

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-11073; 34-95122; IC-34619; File No. S7-19-22]

List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities.

DATES: Comments should be submitted by AUGUST 23, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (<http://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7-19-22 on the subject line.

Paper comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-19-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/other.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Leila Bham, Senior Special Counsel, Office of the General Counsel, 202-551-5532.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 601-612, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- the continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;
- the complexity of the rule;

- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(b).

The list below includes rules adopted in 2012 that may have a significant economic impact on a substantial number of small entities (but excludes rules that have been substantially changed since adoption, rules that are minor amendments to previously adopted rules, and rules that are ministerial, procedural, or technical in nature). Where the Commission has previously made a determination of a rule’s impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission.

Title: **Purchase of Certain Debt Securities by Business and Industrial Development Companies Relying on an Investment Company Act Exemption**

Citation: 17 CFR 270.6a-5

Authority: 15 U.S.C. 80a-6(a)(5)(A)(iv)(I) and 15 U.S.C. 80a-37(a)

Description: The Commission adopted a new rule to establish a standard of credit-worthiness in place of a statutory reference to credit ratings that the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) removed. The rule established the standard of credit quality that must be met by certain debt securities purchased by business and industrial development companies that rely on an exemption from the Investment Company Act of 1940.

Prior RFA Analysis: When the Commission adopted this rule on November 19, 2012, it published

a Final Regulatory Flexibility Analysis in the adopting release, Release No. IC-30268, available at:

<https://www.federalregister.gov/documents/2012/11/23/2012-28456/purchase-of-certain-debt-securities-by-business-and-industrial-development-companies-relying-on-an>. The Commission received no comments on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. IC-29592 (March 3, 2011), available at: <https://www.federalregister.gov/documents/2011/03/09/2011-5184/references-to-credit-ratings-in-certain-investment-company-act-rules-and-forms>.

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Title: **Conflict Minerals**

Citation: 17 CFR 240.13p-1 and 17 CFR 249b.400

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77jjj, 77kkk, 77nnn, 77sss, 77ttt, 78a *et seq.* 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78 l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-8, 78p, 78q, 78s, 78u-5, 78w, 78x, 78dd(b), 78dd(c), 78 ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302; 18 U.S.C. 1350; 12 U.S.C. 5221(e)(3), and Pub. L. 111-203, Sec. 1502, 124 Stat. 1376.

Description: The Commission adopted a new form and rule pursuant to Section 1502 of the Dodd-Frank Act relating to the use of conflict minerals. Section 1502 added Section 13(p) to the Securities Exchange Act of 1934 (“Exchange Act”), which required the Commission to promulgate rules requiring issuers with conflict minerals that are necessary to the functionality or production of a product manufactured by such person to disclose annually whether any of those minerals originated in the Democratic Republic of the Congo or an adjoining country. If an issuer’s conflict minerals originated in those countries, Section 13(p) required the issuer to submit a report to the Commission that includes a description of the measures it took to exercise due diligence on the conflict minerals’ source and chain of custody. The measures taken to exercise due diligence must include an independent private sector audit of the report that is conducted in accordance with standards established by the Comptroller General of the United States. Section 13(p) also required the issuer submitting the report to identify the auditor and to certify the audit. In addition, Section 13(p) required the report to include a description of the products manufactured or contracted to be manufactured that are not “DRC conflict free,” the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of

origin. Section 13(p) required the information disclosed by the issuer to be available to the public on its Internet website.¹

Prior RFA Analysis: When the Commission adopted the new form and rule on August 22, 2012, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 34-67716, available at: <https://www.federalregister.gov/documents/2012/09/12/2012-21153/conflict-minerals>. The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-63547 (Dec. 15, 2010), available at <https://www.federalregister.gov/documents/2010/12/23/2010-31940/conflict-minerals>, and considered comments received at that time.

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Title: **Listing Standards for Compensation Committees**

Citation: 17 CFR 229.407 and 17 CFR 240.10C-1

Authority: 15 U.S.C. 77c, 77d, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78j-3, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-23, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a38(a), 80a-39, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

Description: The Commission adopted a new rule and amendments to its proxy disclosure rules to implement Section 952 of the Dodd-Frank Act, which added Section 10C to the Exchange Act. Section 10C required the Commission to adopt rules directing the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer that is not in compliance with Section 10C's compensation committee and compensation adviser requirements. In accordance with the statute, Rule 10C-1 directs the national securities exchanges to establish listing standards that, among other things, require each member of a listed issuer's compensation committee to be a member of the board of directors and to be "independent," as defined in the listing standards of the national securities exchanges adopted in accordance with the final rule. In addition,

¹ In April 2014, the U.S. Court of Appeals for the District of Columbia Circuit rejected challenges to the bulk of the SEC conflict minerals rule but held that Section 1502 of the Dodd-Frank Act and the rule violate the First Amendment to the extent that they require regulated entities to report to the SEC and to state on their website that any of their products "have not been found to be DRC conflict free." *Nat'l Ass'n of Mfrs. v. SEC*, 748 F.3d 359 (D.C. Cir. Apr. 14, 2014). In April 2017, the U.S. District Court for the District of Columbia remanded the case to the Commission. *Nat'l Ass'n of Mfrs. v. SEC*, No. 13-635 (D.D.C. Apr. 3, 2017) (Doc. No. 47) (Final Judgment).

pursuant to Section 10C(c)(2), the Commission adopted amendments to its proxy disclosure rules concerning issuers' use of compensation consultants and related conflicts of interest.

Prior RFA Analysis: When the Commission adopted the new rule and amendments on June 20, 2012, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 33-9330, available at: <https://www.federalregister.gov/documents/2012/06/27/2012-15408/listing-standards-for-compensation-committees>. The Commission received no comments on its Initial Regulatory Flexibility Analysis published in the proposing release, Release No. 33-9199 (Mar. 30, 2011), available at <https://www.federalregister.gov/documents/2011/04/06/2011-7948/listing-standards-for-compensation-committees>. However, other comments received that addressed aspects of the proposed rule that could potentially affect small entities were considered at that time.

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By the Commission.

Dated: June 17, 2022

Vanessa A. Countryman,
Secretary.