

the exemption for additional classes of a listed issuer will apply if any class of securities of the issuer is listed on a national securities exchange or national securities association subject to these rules.

Of course, just as an SRO may adopt standards for audit committees that are stricter than those provided in Exchange Act rule 10A-3, they also may apply their listing standards, including those implementing Exchange Act rule 10A-3, to classes of securities where Exchange Act rule 10A-3 would not require it. For example, in the case of an issuer with a class of debt securities listed on an SRO subject to these rules, another SRO may condition listing by that issuer of its common equity securities on full compliance with that second SRO's listing standards regarding the requirements in Exchange Act rule 10A-3. Moreover, our rules do not embody a "first in time" principle, so that in the above example, once the class of common equity securities was listed on the second SRO subject to our requirements, unless SRO rules provide otherwise, the multiple listing exemption could be applied in respect of the debt securities listed on the first SRO.

Also as proposed, we are extending the exemption to listings of non-equity securities by certain additional subsidiaries of a parent company, if the parent company is subject to the requirements as a result of the listing of a class of equity securities. We proposed having the exemption apply to non-equity listings by direct or indirect consolidated majority-owned subsidiaries of a parent company. While commenters uniformly supported the exemption,¹³⁴ some believed that, for many of the same reasons discussed above regarding the independence exemption for overlapping boards of directors, the number of subsidiaries that would be covered by the multiple listing exemption was too restrictive.¹³⁵

In this instance, however, we believe that a greater degree of interest between the parent and the subsidiary is important. The multiple listing exemption will mean that, unless an SRO's rules provide otherwise, a publicly traded entity will not need to have any independent audit committee members or otherwise be subject to the audit committee responsibilities in

Exchange Act rule 10A-3. It is more important in this instance to ensure that the parent company's audit committee is in the appropriate position to provide oversight for the financial reporting of the subsidiary. This is most likely to be the case if the parent consolidates the subsidiary into its own financial statements. Nevertheless, we also understand that a parent may possess the requisite ownership threshold, but may not consolidate the subsidiary due to particular accounting situations.¹³⁶ Similarly, 50% owned joint ventures may not be consolidated by the two parents that exercise joint control.¹³⁷

To address these concerns, we are expanding the exemption from the proposal to include listings of non-equity securities by a direct or indirect subsidiary that is consolidated or at least 50% beneficially owned by a parent company, if the parent company is subject to the requirements as a result of the listing of a class of its equity securities. However, as proposed, if the subsidiary were to list its own equity securities (other than non-convertible, non-participating preferred securities¹³⁸), the subsidiary will be required to meet the requirements to protect its own public shareholders. The multiple listing exemption is available to U.S. subsidiaries if the parent is a foreign private issuer, even if the foreign parent is relying on one of the special exemptions for foreign private issuers (such as the board of auditors exemption). However, the special exemptions available to the foreign parent are of course not available to its U.S. subsidiary.

b. Security Futures Products and Standardized Options

The enactment of the Commodity Futures Modernization Act of 2000, or CFMA,¹³⁹ addressed the regulation of security futures products.¹⁴⁰ It permits national securities exchanges registered under section 6 of the Exchange Act¹⁴¹ and national securities associations registered under section 15A(a) of the Exchange Act¹⁴² to trade futures on individual securities and on narrow-

based security indices ("security futures") without being subject to the issuer registration requirements of the Securities Act and Exchange Act as long as they are cleared by a clearing agency that is registered under section 17A of the Exchange Act¹⁴³ or that is exempt from registration under section 17A(b)(7)(A) of the Exchange Act. In December 2002, we adopted rules to provide comparable regulatory treatment for standardized options.¹⁴⁴

The role of the clearing agency for security futures products and standardized options is fundamentally different from a conventional issuer of securities. For example, the purchaser of these products does not, except in the most formal sense, make an investment decision regarding the clearing agency. As a result, information about the clearing agency's business, its officers and directors and its financial statements is less relevant to investors in these products than to investors in the underlying security. Similarly, the investment risk in these products is determined by the market performance of the underlying security rather than the performance of the clearing agency. Moreover, the clearing agencies are self-regulatory organizations subject to regulatory oversight. Furthermore, unlike a conventional issuer, the clearing agency does not receive the proceeds from sales of security futures products or standardized options.¹⁴⁵

Recognizing these fundamental differences, we are adopting as proposed an exemption for the listing of a security futures product cleared by a clearing agency that is registered under section 17A of the Exchange Act or exempt from registration under section 17A(b)(7) of the Exchange Act. We are adopting as proposed a similar exemption for the listing of standardized options issued by a clearing agency registered under section 17A of the Exchange Act.

¹⁴³ 15 U.S.C. 78q-1.

¹⁴⁴ See Release No. 33-8171 (Dec. 23, 2002) [68 FR 188]. In that release, we exempted standardized options issued by registered clearing agencies and traded on a registered national securities exchange or on a registered national securities association from all provisions of the Securities Act, other than the section 17 antifraud provision of the Securities Act, as well as the Exchange Act registration requirements. Standardized options are defined in Exchange Act rule 9b-1(a)(4) [17 CFR 240.9b-1(a)(4)] as option contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to option classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.

¹⁴⁵ However, the clearing agency may receive a clearing fee from its members.

¹³⁴ See, e.g., the Letters of ABA; CalPERS; CSC; Edison International; Ford Motor Company; General Electric Company; General Motors Acceptance Corporation; NYSE; PSEG; PwC; Transamerica Finance Corporation ("TFC"); Southern Company.

¹³⁵ See, e.g., the Letters of ABA; Cingular Wireless; Corning Incorporated; Dow Corning Corporation; FEI; PwC; S&C; TFC.

¹³⁶ See, e.g., the Letter of Michael Groll.

¹³⁷ See, e.g., the Letters of Cingular Wireless; Corning Incorporated; Dow Corning Corporation; FEI; PwC.

¹³⁸ Trust-preferred and similar securities also fall within this category.

¹³⁹ Pub. L. No. 106-554, 114 Stat. 2763 (2000).

¹⁴⁰ Securities Act section 2(a)(16) [15 U.S.C. 77b(a)(16)], Exchange Act section 3(a)(56) [15 U.S.C. 78c(a)(56)], and Commodities Exchange Act section 1a(32) [7 U.S.C. 1a(32)] define "security futures product" as a security future or an option on a security future.

¹⁴¹ 15 U.S.C. 78f.

¹⁴² 15 U.S.C. 78o-3(A).