

committee of the board of directors, for payment of compensation:

- To any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;¹¹⁶ and
- To any advisors employed by the audit committee.

This requirement will further the standard relating to the audit committee's responsibility to appoint, compensate, retain and oversee the outside auditor. It also will add meaning to the standard relating to the audit committee's authority to engage independent advisors. Not only could an audit committee be hindered in its ability to perform its duties objectively by not having control over the ability to compensate these advisors, but the role of the advisors also could be compromised if they are required to rely on management for compensation. Thus, absent such a provision, both the audit committee and the advisors could be less willing to address disagreements or other issues with management.

Commenters supported this requirement.¹¹⁷ We also requested comment on whether there should be limits on the amount of compensation that could be requested by the audit committee. The overwhelming majority of commenters did not support compensation limits, arguing that to do otherwise would subvert the intent of the requirement.¹¹⁸ These commenters argued that audit committee members' own fiduciary duties to the issuer and natural oversight by the board of directors as a whole over the audit committee would address any concerns over abuse. The final rule does not set funding limits.

Some commenters believed it would be appropriate to supplement the funding requirements.¹¹⁹ While the Commission's proposal would address the compensation of advisors, it would not provide assurance that the audit committee itself can obtain the funding it needs to carry out its duties. Specifically, these commenters believed

the final rule should also state that the issuer must provide appropriate funding for ordinary administrative expenses of the audit committee. We find merit in this suggestion. An audit committee's effectiveness may be compromised if it is dependent on management's discretion to pay for the committee's expenses, especially when potential conflicts of interest with management may be apparent. Accordingly, the final rule provides that, in addition to funding for advisors, the issuer must provide appropriate funding for ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

F. Application and Implementation of the Standards

1. SROs Affected and Implementation Dates

Section 10A(m) of the Exchange Act by its terms applies to all national securities exchanges and national securities associations. These entities, to the extent that their listing standards do not already comply with the final rule, will be required to issue or modify their rules, subject to Commission review, to conform their listing standards.¹²⁰ The SROs are not precluded from adopting additional listing standards regarding audit committees, as long as they are consistent with Exchange Act rule 10A-3.

To facilitate timely implementation of the requirements, we proposed compliance dates by when each SRO must provide to the Commission proposed rules and rule amendments to implement Exchange Act rule 10A-3, as well as by when such rules or rule amendments must be approved by the Commission. As proposed, SROs would have had until 60 days after publication of our final rule in the **Federal Register** to provide proposed rules or rule amendments, and until 270 days after publication of our final rule to have such rules or rule amendments approved by the Commission. Commenters generally supported these compliance dates, although several requested additional time to submit the proposed rules and rule amendments.¹²¹

In response to these comments, the SRO compliance dates we are adopting in the final rule are designed to facilitate timely implementation of the new requirements, while providing additional time for SROs to submit proposed rules or rule amendments.

Under the final rule, each SRO must provide to the Commission proposed rules or rule amendments that comply with the requirements no later than July 15, 2003. Final rules or rule amendments must be approved by the Commission no later than December 1, 2003.

Regarding when listed issuers must be in compliance with the new listing rules, we proposed that the new requirements would need to be operative by the SROs no later than the first anniversary of the publication of our final rule in the **Federal Register**. A few commenters believed the proposed implementation dates were adequate for issuers to make the necessary changes to their audit committees, arguing that timely implementation is key to restoring investor confidence and public trust.¹²² However, a substantial group of commenters recommended modifications and additional time for issuers to comply, for three primary reasons.

First, commenters noted that the new requirements as proposed would become operative during the 2004 annual shareholder meeting period for most listed issuers.¹²³ Given the importance of allowing issuers to identify, evaluate and recruit qualified directors, as well as the desirability of avoiding the burden and expense of requiring special shareholder meetings to elect those directors, commenters requested the ability to coordinate compliance with their annual shareholder meeting schedule, such as the first annual shareholders meeting after approval of the SRO implementing rules, which could occur after the original compliance date proposed by the Commission.

Second, several commenters requested additional time for compliance by foreign private issuers.¹²⁴ The new SRO rules may represent the first time that some foreign listed issuers will be subject to such requirements. Some were concerned that the pool of candidates available in some countries that would be qualified to perform the functions required of audit committee members may be limited. As such, it may take additional time to locate and attract qualified directors.

Finally, several commenters requested accommodations for smaller listed

¹¹⁶ Exchange Act section 10A(m)(6)(A) uses the phrase "rendering or issuing an audit report." For consistency, we have conformed the language in the final rule to the language used in the oversight requirement in Exchange Act section 10A(m)(2) which refers to "preparing or issuing an audit report." Similarly, the final rule includes as proposed the phrase "other audit, review or attest services." See section II.B.1 regarding a discussion of the scope of this formulation.

¹¹⁷ See, e.g., the Letters of AICPA; CalPERS; Deloitte; FEI; ICI; PwC.

¹¹⁸ Compare, e.g., the Letters of ABA; Deloitte; E&Y; FEI; PwC with the letters of Southern Company; CalPERS.

¹¹⁹ See, e.g., the ABA Letter.

¹²⁰ An SRO that wished to do so could satisfy the requirements of the rule by requiring that a listed issuer must comply with the requirements set forth in Exchange Act rule 10A-3.

¹²¹ See, e.g., the Letters of ABA; NYSE.

¹²² See, e.g., the Letters of CalPERS; CII; CSC; ICI; PwC.

¹²³ See, e.g., the Letters of ABA; AFEP-AGREF; AXA SA; Cleary; German CFOs; Nippon Keidanren; JPMorgan Chase Bank; Matsushita.

¹²⁴ See, e.g., the Letters of Cleary; Davis Polk & Wardwell; Deloitte; European Federation of Accountants ("FEE"); PwC; Telekom Austria AG.