Actions and Compliance

(e) Unless already done, do the following actions.

(1) Before the next flight after the effective date of this AD, and thereafter daily after the last flight of the day until further notice, visually inspect for absence of oil leakage or seepage from both unions of the intermediate bearing return flexible pipes, part number 9 560 17 606 0.

(2) If any oil leakage or seepage is found, disassemble the pipe and visually inspect the unions.

(3) If no crack is found, re-install the pipe.

(4) If any crack is found, remove the pipe from service and replace it.

(5) The actions required by paragraph (e)(1) of this AD may be performed by the owner/operator holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 and 91.417(a)(2)(v).

FAA AD Differences

(f) None.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI Airworthiness Directive 2009–0261–E, dated December 18, 2009, and Turbomeca Alert Mandatory Service Bulletin No. A249 72 0809, Version A, dated December 15, 2009, for related information. Contact Turbomeca S.A., 40220 Tarnos, France; e-mail: *noria-dallas@turbomeca.com;* telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, or go to: *http://www.turbomeca-support.com,* for a copy of this service information.

(i) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *kevin.dickert@faa.gov;* telephone (781) 238–7117; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on January 12, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–758 Filed 1–15–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–61335; File No. S7–12–09]

RIN 3235–AK31

Shareholder Approval of Executive Compensation of TARP Recipients

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the proxy rules under the Securities Exchange Act of 1934 to set forth certain requirements for U.S. registrants subject to Section 111(e) of the Emergency Economic Stabilization Act of 2008. Section 111(e) of the Emergency Economic Stabilization Act of 2008 requires companies that have received financial assistance under the Troubled Asset Relief Program ("TARP") to permit a separate shareholder advisory vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission, during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding. The amendments are intended to help implement this requirement by specifying and clarifying it in the context of the Federal proxy rules.

DATES: *Effective Date:* February 18, 2010.

FOR FURTHER INFORMATION CONTACT: John Harrington, Attorney-Adviser, or N. Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting new Rule 14a–20 and amendments to Schedule 14A [1] and Rule 14a–6 [2] under the Securities Exchange Act of 1934 ("Exchange Act").[3]

I. Background

In July 2009, we published for public comment [4] proposed amendments to the proxy rules under the Exchange Act to set forth certain requirements for U.S. registrants subject to Section 111(e) of the Emergency Economic Stabilization Act of 2008 ("EESA").[5]

Section 111(e) of the EESA, as amended by Section 7001 of the American Recovery and Reinvestment Act of 2009 [6] on February 17, 2009, requires any entity that is a recipient of financial assistance under the Troubled Asset Relief Program ("TARP") to "permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material)." [7] Companies that have received financial assistance under the TARP are required to provide this separate shareholder vote during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.[8] The shareholder vote required by Section 111(e) of the EESA is not binding on the board of directors of a TARP recipient, and such vote will not be construed as overruling a board decision or as creating or implying any additional fiduciary duty by the board.[9] The vote also will not be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.[10]

[1] 17 CFR 240.14a–101.

[2] 17 CFR 240.14a–6.

[3] 15 U.S.C. 78a *et seq.*

[4] *Shareholder Approval of Executive Compensation of TARP Recipients,* Release No. 34–60218 (July 1, 2009) [74 FR 32474] (hereinafter, the "Proposing Release").

[5] 12 U.S.C. 5221(e).

[6] Public Law 111–5, 123 Stat. 115 (2009).

[7] We do not believe this provision changes the Commission's rules for a smaller reporting company that is a TARP recipient under the EESA with respect to the compensation discussion and analysis ("CD&A") disclosure. Our compensation disclosure rules, as set forth in Item 402 of Regulation S–K [17 CFR 229.402], permit smaller reporting companies to provide scaled disclosure that does not include CD&A.

[8] Section 111 of the EESA defines this period not to include any period during which the Federal Government "only holds warrants to purchase common stock of the TARP recipient." *See* 12 U.S.C. 5221(a)(5).

[9] Section 111(e)(2) of the EESA [12 U.S.C. 5221(e)(2)].

[10] *Id.* Rule 14a–8 under the Exchange Act will continue to apply to shareholder proposals that relate to executive compensation. Rule 14a–8 provides shareholders with an opportunity to place a proposal in a company's proxy materials for a vote at an annual or special meeting of shareholders. Under this rule, a company generally is required to include the proposal unless the shareholder has not complied with the rule's procedural requirements or the proposal falls within one of the rule's 13 substantive bases for exclusion. To date, the staff of the Division of Corporation Finance has considered two requests in which TARP recipients requested the staff's concurrence that, given the shareholder advisory vote provision in Section 111(e) of the EESA, the companies could rely on Rule 14a–8(i)(9) [17 CFR 240.14a–8(i)(9)] (the exclusion for proposals that directly conflict with one of the company's own proposals) or Rule 14a–8(i)(10) [17 CFR 240.14a–8(i)(10)] (the exclusion for proposals that have been substantially implemented) to

Continued

We received approximately 50 comment letters in response to the proposed amendments.[11] The respondents included business organizations, law firms and attorneys, investment firms, investor groups and many individuals. Most commenters expressed general support for the proposed amendments.[12] A few of these commenters expressed general support for the amendments, but also suggested certain changes or improvements on specific issues, as discussed more fully below.[13] Several other commenters only addressed specific aspects of the proposed amendments, such as the requirement to file a preliminary proxy statement as a consequence of the required vote, but did not express a viewpoint on the overall proposals.[14] One commenter argued that we should revise our proposals so that TARP recipients are not required to provide a mandatory annual advisory shareholder vote on executive compensation.[15]

More generally, many commenters expressed support for a requirement that all public companies permit an annual advisory vote on executive compensation.[16] Other commenters expressed opposition to mandatory "say on pay" for all public companies.[17] While we note these comments, the purpose of this rulemaking is limited to helping to implement the requirements of Section 111(e) of the EESA with respect to TARP recipients. Therefore, these comments are beyond the scope of this rulemaking.

We have carefully considered the comments we received regarding the proposed amendments and are adopting new Rule 14a–20 and an amendment to Item 20 of Schedule 14A substantially as proposed with slight modifications to provide further clarity. In response to comments we received, we are also amending Rule 14a–6(a) under the Exchange Act so that TARP recipients required to provide a separate shareholder vote on executive compensation pursuant to Section 111(e)(1) of the EESA will not be required to file a preliminary proxy statement as a consequence of providing the required vote.

II. Discussion of the Amendments

We are adopting substantially as proposed new Rule 14a–20 under the Exchange Act to help implement Section 111(e) of the EESA. Under Rule 14a–20, registrants that are "TARP recipients"[18] will be required to provide the separate shareholder vote to approve the compensation of executives, as required by Section 111(e)(1) of the EESA, in proxies solicited during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding. Rule 14a–20 clarifies that the separate shareholder vote required by Section 111(e)(1) of the EESA will only be required on a proxy solicited for an annual (or special meeting in lieu of the annual) meeting of security holders for which proxies will be solicited for the election of directors.[19]

We are making one modification to the proposed instruction to Rule 14a–20 in order to clarify its meaning. The purpose of the instruction remains, as proposed, to clarify that smaller reporting companies will not be required to provide a compensation discussion and analysis in order to comply with the requirements of Rule 14a–20.[20] As proposed, the instruction referenced the compensation of executives as disclosed pursuant to Item 402(m) through (r) of Regulation S–K.[21] Items 402(m) through (r) are the entire scaled compensation disclosure applicable to smaller reporting companies. However, paragraph (r) refers only to director compensation. As suggested by one commenter, we are revising the instruction to eliminate the reference to paragraph (r) in order to avoid the implication that the required vote relates to director compensation.[22] Other than this modification, we are adopting the instruction as proposed.

We are also adopting substantially as proposed an amendment to Item 20 of Schedule 14A that will be applicable to registrants that are TARP recipients and are required to provide a separate shareholder vote on executive compensation pursuant to Section 111(e)(1) of the EESA and Rule 14a–20. Pursuant to this amendment, such registrants will be required to disclose in the proxy statement that they are providing a separate shareholder vote on executive compensation pursuant to the requirements of the EESA, and to briefly explain the general effect of the vote. In response to a comment we received requesting clarification, we are adding the phrase "such as whether the vote is non-binding" to the end of the text of the amended Item 20 in order to provide an example of a type of disclosure that is required.[23]

As adopted, Item 20 will not require any additional disclosures by TARP recipients beyond those discussed above. Although a few commenters advocated additional disclosure requirements,[24] we believe the existing

exclude from their proxy materials shareholder proposals that requested policies of holding annual shareholder advisory votes on executive compensation. The staff of the Division of Corporation Finance declined to concur with either request. *See* Bank of America Corp. (Mar. 11, 2009); CoBiz Financial Inc. (Mar. 25, 2009) (available at *http://www.sec.gov/divisions/corpfin/cf-noaction/2009_14a-8.shtml*).

[11] The public comments we received are available online at *http://www.sec.gov/comments/s7-12-09/s71209.shtml.*

[12] *See, e.g.,* letters from California Public Employees' Retirement System ("CalPERS"), Calvert Group, Ltd. ("Calvert"), General Board of Pension and Health Benefits of the United Methodist Church ("UMC"), Northwest & Ethical Investments L.P., Sisters of Saint Francis of Philadephia, United Brotherhood of Carpenters and Joiners of America ("UBCJA") and Walden Asset Management ("Walden").

[13] *See, e.g.,* letters from CalPERS, UBCJA and Pax World Management Corp.

[14] *See, e.g.,* letters from Cleary Gottlieb Steen & Hamilton LLP ("Cleary"), Mary K. Blasy, Esq. ("Blasy"), and Sullivan & Cromwell LLP ("S&C").

[15] *See* letter from Center for Capital Markets Competitiveness, U.S. Chamber of Commerce ("CCMC"). CCMC advocated a triennial vote with an opt-out provision for small and mid-size companies. However, as discussed below, Section 111(e)(1) of the EESA requires an annual vote and does not include opt-out provisions.

[16] *See, e.g.,* letters from CalPERS, Calvert, Midwest Coalition for Responsible Investments and Walden.

[17] *See, e.g.,* letters from The Center on Executive Compensation and UBCJA.

[18] Section 111(a)(3) of the EESA defines TARP recipient as "any entity that has received or will receive financial assistance under the financial assistance provided under the TARP." *See* 12 U.S.C. 5221(a)(3).

[19] As noted in the Proposing Release, the Commission agrees with the view previously expressed by the Division of Corporation Finance that a separate shareholder vote on executive compensation is required only with respect to an annual meeting of shareholders for which proxies will be solicited for the election of directors or a special meeting in lieu of such annual meeting. *See* Compliance and Disclosure Interpretations: American Recovery and Reinvestment Act of 2009 (Updated February 26, 2009), Question 1, available at *http://www.sec.gov/divisions/corpfin/guidance/arrainterp.htm.* Although Section 111(e)(1) of the EESA refers to an annual "or other meeting of the shareholders," the subsection is titled "Annual Shareholder Approval of Executive Compensation." Rule 14a–20 is intended to result in TARP recipients conducting the required advisory vote annually in connection with the election of directors, with respect to which our rules call for disclosure of executive compensation.

[20] Several commenters expressed support for the proposed instruction clarifying that smaller reporting companies that are TARP recipients are not obligated to provide a compensation discussion and analysis. *See, e.g.,* letters from Calvert, UBCJA and Ursuline Sisters of Tildonk. One commenter did not believe smaller reporting companies in general should be entitled to provide scaled compensation disclosure. *See* letter from CalPERS. Another commenter believed smaller reporting companies that are TARP recipients should provide a limited compensation discussion and analysis of at least 100 words. *See* letter from Phil Nicholas ("Nicholas"). As described above, we do not believe the EESA alters the disclosure obligations of smaller reporting companies pursuant to our existing rules regarding scaled disclosure. *See* note 7 above.

[21] 17 CFR 229.402(m)–(r).

[22] *See* letter from S&C.

[23] *See* letter from Davis Polk & Wardwell LLP ("Davis Polk").

[24] *See* letters from CalPERS (suggesting that TARP recipients should detail in the CD&A how receipt

compensation disclosure requirements of Item 402 of Regulation S–K should result in sufficient disclosure about TARP recipients' compensation policies and decisions to enable an informed vote on the compensation of executives.[25] We note in this connection that, under our existing rules, a TARP recipient must consider various disclosures regarding its participation in TARP. For example, a TARP recipient must consider whether the impact of TARP participation on compensation is required to be discussed in its CD&A in order to provide investors with material information that is necessary to an understanding of the company's compensation policies and decisions regarding named executive officers.[26]

As we indicated in the Proposing Release, we believe Rule 14a–20 and the amendment to Schedule 14A will afford registrants that are TARP recipients adequate flexibility to meet their obligations under Section 111(e) of the EESA.[27] At the same time, the amendments, by helping to implement the requirements of Section 111(e) of the EESA in our proxy rules, should provide clarity for registrants that are TARP recipients regarding how they must comply with their obligations under Section 111(e) of the EESA. We also believe that this disclosure will provide investors with information that will help them to make informed voting decisions.

In the Proposing Release, we solicited comment on whether we should amend Rule 14a–6(a) under the Exchange Act so that registrants that are TARP recipients would not be required to file a preliminary proxy statement as a consequence of providing the required shareholder vote on executive compensation. In response to comments received and after further consideration of this issue, we are adopting an amendment to Rule 14a–6(a) under the Exchange Act to add the vote required for TARP recipients to the list of items that do not trigger a preliminary filing requirement.

Rule 14a–6 under the Exchange Act generally requires registrants to file proxy statements in preliminary form at least ten calendar days before definitive proxy materials are first sent to shareholders, unless the items included for a shareholder vote in the proxy statement are limited to matters specified in the rule.[28] During the time before final proxy materials are filed, our staff has the opportunity to comment on the disclosures, and registrants are able to incorporate the staff's comments in their final proxy materials. The matters that do not require filing of preliminary materials are various items that regularly arise at annual meetings, such as the election of directors, ratification of the selection of auditors, approval or ratification of certain employee benefits plans and shareholder proposals under Rule 14a–8.

We noted in the Proposing Release that, in light of the early stage of development of disclosures and the special policy considerations related to this required vote for TARP recipients, we thought it would be appropriate to provide the staff with the opportunity to comment on the disclosure before final proxy materials were filed. Some commenters agreed with that approach.[29] Other commenters who were opposed to a preliminary filing requirement generally argued that the burdens to TARP recipients and Commission staff would not be justified by the benefits of a preliminary filing requirement.[30] These commenters noted that a preliminary filing requirement would be unduly burdensome and amplify the already difficult timing and scheduling issues surrounding annual meetings. According to the commenters, the need to make a preliminary filing would require accelerated timelines and result in additional costs. Commenters also noted additional timing difficulties related to "notice and access" requirements under Rule 14a–16.[31] At the same time, the commenters argued that the disclosure provided in response to Item 20 of Schedule 14A as amended would be straightforward and unlikely to require staff intervention.[32] Therefore, these commenters asserted, the benefits to investors of a preliminary filing requirement would be limited. Overall, these commenters noted, an advisory vote on executive compensation of TARP recipients is similar to the other items specified in Rule 14a–6(a) that routinely arise at annual meetings and therefore should not trigger a preliminary filing requirement.[33]

After further consideration of this issue, we agree that a preliminary filing requirement is not necessary and are adopting an amendment to Rule 14a–6 accordingly. We agree with commenters that this item is similar to the other items specified in Rule 14a–6(a) that do not require a preliminary filing, and that the burdens of requiring a preliminary filing outweigh the potential benefits in this context. We note also that the staff is not precluded from providing an issuer with comments on the disclosure in a proxy statement after it has been filed in definitive form if the staff determines that to be appropriate in the circumstances.

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of TARP funds will affect executive compensation), The Value Alliance ("Value Alliance") (suggesting that required disclosures should include information on how receipt of TARP funds impacted compensation policies), Blasy (advocating for disclosure requirements related to EESA incentive compensation claw-back provisions), Jonathan Graf (commenting that CD&A should discuss key financial and risk decisions) and Jasim Haider (also expressing the view that CD&A should discuss significant financial and risk decisions).

[25] We also note that, on December 16, 2009, we approved certain amendments intended to improve our proxy disclosure requirements. *See Proxy Disclosure Enhancements,* Release No. 33–9089 (December 16, 2009). As part of this rulemaking, we approved amendments accelerating the reporting of shareholder vote results by moving the reporting requirement from the Exchange Act periodic reports to Form 8–K [17 CFR 249.308]. These amendments will apply to reporting results of the vote required by Section 111(e) of the EESA. This will help to address the concerns of commenters who stressed the importance of timely reporting of the shareholder vote on executive compensation. *See, e.g.,* letter from CalPERS.

[26] *See* Item 402(b), (e) and (o) of Regulation S–K [17 CFR 229.402(b), (e) and (o)].

[27] Several commenters expressed support for the flexibility provided by the proposed rules and did not believe we should designate the specific language to be used by TARP recipients when presenting the required vote to shareholders. *See, e.g.,* letters from Blasy, Davis Polk, UMC, UBCJA and Walden. On the other hand, two commenters suggested that we mandate the specific language to be used. *See* letters from S&C (proposing a standard form of resolution) and Value Alliance.

Consistent with the proposal, we are not requiring registrants to use any specific language or form of resolution in order to afford registrants that are TARP recipients some flexibility in how they present the required vote. However, as stated in Section 111(e)(1) of the EESA, the vote must be to approve "the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material)." As we indicated in the Proposing Release, we believe that a vote to approve a proposal on a different subject matter, such as a vote to approve only compensation policies and procedures, would not satisfy the requirements of Section 111(e)(1) of the EESA or Rule 14a–20.

Likewise, a shareholder proposal that asks the company to adopt a policy providing for periodic, non-binding shareholder votes on executive compensation in the future would not satisfy the requirement of Section 111(e) of the EESA or Rule 14a–20. Section 111(e) requires a vote to approve the compensation of executives. A vote to request a voting policy that would apply at future meetings would not satisfy the EESA or Rule 14a–20. *See also* note 10 above.

[28] 17 CFR 240.14a–6(a).

[29] *See* letters from CalPERS, Calvert and Nicholas. *See also* letter from UMC (acknowledging that a preliminary filing many be beneficial to staff and some investors, but noting that a preliminary filing would be of limited value to the commenter).

[30] *See* letters from Cleary, Davis Polk and S&C. *See also* letter from UBCJA.

[31] 17 CFR 240.14a–16. *See* letters from Cleary and Davis Polk.

[32] *See* letter from Cleary.

[33] *See* letters from Davis Polk and S&C.

III. Paperwork Reduction Act

A. Background

The final amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[34] As discussed in the Proposing Release, we submitted the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[35] The title for the collection of information is:

"Schedule 14A" (OMB Control No. 3235–0059).

Schedule 14A was adopted under the Exchange Act and sets forth the disclosure requirements for proxy statements filed by U.S. issuers to help shareholders make informed voting decisions. The hours and costs associated with preparing, filing and sending the form constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the amendments by affected U.S. issuers will be mandatory. Responses to the information collections will not be kept confidential and there will be no mandatory retention period for the information disclosed.

As discussed in more detail above, we are adopting a new Rule 14a–20 under the Exchange Act and an amendment to Item 20 of Schedule 14A. Rule 14a–20 will help implement the requirement under Section 111(e)(1) of the EESA to provide a separate shareholder vote to approve the compensation of executives. Pursuant to the amendment to Item 20 of Schedule 14A, registrants required to provide a separate shareholder vote pursuant to Section 111(e) of the EESA and new Rule 14a–20 will be required to disclose the EESA requirement to provide such a vote and the general effect of the vote. In addition, we are adopting an amendment to Rule 14a–6(a) under the Exchange Act so that TARP recipients will not be required to file a preliminary proxy statement as a consequence of providing the required vote on executive compensation.

We published a notice requesting comment on the collection of information requirements in the Proposing Release and submitted these requirements to OMB for review in accordance with the PRA. Although we received many comment letters on the proposed rule amendments, no commenter specifically mentioned the estimated effects of these proposed amendments on the collection of information requirements.[36]

Since we are adopting Rule 14a–20 and the amendment to Item 20 of Schedule 14A substantially as proposed, we are not changing the PRA burden estimates originally submitted to OMB. In addition, for the reasons discussed below, we are not revising our PRA burden estimates as a result of the amendment to Rule 14a–6(a).

B. Burden and Cost Estimates Related to the Amendments

We believe that Rule 14a–20 and the amendment to Schedule 14A will result in only a modest increase in the burden and cost of preparing and filing a Schedule 14A because they will not cause TARP recipients to collect or disclose any significant additional information. Section 111(e) of the EESA already increased the burdens and costs for registrants that are TARP recipients by requiring a separate shareholder vote on executive compensation and was already in effect during the 2009 proxy season. Our amendments address the EESA requirement in the context of the Federal proxy rules, thereby creating only an incremental increase in the burdens and costs for such registrants. We believe the amendments will remove uncertainty while still providing registrants that are TARP recipients adequate flexibility in complying with Section 111(e) of the EESA. For purposes of this analysis, we estimate the burden of disclosing the general effect of the vote pursuant to Item 20 of Schedule 14A and ensuring conformity with Rule 14a–20 when complying with Section 111(e)(1) of the EESA will be approximately one hour per year per registrant that is a TARP recipient. We do not believe the minor modifications that we are making to the proposed Rule 14a–20 and amendment Item 20 of Schedule 14A in response to comments will impact this estimated burden.

However, as a result of our amendment to Rule 14a–6(a), TARP recipients will no longer be required to file a preliminary proxy statement as a consequence of providing the required vote. The amendment to Rule 14a–6(a) does not change the substance of the information that must be collected and disclosed in Schedule 14A, but it does eliminate an additional filing requirement. As discussed in greater detail below in the Cost-Benefit Analysis, we believe this amendment will benefit many TARP recipients, primarily by easing some of the timing challenges that can result from a requirement to prepare and file preliminary proxy materials in connection with an annual meeting. However, we do not believe the average paperwork burden will change as a result of the amendment to Rule 14a–6(a).

A requirement to file a preliminary proxy statement accelerates the time in which registrants must complete a Schedule 14A and creates the possibility that the filing could be subject to staff review before a definitive filing is made. A filer may incur additional paperwork burden if it changes its disclosure in the definitive proxy statement in response to staff comments. However, the staff does not review every preliminary proxy statement that is filed with the Commission and is not precluded from commenting on proxy materials filed in definitive form if the staff deems that to be appropriate under the circumstances. In addition, the amendment to Rule 14a–6(a) that we are adopting today does not necessarily eliminate the potential burdens associated with a preliminary filing requirement because any TARP recipient that presents an additional proposal to shareholders in its proxy materials that is not among the matters enumerated in Rule 14a–6(a) as amended will still be required to file a preliminary proxy statement. On balance, therefore, we do not believe that eliminating the requirement to file a preliminary proxy statement is likely to change the overall disclosure provided by TARP recipients with respect to the required vote on executive compensation, so we are not reducing our average PRA burden estimate.

We estimate there are approximately 275 registrants that are TARP recipients with outstanding obligations that would be subject to the final amendments.[37] Since we estimate that the rules we are adopting will result in an increased burden of one hour per year for each registrant that is a TARP recipient, the total annual PRA burden increase attributable to the final rules is 275 hours. For proxy statements, consistent with our customary assumptions, we

[34] 44 U.S.C. 3501 *et seq.*

[35] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[36] We note that one commenter indicated that the additional burdens of a preliminary filing far outweigh any potential benefit of prior staff review. *See* letter from Cleary. As discussed above, we are amending Rule 14a–6 and, therefore, a TARP recipient will not be required to file a preliminary proxy statement as a consequence of providing the required vote.

[37] Our staff made this estimate from publicly-available information about TARP recipients. The estimate is based on the number of TARP recipients that are subject to our proxy rules and that have not repaid their TARP obligations as of November 6, 2009.

estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the company to review corporate disclosure at an average cost of $400 per hour.[38] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. Based on the foregoing, we calculated the additional annual compliance burdens resulting from the final amendments at 206.5 hours (this is 75% of the total 275 hours in increased burden carried by the company internally) and $27,500 (this is 25% of the total increased hourly burden carried by outside professionals and reflected as a cost). The current total annual burden hours and cost of Schedule 14A approved by the OMB is 555,683 hours and $63,709,987. Giving effect to the incremental increases in burden hours and costs as a result of the final amendments, the total annual burden hours and cost of Schedule 14A will be approximately 555,889.5 hours and $63,737,487.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits of our rules. In this section, we examine the benefits and costs of the final amendments we are adopting today.[39]

In the Proposing Release, we requested that commenters provide views, supporting information and estimates on the benefits and costs that may result from adoption of the proposed amendments. No commenter expressly addressed the cost-benefit analysis in the Proposing Release. Some commenters cited certain benefits and costs of the proposed amendments in the course of making a variety of suggestions and observations. We discuss these comments throughout the release as applicable.

[38] We estimate an hourly rate of $400 as the average cost for the service of outside professionals that assist in preparing and filing proxy statements and related disclosures with the Commission.

[39] The cost-benefit analysis in this section addresses the costs and benefits of the amendments. The analysis does not, however, address the costs and benefits of the requirement in Section 111(e)(1) of the EESA that TARP recipients conduct a separate shareholder vote on executive compensation. While the amendments set forth the manner in which registrants that are TARP recipients must implement this requirement when complying with the Federal proxy rules, such registrants are already subject to the provisions of Section 111(e)(1) of the EESA and thus we are only addressing the incremental costs and benefits of the amendments.

A. Benefits

We are adopting amendments to the Federal proxy rules to help implement the requirement in Section 111(e)(1) of the EESA that TARP recipients provide a separate shareholder vote to approve the compensation of executives. Under the amendments, this separate shareholder vote will be required when registrants that are TARP recipients solicit proxies during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, and the solicitation relates to an annual meeting (or a special meeting in lieu of an annual meeting) for which proxies will be solicited for the election of directors. Companies required to provide such a separate shareholder vote will also be required to disclose in their proxy statements the EESA requirement to provide such a vote, and to briefly explain the general effect of the vote. We are also amending Rule 14a–6(a) under the Exchange Act so that TARP recipients are not required to file a preliminary proxy statement as a consequence of providing the required vote on executive compensation.

We believe the amendments will benefit registrants that are TARP recipients by clarifying how they must comply with the requirements of Section 111(e)(1) of the EESA in the context of the Federal proxy rules. The amendments eliminate uncertainty that may have existed among TARP recipients and other market participants regarding what is necessary under the Commission's proxy rules when conducting a shareholder vote required under Section 111(e) of the EESA. In addition to these benefits, we believe the amendments allow TARP recipients adequate flexibility under the proxy rules to comply with the requirements of the EESA. By providing clarity while maintaining adequate flexibility, we believe the amendments will reduce the amount of management time and legal expenses necessary to ensure that registrants that are TARP recipients comply with their obligations under both the EESA and the Federal proxy rules. This should benefit TARP recipients and their shareholders.

The amendment to Rule 14a–6(a) will also benefit many TARP recipients. During the 2009 proxy season, TARP recipients were required to file preliminary proxy statements because the vote on executive compensation required by the EESA was not among the matters enumerated in Rule 14a–6(a) that do not trigger a preliminary filing requirement. Because a preliminary proxy statement must be filed at least 10 days prior to the date definitive copies are first sent or given to shareholders, registrants subject to a preliminary filing requirement must complete their materials on an accelerated basis. This can create costs and burdens, especially in conjunction with the scheduling and timing issues surrounding annual meetings. In addition, a preliminary filing requirement may make it more difficult for a registrant to achieve the cost savings possible under the "notice and access" model because a registrant must send shareholders a Notice of Internet Availability of Proxy Materials (and those materials must be available) at least 40 days prior to the meeting date unless the registrant relies on the "full set delivery" option.[40] By amending Rule 14a–6 so that TARP recipients are not required to file a preliminary proxy statement as a consequence of providing the required vote, we believe these costs may be avoided or lessened and thus the amendment will benefit many TARP recipients.

We believe the amendments will benefit investors by resulting in clear disclosure about the requirements of Section 111(e)(1) of the EESA as applied to Exchange Act registrants. When a separate shareholder vote on the compensation of executives is required by the EESA, Rule 14a–20 specifies and clarifies that requirement in the context of the Federal proxy rules. By doing so, we believe Rule 14a–20 should promote better compliance with the requirements of Section 111(e)(1) of the EESA when registrants that are TARP recipients conduct solicitations subject to our proxy rules. The amendment to Schedule 14A requires disclosure about the EESA requirement to provide a separate shareholder vote and the general effects of such a vote. Together, the amendments are intended to provide useful, comparable and consistent information to assist an informed voting decision when registrants that are TARP recipients present to investors the advisory vote on executive compensation required pursuant to Section 111(e)(1) of the EESA. The specification and clarification of the requirement in Rule 14a–20 will also help provide certainty about the nature of the TARP recipient's responsibility to hold the advisory vote, making it easier for companies to comply.

B. Costs

We believe the amendments will not add any significant costs for TARP recipients to those already created by the requirements of Section 111(e)(1) of the EESA and our proxy rules. The

[40] 17 CFR 240.14a–16.

amendments are intended to help implement the existing substantive EESA requirement in the context of the Federal proxy rules. While our amendment to Schedule 14A would require certain disclosures not explicitly required by EESA, we believe any incremental costs imposed by our amendments would be minimal. For purposes of the PRA, we estimated the total annual increase in incremental burden as a result of the amendments to be 275 hours.

There may be some costs to investors as a result of our amendment to Rule 14a–6(a). Because TARP recipients will no longer be required to file a preliminary proxy statement as a consequence of providing the required vote on executive compensation, Commission staff may not have the opportunity to review preliminary proxy materials before TARP recipients make definitive copies of these materials available to shareholders. Staff review of preliminary materials can benefit shareholders by helping to ensure that registrants comply with the Federal proxy rules and provide appropriate disclosure to shareholders. However, we do not believe the amendment to Rule 14a–6(a) will deprive investors of significant benefits. We believe that the rules we are adopting today, Rule 14a–20 and the amendment to Item 20 of Schedule 14A, provide clear guidance to TARP recipients regarding their obligations under the Federal proxy rules when subject to the requirements of Section 111(e) of the EESA. In addition, the staff does not review every preliminary proxy statement that is filed with the Commission and is not precluded from commenting on proxy materials filed in definitive form if the staff deems that to be appropriate under the circumstances.

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

Section 23(a)(2) of the Exchange Act[41] also requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. 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. In addition, Section 3(f)[42] of the Exchange Act requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

We believe the final amendments will benefit registrants that are TARP recipients and their shareholders by providing certainty regarding how registrants that are TARP recipients must comply with the EESA requirement to hold an advisory vote on executive compensation in the context of the Federal proxy rules, while maintaining adequate flexibility to comply with this requirement. The certainty should promote efficiency. The final amendments also will help ensure that shareholders receive disclosure regarding the required vote and the nature of a registrant's responsibilities to hold the vote under the EESA. The amendment to Rule 14a–6(a) will benefit many TARP recipients by reducing the burdens associated with a preliminary filing requirement. As discussed in greater detail above, we believe these benefits will be achieved without imposing any significant additional burdens on registrants that are TARP recipients or costs to their shareholders. We do not anticipate any effect on competition or capital formation. We do believe the rules will make compliance with EESA more efficient.

In the Proposing Release, we requested comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also requested comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. We did not receive any comments directly responding to these requests.

VI. Regulatory Flexibility Act Certification

In Part VII of the Proposing Release, the Commission certified pursuant to Section 605(b) of the Regulatory Flexibility Act[43] that the proposed amendments to the Federal proxy rules would not have a significant economic impact on a substantial number of small entities. While the Commission encouraged written comments regarding this certification, no commenters responded to this request or indicated that the amendments as adopted would have a significant economic impact on a substantial number of small entities.

VII. Statutory Authority and Text of the Final Amendments

The amendments described in this release are being adopted under the authority set forth in Section 111(e) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)) and Sections 14(a) and 23(a) of the Exchange Act (15 U.S.C. 78n(a) and 78w(a)).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

■ For the reasons set out in the preamble, the Commission hereby amends title 17, chapter II, of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* 18 U.S.C. 1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

■ 2. Amend § 240.14a–6 by:

■ a. Removing "and/or" from the end of paragraph (a)(5);

■ b. Removing the period from the end of paragraph (a)(6) and in its place adding "; and/or"; and

■ c. Adding paragraph (a)(7) immediately following paragraph (a)(6).

The addition reads as follows:

§ 240.14a–6 Filing requirements.

(a) * * *

(7) A vote to approve the compensation of executives as required pursuant to Section 111(e)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)) and § 240.14a–20.

* * * * *

■ 3. Add § 240.14a–20 to read as follows:

§ 240.14a–20 Shareholder approval of executive compensation of TARP recipients.

If a solicitation is made by a registrant that is a *TARP recipient,* as defined in section 111(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(a)(3)), during the period in which any obligation arising from financial assistance provided under the *TARP,* as defined in section 3(8) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5202(8)), remains outstanding and the solicitation relates to an annual (or special meeting in lieu of the annual) meeting of security

[41] 15 U.S.C. 78w(a).

[42] 15 U.S.C. 78c(f).

[43] 5 U.S.C. 605(b).

holders for which proxies will be solicited for the election of directors, as required pursuant to section 111(e)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)), the registrant shall provide a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to Item 402 of Regulation S–K (§ 229.402 of this chapter), including the compensation discussion and analysis, the compensation tables, and any related material.

Note to § 240.14a–20: TARP recipients that are smaller reporting companies entitled to provide scaled disclosure pursuant to Item 402(l) of Regulation S–K are not required to include a compensation discussion and analysis in their proxy statements in order to comply with this section. In the case of these smaller reporting companies, the required vote must be to approve the compensation of executives as disclosed pursuant to Item 402(m) through (q) of Regulation S–K.

■ 4. Amend § 240.14a–101 to add a sentence at the end of Item 20 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

SCHEDULE 14A INFORMATION

* * * * *

Item 20. Other proposed action. * * * Registrants required to provide a separate shareholder vote pursuant to section 111(e)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)) and § 240.14a–20 shall disclose that they are providing such a vote as required pursuant to the Emergency Economic Stabilization Act of 2008, and briefly explain the general effect of the vote, such as whether the vote is non-binding.

* * * * *

By the Commission.

Dated: January 12, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–756 Filed 1–15–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 514

RIN 3141–0001

Amendments to Various National Indian Gaming Commission Regulations; Correction

AGENCY: National Indian Gaming Commission.

ACTION: Correcting amendments.

SUMMARY: On July 27, 2009 (74 FR 36926), the National Indian Gaming Commission ("NIGC") published a final rule updating various NIGC regulations and streamlining procedures. On August 25, 2009 (74 FR 42275), NIGC extended the effective date of the changes made by the final rule to December 31, 2009. This publication corrects inadvertent errors left in § 514.1 of the final rule so that fees and fee statements are due on June 30th and December 31st of each calendar year, not on March 1st and August 1st as originally published.

DATES: *Effective Date:* This correction is effective on January 19, 2010.

FOR FURTHER INFORMATION CONTACT: Christopher White, Comptroller, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701–2721, NIGC is funded through fees assessed on Class II and Class III gaming operations. Prior to the December 31, 2009 effective date of NIGC's final rule, "Amendments to Various National Indian Gaming Commission Regulations" (74 FR 36926), NIGC regulations required tribes to submit fees and fee statements four times per year. The prior regulations also required that the fees and fee statements be received at NIGC's Washington, DC headquarters no later than the last day of each quarter—March 31st, June 30th, September 30th, and December 31st of each calendar year.

The final rule amended 25 CFR 514.1 to require the payment of fees and submission of fee statements only twice each year, and it implemented the "mailbox" rule such that payments and submissions were timely if sent on or before their due dates.

Unfortunately, as published, the final rule contained incorrect due dates for fees and fee statements, giving them as March 1 and August 1 of each calendar year. This publication corrects § 514.1(c)(2), § 514.1(c)(6)(i), and § 514(d) so that the due dates for the submission of fees and fee statements read correctly as June 30th and December 31st of each calendar year. This correction makes no change to the adoption of the mailbox rule. Payments and submissions are still timely if sent on or before June 30th and December 31st of each calendar year.

The NIGC finds that it may make this correction without notice and public comment. The changes are few and ministerial, and they remove typographical errors so that the adopted regulations read correctly and reflect the NIGC's intent. What is more, leaving the incorrect dates in place during a notice-and-comment period has the potential to prejudice Indian tribes and is therefore contrary to the public interest.

The incorrect final rule would make fees and fee statements due on March 1, 2010, a full four months (121 days) before the NIGC intended them to be due. Further, as a practical matter, NIGC could not propose an amended rule, receive and review comments, publish an amended final rule, and have that amended rule become effective before March 1. As a result, unless the final rule is corrected immediately, any failure by a tribe to submit fees by March 1 would be a technical violation of NIGC regulations and cause concern about the possibility, however remote, of a notice of violation and attendant fines and penalties.

Even though that outcome is unlikely, there is no need to artificially place tribes out of compliance with IGRA or to create a risk of adverse enforcement actions. An immediate ministerial change to three sentences will correct the NIGC's error, preserve tribal compliance with IGRA, and alleviate any concern about the possibility of enforcement actions.

List of Subjects in 25 CFR Part 514

Gambling, Indians—lands, Indians—tribal government, Reporting and recordkeeping requirements.

■ Accordingly, 25 CFR part 514 is corrected by making the following correcting amendments:

PART 514—FEES

■ 1. The authority citation for part 514 continues to read as follows:

Authority: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

§ 514.1 [Amended]

■ 2. Amend § 514.1 as follows:

■ a. Amend paragraph (c)(2) by correcting "March 1st and August 1st" to read "June 30th and December 31st".

■ b. Amend paragraph (c)(6)(i) by correcting "March 1st" to read "June 30th".

■ c. Amend paragraph (d) by correcting "March 1st and August 1st" to read "June 30th and December 31st".

Dated: January 12, 2010.

George T. Skibine,

Acting Chairman.

[FR Doc. 2010–802 Filed 1–15–10; 8:45 am]

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