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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240, 249 and 274

[Release No. 33-10998; 34-93311; IC-34399; File No. S7-12-15]

RIN 3235-AK99

Reopening of Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission ("Commission") is reopening the comment period for its proposal to implement the provisions of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). The proposed rule would direct the national securities exchanges and national securities associations to establish listing standards that would require each issuer to develop and implement a policy providing for the recovery, under certain circumstances, of incentive-based compensation based on financial information required to be reported under the securities laws that is received by current or former executive officers, and require disclosure of the policy (the "Proposed Rules"). The Proposed Rules were set forth in a release published in the Federal Register on July 14, 2015 (Release No. 34-75342) (the "Proposing Release"), and the related comment period ended on September 14, 2015. The reopening of this comment period is intended to allow interested persons further opportunity to analyze and comment upon the Proposed Rules in light of

developments since the publication of the Proposing Release and our further consideration of the Section 954 mandate.

DATES: The comment period for the proposed rule published July 14, 2015, at 80 FR 41143, is reopened. Comments should be received on or before November 22, 2021.

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

Electronic comments:

- Use the Commission's Internet comment form (https://www.sec.gov/rules/submitcomments.htm).

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 S7-12-15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (http://www.sec.gov/rules/proposed.shtml). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549-1090 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.

Studies, memoranda, or other substantive items may be added by the Commission

or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Steven G. Hearne, Senior Special Counsel, in the Office of Rulemaking, at (202) 551-3430, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

Section 954 of the Dodd-Frank Act added Section 10D to the Securities Exchange Act of 1934[1] ("Exchange Act"), which provides that the Commission require national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not develop and implement a policy providing for the recovery of erroneously awarded compensation and for disclosure of that policy. As described more fully in the Proposing Release,[2] under the Proposed Rules, an issuer would be subject to delisting if it does not adopt a compensation recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules, and comply with the policy's recovery provisions. Specifically, the Proposed Rules would:

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[1] 15 U.S.C. 78a *et seq*.

[2] *See Listing Standards for Recovery of Erroneously Awarded Compensation*, Release No. 34-75342 (Jul. 1, 2015) [80 FR 41143 (Jul. 14, 2015)].

1. Require national securities exchanges and associations to establish listing standards that require listed issuers to adopt and comply with a compensation recovery policy in which:

    i. Recovery is required:

        a. From current and former executive officers who received incentive-based compensation during the three fiscal years preceding the date on which the issuer is required to prepare an accounting restatement to correct a material error.

        b. On a "no fault" basis, without regard to whether any misconduct occurred or an executive officer's responsibility for the misstated financial statements.

    ii. The amount of incentive-based compensation to be recovered is the amount received by an executive officer that exceeds the amount the executive officer would have received had the incentive-based compensation been determined based on the restated financial statements.

    iii. Issuers must recover in compliance with their recovery policies except to the extent that it would be impracticable to do so, such as where the direct expense of enforcing recovery would exceed the amount to be recovered or, for foreign private issuers, in specified circumstances where recovery would violate home country law.

    iv. Issuers are prohibited from indemnifying current and former executive officers against the loss of recoverable incentive-based compensation.

2. Define significant terms, including:

i. "Incentive-based compensation" as any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure, and further defining "financial reporting measure" as a measure that is determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, any measure derived wholly or in part from such financial information, and stock price and total shareholder return. For incentive-based compensation based on stock price or total shareholder return, issuers would be permitted to use a reasonable estimate of the effect of the restatement on the applicable measure to determine the amount to be recovered.

ii. "Executive officer" modeled on the definition of "officer" under 15 U.S.C. 78p ("Exchange Act Section 16"), to include the issuer's president, principal financial officer, principal accounting officer, any vice-president in charge of a principal business unit, division or function, and any other person who performs policy-making functions for the issuer and otherwise conforms to the full scope of the Exchange Act Section 16 definition.[3]

3. Require the filing of the compensation recovery policy as an exhibit to the issuer's Exchange Act annual report, and if during its last completed fiscal year the issuer either completed a restatement that required recovery, or there was an outstanding balance of excess incentive-based compensation relating to a prior restatement, require disclosure, block tagged in XBRL, to accompany the

[3] *See* 17 CFR 240. 16a-1(f).

executive compensation disclosure in annual reports and any proxy or information statements of:

i. The date on which the issuer was required to prepare each accounting restatement, the aggregate dollar amount of excess incentive-based compensation attributable to the restatement, and the aggregate dollar amount of excess incentive-based compensation that remained outstanding at the end of its last completed fiscal year.

ii. The name of each individual subject to recovery from whom the issuer decided not to pursue recovery, the amounts due from each such individual, and a brief description of the reason the issuer decided not to pursue recovery.

iii. If at the end of the issuer's last completed fiscal year, amounts of excess incentive-based compensation are outstanding from any individual for more than 180 days, the name of, and amount due from, each such individual.

4. Apply to all listed issuers except for certain registered investment companies to the extent they do not provide incentive-based compensation to their employees and limited accommodations for foreign private issuers.

II. REOPENING OF COMMENT PERIOD

Since the enactment of Section 954 of the Dodd-Frank Act in 2010, and the publication of the Proposed Rules in 2015, there have been important developments relating to clawback policies. We have observed an increase in the number of issuers disclosing information about their ability to recoup performance-based awards in the

event of fraud, restatement of financial statements, or other reasons, and adopting and implementing executive compensation clawback policies addressing these circumstances.[4]

In light of these developments, and our further consideration of how best to implement the Section 954 mandate, we are reopening the comment period for the Proposed Rules until November 22, 2021, to provide the public with an additional opportunity to analyze and comment on the Proposed Rules. Commenters may submit, and the Commission will consider, comments on any aspect of the Proposed Rules. All comments received to date on the Proposed Rules will be considered and need not be resubmitted. Comments are particularly helpful to us if accompanied by quantified estimates or other detailed analysis and supporting data regarding the issues addressed in those comments. In addition to the requests for comment included in the Proposing Release, the Commission specifically seeks comments on the following:

Request for Comment

1. Exchange Act Section 10D provides for the implementation of a policy for the recovery of certain incentive-based compensation "in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws." The Commission proposed to define an "accounting restatement" for this purpose as "the result of the process of revising previously issued financial statements to reflect the correction of one or more errors that are material to those financial statements." The proposed definition

4 An Intelligize search indicates a significant increase in the number of publicly traded companies that adopted a clawback compensation policy, from 982 in 2015 to 1,321 in 2018 and to 2,021 in 2020.

would not require a recovery where an issuer's previously issued financial statements are required to be restated in order to correct errors that were not material to those previously issued financial statements, but would result in a material misstatement if (a) the errors were left uncorrected in the current report or (b) the error correction was recognized in the current period.

Since the Commission issued the Proposing Release in 2015, concerns have been expressed that issuers may not be making appropriate materiality determinations for errors identified. Some commentators have suggested that this could be because some of these issuers are seeking to avoid compensation recovery under their clawback policies.[5] One commenter expressed concerns regarding immaterial "revision restatements" that would allow an issuer to avoid the application of the proposed clawback provisions and recommended that the clawback trigger not be limited to material restatements of previously issued financial statements.[6] In this regard, we note that Commission staff has provided guidance that an issuer's materiality evaluation of an identified unadjusted error

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5 *See, e.g.,* Shh! Companies Are Fixing Accounting Errors Quietly - WSJ - Wall Street Journal (Dec. 5, 2019). *See also* Choudhary, Preeti and Merkley, Kenneth J. and Schipper, Katherine, *Immaterial Error Corrections and Financial Reporting Reliability* (June 15, 2021) available at https://ssrn.com/abstract=2830676 or http://dx.doi.org/10.2139/ssrn.2830676; and Thompson, Rachel, *Reporting Misstatements as Revisions: An Evaluation of Managers' Use of Materiality Discretion* (Sept. 17, 2021) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3450828.

6 *See* letter in response to the Proposing Release from AFL-CIO (Sept. 14, 2015) ("AFL-CIO"). Some commenters supported a trigger when *any* revision to previously issued financial statements occurred. *See, e.g.,* letters in response to the Proposing Release from As You Sow Foundation (Sept. 15, 2015); Council of Institutional Investors (Aug. 27, 2015); California Public Employees Retirement System (Sept. 14, 2015). Other commenters supported the proposed standard to limit the trigger to material restatements of previously issued financial statements. *See, e.g.,* letters in response to the Proposing Release from Ernst & Young LLP (Sept. 15, 2015) and Society of Corporate Secretaries and Governance Professionals (Sept. 18, 2015) ("SCSGP").

should consider the effects of the identified unadjusted error on the applicable financial statements and related footnotes, and evaluate quantitative and qualitative factors.[7]

We are considering whether the term "an accounting restatement due to material noncompliance" should be interpreted to include all required restatements made to correct an error in previously issued financial statements.[8] This interpretation would include restatements required to correct errors that were not material to those previously issued financial statements, but would result in a material misstatement if (a) the errors were left uncorrected in the current report or (b) the error correction was recognized in the current period. Under such an interpretation, those restatements as well as restatements to correct errors that are material to the previously issued financial statements, would be considered "an accounting restatement due to material noncompliance" and therefore would result in a clawback recovery analysis. We believe that revising the Proposed Rules to encompass these types of restatements would be an appropriate means of implementing the statute.

Should the scope of the Proposed Rules include (1) restatements that correct errors that are material to previously issued financial statements and (2) restatements that correct errors that are not material to previously issued financial statements, but would

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7 The staff has provided guidance to assist registrants in carrying out these evaluations. *See* Staff Accounting Bulletin No. 99, *Materiality* (Aug. 12, 1999) and Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (Sept. 13, 2006). The statements in the staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

8 *See* Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 250, which defines "error in previously issued financial statements" as an error in recognition, measurement, presentation, or disclosure in financial statements resulting from mathematical mistakes, mistakes in the application of generally accepted accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared.

result in a material misstatement if (a) the errors were left uncorrected in the current report or (b) the error correction was recognized in the current period? Are there practical or other considerations that would make application of the clawback policy in these circumstances challenging or unduly burdensome? If so, are there additional changes we should make to address those challenges or burdens? For example, in instances where a clawback analysis would be trigged by restatements that correct errors that are not material to previously issued financial statements, should the rules provide additional discretion for compensation committees of the issuer's board of directors to determine whether to pursue recovery of incentive-based compensation and how much to recover, and would such discretion be consistent with Section 954? Is there an alternative interpretation of "an accounting restatement due to material noncompliance" that would be more appropriate and better capture required restatements? Are there accounting restatements that are due to material noncompliance that would not be captured by the proposed definition or the interpretation set forth above that should be subject to clawback?

2. For purposes of triggering the three-year lookback period, the Proposed Rules would establish the date on which an issuer is required to prepare an accounting restatement as the earlier of (a) the date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the issuer's previously issued financial statements contain a material error, or (b) the date a court, regulator or other legally authorized body directs the issuer to restate its previously issued financial statements to correct a material error. The Proposing Release indicated

the Commission's belief that a definition that incorporates the proposed triggering events rather than leaving the determination solely to the discretion of the issuer would better realize the objectives of Section 10D while providing clarity about when a recovery policy, and specifically the determination of the three-year look-back period, would be triggered for purposes of the proposed listing standards. Some commenters expressed concern that the "reasonably should have concluded" standard adds unnecessary uncertainty to the determination.[9] Should we remove the "reasonably should have concluded" standard in light of concerns that the standard adds uncertainty to the determination? For example, should we revise the trigger to use the earlier of (a) the date the issuer's board of directors, a committee of the board of directors, or the officer or officers of the issuer authorized to take such action if board action is not required, concludes that the issuer's previously issued financial statements require a restatement to correct an error in those financial statements that is material to the previously issued financial statements or that would result in a material misstatement if (1) the error was left uncorrected in the current report or (2) the error correction was recognized in the current period; or (b) the date a court, regulator or other legally authorized body directs the issuer to restate its previously issued financial statements for either type of error? For errors that are material to the previously issued financial statements, we generally expect

[9] *See* letters in response to the Proposing Release from American Bar Association (Feb. 11, 2016) ("ABA"); Business Roundtable (Sept. 14, 2015); Center on Executive Compensation (Sept. 14, 2015); Davis Polk & Wardwell LLC (Sept. 11, 2015); Exxon Mobil Corporation (Sept. 14, 2015); and SCSGP. The letter from Exxon Mobil Corporation asserted it is not "a realistic concern" that issuers would delay issuing a restatement to avoid a clawback.

the date in (a) to coincide with the date disclosed in the Item 4.02(a) Form 8-K filed.[10] For errors that are not material to the previously issued financial statements but where the issuer concludes that a restatement is required, we believe evidence of the conclusion that a restatement is required is generally included in the issuer's documentation of its materiality analysis of the error.[11] Should we remove the "reasonably should have concluded" standard in light of concerns raised by commenters, regardless of whether we revise the proposed trigger to accommodate the additional accounting restatements that we are considering? Is there another standard consistent with the purposes of the rule that may reduce the expected complexities of applying the "reasonably should have concluded" standard?

3. The Commission proposed defining a number of terms for purposes of the Proposed Rules. Alternatively, should the Commission rely on common understanding or specifically delineate the rules without relying on a set of definitions specific to this rule? For example, an "accounting restatement" was proposed to be defined solely for the purposes of the Proposed Rule as "the result of the process of revising previously issued financial statements to reflect the correction of one or more errors that are material to those financial statements." U.S. GAAP and IFRS include guidance on how an issuer should correct accounting errors in previously issued financial statements.[12] In addition, Federal securities laws and Commission rules require presenting information that is not

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[10] An Item 4.02(a) Form 8-K is required to report when the registrant concludes that its previously issued financial statements should no longer be relied upon because of an error in such financial statements as addressed in FASB ASC Topic 250, Accounting Changes and Error Corrections.

[11] An Item 4.02 Form 8-K is not typically filed for an error that is not material to the previously issued financial statements.

[12] *See* FASB ASC Topic 250, *Accounting Changes and Error Corrections,* and International Accounting Standard 8, *Accounting Policies, Changes in Accounting Estimates and Errors.*

misleading. To assist registrants with compliance with the Federal securities laws, the staff has provided certain guidance on how registrants assess the materiality of an accounting error.[13] Because the revised clawback trigger we are considering would specifically refer to all required restatements to previously issued financial statements, including those restatements that were not material to those previously issued financial statements, but would result in a material misstatement if (a) the errors were left uncorrected in the current report or (b) the error correction was recognized in the current period, we are considering whether it would be more appropriate to rely on existing guidance, literature and definitions concerning accounting errors rather than define "accounting restatement" and "material noncompliance." Should we rely on these existing resources and remove the proposed definitions of "accounting restatement" and "material noncompliance"? Alternatively, are there other definitions of "accounting restatement" and "material noncompliance" we should use or would adding new definitions cause more confusion in their application? Additionally, if the rule does not establish a specific definition regarding when incentive-based compensation is "received," what guidance, if any, should we provide regarding the meaning of that term?

4. If we interpret the statutory term "an accounting restatement due to material noncompliance" to include restatements required to correct errors that were not material to previously issued financial statements, but would result in a material misstatement if (a) the errors were left uncorrected in the current report or (b) the error correction was recognized in the current period, then those restatements would require a recovery analysis. Registrants do not always label historical financial statements as "restated" for

[13] *See* supra note 7.

these types of restatements. Also, an Item 4.02 Form 8-K filing is not typically filed for this type of error, because the error is not material to the previously issued financial statements. As such, to provide greater transparency around such restatements, we are considering whether to add check boxes to the cover page of the Form 10-K that indicate separately (a) whether the previously issued financial statements included in the filing include an error correction, and (b) whether any such corrections are restatements that triggered a clawback analysis during the fiscal year. Would one or both checkboxes and the related information be useful to investors? Is there another method, such as via a Form 8-K filing, that we should consider in order to provide this information to investors in a transparent and prominent manner? Are there any other disclosures that would be useful to investors in explaining or clarifying information surrounding any restatements or the issuer's decision of whether or not to claw back compensation?

5. As noted above, there has been an observed increase in voluntary adoption of compensation clawback policies in recent years, together with accompanying disclosures about those policies. These developments would impact the potential costs of the Proposed Rules at the aggregate level. However, such impact is likely to differ across issuers in a variety of ways. For example, some issuers may already have policies that would satisfy, or easily could be modified to satisfy, the requirements of the Proposed Rules. Other issuers may have clawback policies in place that are substantially different from the requirements of the Proposed Rules, or may not have clawback policies in place altogether. We request any estimates or data that would allow us to refine our characterization of costs and benefits of the clawback policies under the current state of issuer clawback policies and how such effects would differ under the Proposed Rules. In

particular, we request specific estimates of the costs that are incurred by issuers in implementing these policies, and the costs and benefits to investors. How might these costs and/or benefits change in implementing a policy pursuant to a Commission rulemaking and the new potential interpretation of "an accounting restatement due to material noncompliance"? We also request data regarding the characteristics of voluntarily adopted clawback policies (for example, clawback triggers, scope of covered persons, scope of compensation covered, among other characteristics), and data regarding compensation structures that are used by issuers (for example, compensation instruments utilized, measures used to award/earn such compensation, among others). Has the voluntary adoption of clawback provisions resulted in a decrease of incentive-based compensation or an increase in compensation tied to non-financial performance by issuers?

6. We understand that as part of the materiality analysis relating to errors, issuers already consider whether any misstatement of previously issued financial statements had the effect of increasing management's compensation. To what extent can the evaluation already conducted in connection with evaluating the materiality of an error be leveraged in connection with determining the need for and the amount of any clawback? Would revising the scope of the Proposed Rules to encompass additional accounting restatements, as described above, affect how an issuer conducts this evaluation and, if so, how? Would revising the scope largely capture situations where issuers may have shifted from restating previously issued financial statements to avoid triggering compensation clawback policies, or would there be situations where the revised scope becomes over-inclusive? How would revising the scope impact the costs to issuers or benefits to

investors of the clawback provision and the execution of the clawback analysis as compared to the Proposed Rules? We request data or analysis that will assist us in evaluating the effects of including these additional accounting restatements within the scope of the rule, in particular any data that may assist in quantifying the number of additional clawback analyses that would be triggered and the costs and benefits of revising the scope of the rule. How would the potential changes discussed in this release affect the appropriateness of the scope of the Proposed Rules overall? For example, in response to the Proposing Release, some commenters stated that the Proposed Rules applied too broadly both to individuals and to issuers.[14] Is the rule as proposed appropriately tailored? How, if at all, would the changes to the scope of the rules discussed in this release affect the other aspects of the Proposed Rules?

7. The Commission proposed to define the recoverable amount as "the amount of incentive-based compensation received by the executive officer or former executive officer that exceeds the amount of incentive-based compensation that otherwise would have been received had it been determined based on the accounting restatement."[15] Applying this definition, after an accounting restatement, the issuer would first recalculate the applicable financial reporting measure and the amount of incentive-based compensation based thereon. The issuer would then determine whether, based on that financial reporting measure as calculated relying on the original financial statements and taking into account any discretion that the compensation committee had applied to reduce

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[14] *See e.g.,* letters in response to the Proposing Release from ABA; National Association of Manufacturers (Sept. 14, 2015); and SCSGP. *But see, e.g.,* letters in response to the Proposing Release from Better Markets, Inc. ((Sept. 14, 2015); and AFL-CIO (supporting the scope of the Proposed Rules).

[15] *See* Proposed Rule 10D-1(b)(1)(iii).

the amount originally received, the executive officer received a greater amount of incentive-based compensation than would have been received applying the recalculated financial reporting measure.

There are a number of possible methods to reasonably estimate the effect of an accounting restatement on stock price with varying levels of complexity and a range of related costs. For incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in the accounting restatement, the Proposed Rules would require an issuer to maintain documentation of the determination of that reasonable estimate and provide such documentation to the relevant exchange or association.[16] The Proposed Rules did not explicitly require disclosure of how issuers calculated the recoverable amount. We request comment on whether additional disclosures beyond what was proposed should be required. For example, would investors benefit from disclosure of how issuers calculated the recoverable amount, including their analysis of the amount of the executive's compensation that is recoverable under the rule, and/or the amount that is not subject to recovery? For incentive-based compensation based on stock price or total shareholder return, would investors benefit from disclosure regarding the determination and methodology that an issuer used to estimate the effect of stock price or total shareholder return? What are the costs associated with such disclosure?

8. Have there been any changes or developments since the Proposing Release with respect to payment of incentive-based compensation by listed registered management

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[16] *See* Proposed Rule 10D-1(b)(1)(iii)(B).

investment companies that should affect how listed registered management investment companies are treated under the Proposed Rules? If an investment company, or a business development company, is externally, rather than internally, managed, should this impact how the company is treated under the Proposed Rules? For example, should listed business development companies (or externally managed listed business development companies) be treated the same as listed registered management investment companies and be eligible for the conditional exemption as long as they do not actually pay incentive-based compensation? Should we reconsider any of the Proposed Rules' conditions or disclosure requirements with respect to registered or unregistered investment companies? What impact would any of those changes have on the economic effects of the rule?

9. The Commission proposed to require that the new compensation recovery disclosures be block-text tagged using XBRL. The Commission is considering requiring that specific data points within the new compensation recovery disclosure be separately detail tagged using Inline XBRL instead of, or in addition to, the proposed block-text tagging.[17] Would Inline XBRL detail tagging of some or all of the compensation recovery disclosures be valuable to investors? If so, which disclosures should we require issuers to detail tag and why? Is there an alternative technology to XBRL that we should consider? Should we enable more flexibility by adopting other tagging technologies?

[17] Subsequent to the proposal, the Commission adopted rules replacing XBRL tagging requirements for issuer financial statements and open-end fund risk/return summary disclosures with Inline XBRL tagging requirements. Inline XBRL embeds the machine-readable tags in the human-readable document itself, rather than in a separate exhibit. *See Inline XBRL Filing of Tagged Data,* Release No. 33-10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)]. As a result of those changes, we are considering using Inline XBRL, rather than XBRL, for the proposed tagging requirements.

10. Are there any other developments since the Proposing Release that should affect our consideration of the Proposed Rules or their potential economic effects? Are there any changes we should consider in the methodologies and estimates used to analyze the economic effects of the Proposed Rules in the Proposing Release?

We request and encourage any interested person to submit comments regarding the Proposed Rules, specific issues discussed in this release or the Proposing Release, and other matters that may have an effect on the Proposed Rules. We request comment from the point of view of issuers, shareholders, directors, investors, and other market participants. We note that comments are of particular assistance to us if accompanied by supporting data and analysis of the issues addressed in those comments, particularly quantitative information as to the costs and benefits. If alternatives to the Proposed Rules are suggested, supporting data and analysis and quantitative information as to the costs and benefits of those alternatives are of particular assistance. Commenters are urged to be as specific as possible; when commenting, it would be most helpful if you include the reasoning behind your position or recommendation. All comments received to date on the Proposed Rules will be considered and need not be resubmitted. If any commenters who have already submitted a comment letter wish to provide supplemental or updated comments, we encourage them to do so.

Dated: October 14, 2021.

By the Commission.

Jill M. Peterson,

Assistant Secretary.