden of 120 (6 statements x 10 hours/statement x 2 nominees/shareholder), which corresponds to 90 hours of shareholder time (6 statements x 10 hours/statement x 2 nominees/shareholder x 0.75) and \$12,000 for services of outside professionals (6 statements x 10 hours/statement x 2 nominees/shareholder x 0.25 x \$400). Therefore, we estimate a total of 1,020 burden hours for all reporting companies, including investment companies, broken down into 765 hours of shareholder time and \$102,000 for services of outside professionals.

#### Form 8-K

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<sup>4</sup> See new Rule 14a-2(b)(8).

Under Rule 14a-11, a company would be required to provide notice on Form 8-K of the date by which a nominating shareholder would be required to provide notice of its intent to require the company to include the nominating shareholder's nominee in the company's proxy materials. The rule also would require registered investment companies to file a Form 8-K to disclose certain information relating to net assets and number of shares entitled to vote at the annual meeting of shareholders. The numbers in the table reflect the program change as a result of the rulemaking. We allocate 75% of the burden of preparing Form 8-K to company time and 25% for services of outside professionals. We currently estimate 5 burden hours per response to prepare Form 8-K. We estimate that 440 reporting companies (other than registered investment companies) and 625 registered investment companies would be required to file a Form 8-K resulting in an increase to the total number of responses of 1,065, and a total burden of 5,325 burden hours, which corresponds to 3,994 hours of company time and \$532,500 for services of outside professionals.

#### Form ID

Under the proposed rules, shareholders who are required to file a Schedule 14N would be required to do so electronically with the Commission. We anticipate that some shareholders that will be required to file a Schedule 14N will not previously have filed an electronic submission with the Commission and will file a Form ID. We estimate the proposed rules will result in 84 additional filings. We currently estimate the burden associated with Form ID is 0.15 hours per response. We anticipate that the proposed rules will increase the number of Form ID filings, but will not increase the burden hours per response. The additional annual burden would be 13 hours (84 filings x .15 hours/filing). For purposes of the PRA, we estimate that the additional burden cost resulting from the proposed amendments will be zero because we estimate that 100 percent of the burden will be borne internally by the nominating shareholder.

#### Schedule 13G

The proposed rules would permit shareholders to aggregate holdings for purposes of meeting the eligibility thresholds in proposed Rule 14a-11. The Commission anticipates that some groups of shareholders would exceed the 5% threshold and, therefore, be required to file a Schedule 13G. We estimate that the proposed rules will result in an additional 28 Schedule 13G filings. We currently estimate that the 25% of the burden of preparation of Schedule 13G is borne by the company, and 75% by outside professionals. We currently estimate the burden per response for Schedule 13G to be 12.4 hours. We estimate an increase in the number of Schedule 13G filings; we do not expect the proposed rules to result in an increase in the burden per response for Schedule 13G. The total burden associated with this increase in the number of filings is 87 hours of shareholder time, and \$104,160 for services of outside professionals.

#### Rule 20a-1

Investment Company Act Rule 20a-1 requires registered investment companies to comply with Exchange Act Regulation 14A or 14C, as applicable. The annual responses to Rule 20a-1 reflect the number of proxy and information statements that are filed by registered investment companies. The burden estimates of the proposed rules as they relate to investment companies' compliance with Regulation 14A or 14C will be added to Rule 20a-1. This includes the burden hours relating to proposed Rule 14a-11 and the amendment to Rule 14a-8(i)(8).

We estimate that 6 registered investment companies will receive nominees from shareholders pursuant to Rule 14a-11 annually.<sup>5</sup> We assume that approximately 5 (or 90% of 6) registered investment companies that have an eligible shareholder or group and receive a shareholder nominee for director would be required to include the nominee in its proxy materials. The number of annual responses to Rule 20a-1 will not change and will remain at 1,225. Thus, we estimate that the total burden associated with Rule 14a-11 would be 444 hours of company time and \$59,100 for services of outside professionals, which would be added to the burden associated with Investment Company Act Rule 20a-1.<sup>6</sup>

For registered investment companies, we anticipate that the amendment to Rule 14a-8(i)(8) will result in an increase of 12 proposals annually, and a total of 24 proposals regarding procedures for the inclusion of shareholder nominees for director in company proxy materials to companies per year.<sup>7</sup> Therefore, for registered investment companies, the amendment to Rule 14a-8 would result in 2,994 burden hours of company time and

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<sup>5</sup> In this regard, we estimate that there were 11 contested elections in 2009, based on the number of EDGAR filings on form-type PREC14A with respect to unique investment companies in 2009. In addition, the average number of no-action letters issued by the staff regarding proposals seeking to amend a registered investment company's bylaws to provide for shareholder director nominations received in calendar years 2007, 2008 and 2009, rounded to the nearest whole number greater than zero, is one. We estimate that investment companies currently receive as many proposals regarding nomination procedures or disclosures as there are contested elections and no-action letters issued by the staff, resulting in a total of 24 contested elections and board-related shareholder proposals per year. For reasons similar to those articulated above for non-investment companies, we believe these actions related to contested solicitation or board issues, 24 in total, provide useful information about the degree of interest in using Rule 14a-11. However, as discussed above, Rule 14a-11 contains different eligibility requirements than our current rules that will likely result in fewer companies receiving nominations submitted pursuant to the rule. Similar to non-investment companies, we believe it is reasonable to discount the 24 contested elections and board-related shareholder proposals by approximately 75%, resulting in six investment companies receiving nominations pursuant to Rule 14a-11.

<sup>6</sup> See discussion above regarding Rule 14a-11.

<sup>7</sup> The increase is estimated based on the number of registered investment company proxy contests in calendar year 2009 (11) plus the average number of no-action letters issued by the staff regarding proposals seeking to amend a registered investment company's bylaws to provide for shareholder director nominations received in calendar years 2007, 2008, and 2009 rounded to the nearest whole number greater than zero (1). In addition, we estimate that investment companies currently receive as many proposals regarding nomination procedures or disclosures as there are contested elections and no-action letters issued by the staff, resulting in a total of an estimated 24 proposals regarding nomination procedures or disclosures related to director nominations to companies per year.

\$399,200 for costs of outside professionals. These burdens would be added to the burden of Investment Company Act Rule 20a-1. The burden is comprised of the following components:

- We estimate the annual incremental burden for the shareholder proponent to prepare the proposal to be 10 hours per proposal, for a total of 120 burden hours. This would correspond to 90 hours of shareholder time and \$12,000 for the services of outside professionals.
- Similar to reporting companies other than investment companies, we estimate that 90% of registered investment companies that receive a shareholder proposal seeking to establish procedures under a company’s governing documents for the inclusion of one or more shareholder nominees in a company’s proxy materials will determine that they may exclude the proposal from their proxy materials and request concurrence through the no-action letter process (so registered investment companies will seek to exclude 22 such proposals per proxy season). Also similar to reporting companies other than registered investment companies, we assume that the annual burden for the company’s submission of a notice of its intent to exclude the proposal and its reasons for doing so would average 116 hours per proposal. This corresponds to 1,914 hours of company time and \$255,200 for the services of outside professionals.
- We also estimate that the annual burden for the proponent’s participation in the Rule 14a-8 no-action process would average 60 hours per proposal. This corresponds to 990 hours of shareholder time and \$132,000 for the services of outside professionals.

Thus, the total burden added to Rule 20a-1 is 3,438 hours of company time (444 hours for rule 14a-11 + 2,994 hours for Rule 14a-8 = 3,438 hours) and \$458,300 for costs of outside professionals (\$59,100 for Rule 14a-11 + \$399,200 for amendments to Rule 14a-8 = \$458,300).

	Current Annual Responses (A)	Proposed Annual Responses (B)	Current Burden Hours (C)	Increase in Burden Hours (D)	Proposed Burden Hours (E) =C+D	Current Professional Costs (F)	Increase in Professional Costs (G)	Proposed Professional Costs (H) =F+G
Sch 14A	7,300	7,300	671,970	16,370	688,340	\$79,214,887	\$2,182,590	\$81,397,477
Sch 14C	680	680	63,152	1,819	64,971	\$7,393,639	\$242,510	\$7,636,149
Sch 14N	0	162	0	7,870	7,870	\$0	\$1,049,300	\$1,049,300
Form 8-K	115,795	116,860	493,436	3,994	497,430	\$65,791,500	\$532,500	\$66,324,000
Form ID	65,700	65,784	9,855	13	9,868	\$0	\$0	\$0
Sch 13G	12,500	12,528	35,577	87	35,664	\$42,694,200	\$104,160	\$42,798,360
Rule 20a-1	1,225	1,225	142,958	3,438	146,396	\$20,090,000	\$458,300	\$20,548,300

Total				33,591			\$4,569,360	
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14. ESTIMATE OF COST TO FEDERAL GOVERNMENT

We estimate costs to the federal government will be \$50,000.

15. EXPLANATION OF CHANGES IN BURDEN

The table below illustrates the changes in cost and hour burdens from the burden estimates currently approved by OMB. Columns (A) and (C) and (F) represent the most recent burden estimates submitted to OMB. Columns (B), (E) and (H) represent the new burden estimates under the final rules. Columns (D) and (G) represent the program change, which encompasses the change in the burden estimates attributable to the new rules.

	Current Annual Responses (A)	Proposed Annual Responses (B)	Current Burden Hours (C)	Increase in Burden Hours (D)	Proposed Burden Hours (E) =C+D	Current Professional Costs (F)	Increase in Professional Costs (G)	Proposed Professional Costs (H) =F+G
Sch 14A	7,300	7,300	671,970	16,370	688,340	\$79,214,887	\$2,182,590	\$81,397,477
Sch 14C	680	680	63,152	1,819	64,971	\$7,393,639	\$242,510	\$7,636,149
Sch 14N	0	162	0	7,870	7,870	\$0	\$1,049,300	\$1,049,300
Form 8-K	115,795	116,860	493,436	3,994	497,430	\$65,791,500	\$532,500	\$66,324,000
Form ID	65,700	65,784	9,855	13	9,868	\$0	\$0	\$0
Sch 13G	12,500	12,528	35,577	87	35,664	\$42,694,200	\$104,160	\$42,798,360
Rule 20a-1	1,225	1,225	142,958	3,438	146,396	\$20,090,000	\$458,300	\$20,548,300
Total				33,591			\$4,569,360	

16. INFORMATION COLLECTIONS PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. EXPLANATION AS TO WHY EXPIRATION DATE WILL NOT BE DISPLAYED

Not applicable.

18. EXCEPTIONS TO CERTIFICATION

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.