

redundant of the disclosure in the report.¹⁹⁴ To avoid imposing a duplicative requirement, we are not adopting the exhibit requirement.

We proposed to exclude unit investment trusts from the disclosure requirements relating to their use of the general exemption for UITs. As a passive investment vehicle, a UIT has no board of directors, and there is little reason why investors would expect a UIT to have an audit committee. We also proposed to exclude issuers availing themselves of the multiple listing exemption from the disclosure requirements. These issuers, or their controlling parents, will be required to comply with the audit committee requirements as a result of a separate listing. Accordingly, disclosure of the use of that exemption will not serve the purpose of highlighting for investors those issuers that are different from most other listed issuers. The majority of commenters supported these proposals, and we are adopting them.¹⁹⁵

We requested comment on whether we should exclude additional issuers from the exemption disclosure requirement. Some commenters recommended excluding disclosure of additional exemptions, such as the exemptions for overlapping boards, security futures products, standardized options, securities issued by foreign governments and securities issued by Asset-Backed Issuers and similar passive issuers.¹⁹⁶ For overlapping boards, issuers relying on that exemption will still be required to have independent directors, so disclosure of the exemption would not serve to highlight those issuers that are different from most issuers. Regarding security futures products, standardized options, foreign governments and Asset-Backed Issuers and similar passive issuers, like UITs, there would be little reason to believe that these issuers would have audit committees. Accordingly, we also are excluding listed issuers that rely on these exemptions from the disclosure requirement.

2. Identification of the Audit Committee in Annual Reports

An issuer subject to the proxy rules of section 14 of the Exchange Act¹⁹⁷ is currently required to disclose in its proxy statement or information

statement, if action is to be taken with respect to the election of directors, whether the issuer has a standing audit committee, the names of each committee member, the number of committee meetings held by the audit committee during the last fiscal year and the functions performed by the committee.¹⁹⁸ As discussed in the Proposing Release, we believe it is important for investors to be able to readily determine basic information about the composition of a listed issuer's audit committee. To foster greater availability of this basic information, we are adopting as proposed a requirement that disclosure of the members of the audit committee be included or incorporated by reference in the listed issuer's annual report.¹⁹⁹ Also, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we also are requiring a listed issuer that has not separately designated, or has chosen not to separately designate an audit committee, to disclose that the entire board of directors is acting as the issuer's audit committee.

We are adopting as proposed similar changes for foreign private issuers that file their annual reports on Form 40-F. Foreign private issuers that file their annual reports on Form 20-F already are required to identify the members of their audit committee in their annual reports. For these listed issuers, however, we are adopting the requirement that these issuers must disclose if the entire board of directors is acting as the audit committee.²⁰⁰ We also are adopting similar changes for

registered management investment companies.²⁰¹

Commenters expressed support for these changes.²⁰² Some commenters, however, recommended that listed issuers that are not required to provide disclosure of their reliance on one of the exemptions to the rule—such as a subsidiary relying on the multiple listing exemption, a foreign government issuer or an Asset-Backed Issuer or similar issuer—also should be excluded from the requirement to disclose whether or not they have a separate audit committee.²⁰³ According to these commenters, because these listed issuers need not disclose they are availing themselves of the exemption to the audit committee requirements, it would be anomalous to require these same listed issuers to disclose whether or not they have an audit committee. We are persuaded by these comments. Accordingly, we are excluding such issuers from this disclosure requirement. We are not making a corresponding change to Form N-CSR for registered management investment companies. We expect that registered management investment companies would only rarely, if at all, rely on the exemptions that trigger a disclosure requirement.²⁰⁴ We believe that in such an unusual case, it would nonetheless be appropriate for the investment company to disclose whether it has an audit committee.

3. Updates to Existing Audit Committee Disclosure

An issuer subject to the proxy rules is currently required to disclose additional information about its audit committee in its proxy statement or information statement, if action is to be taken with

¹⁹⁴ Item 22(b)(14) of Schedule 14A and Item 5 of Form N-CSR. Form N-CSR is used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act. See Investment Company Act Release No. 25914 (Jan. 27, 2003) [68 FR 5348].

¹⁹⁵ See, e.g., the Letters of ABA; CalPERS; CSC; PwC; Transparency International-USA.

¹⁹⁶ See, e.g., the Letters of Edison International; General Electric Company; TFC.

Unit investment trusts are not required to provide disclosure of their use of the exemption under Exchange Act rule 10A-3(c)(6)(ii). See Exchange Act rule 10A-3(d). As proposed, UITs were not subject to any requirement that they disclose whether or not they have a separate audit committee, since UITs do not file proxy or information statements where action is to be taken with respect to election of directors, or Form N-CSR, where such disclosure would be made.

²⁰⁴ These exemptions include those for listing certain securities of subsidiaries of a parent whose listed securities are subject to Exchange Act rule 10A-3, security futures products, standardized options, securities issued by asset-backed issuers, foreign governments and passive issuers. Exchange Act rule 10A-3(c)(2), (4)-(7) [17 CFR 240.10A-3(c)(2), (4)-(7)].

¹⁹⁴ See, e.g., the Letters of ABA; Cleary; NTT DoCoMo, Inc.; ORIX Corporation.

¹⁹⁵ Compare, e.g., the Letters of ABA; CCU; General Electric Company; General Motors Corporation; General Motors Acceptance Corporation; Nasdaq; PSEG with the Letter of CalPERS.

¹⁹⁶ See, e.g., the ABA Letter.

¹⁹⁷ 15 U.S.C. 78n.

¹⁹⁸ See Item 7(d)(1) of Schedule 14A. Identical information is required with respect to nominating and compensation committees of the board of directors.

¹⁹⁹ Because this information will be included in Part III of annual reports on Forms 10-K and 10-KSB, companies subject to the proxy rules will be able to incorporate the required disclosure from a proxy or information statement that involves the election of directors, where it is already required to appear, into their annual reports. Information regarding the number of meetings of the audit committee and the basic functions performed by the audit committee, as well as the information regarding nominating and compensation committees, will continue to be required only in proxy or information statements that involve the election of directors.

²⁰⁰ In addition, we have added an instruction to Item 6.C. in Form 20-F that if the company is relying on the exemption in Exchange Act rule 10A-3(c)(3) because it has a board of auditors or similar body, the disclosure required by that Item with regard to the company's audit committee can be provided with respect to the company's board of auditors, or similar body.