

effective by April 26, 2003. We have been working with the SROs to implement the statutory requirement in an orderly fashion. However, because of the extended compliance dates, a notice period of less than 30 days should not prejudice anyone. Under the final rule and amendments, SROs are not required to submit proposals implementing the directive in Exchange Act rule 10A-3 until July 15, 2003. The rules based on those proposals must be approved by the Commission by December 1, 2003. Listed issuers do not have to comply with the new listing rules until their first annual shareholders meeting after January 15, 2004, at the earliest, and small business issuers and foreign private issuers will have additional time to comply. Issuers need not comply with the disclosure changes until reports covering periods ending on or after (or proxy or information statements for actions occurring on or after) the compliance date for the listing standards applicable to the listed issuer. Because of this delay before any action is required as a result of the rules, the Commission finds good cause to make the new rules and amendments effective on April 25, 2003.

VIII. Statutory Authority and Text of Rule Amendments

The amendments contained in this document are being adopted under the authority set forth in sections 2,²⁷⁰ 6,²⁷¹ 7,²⁷² 8,²⁷³ 10,²⁷⁴ 17²⁷⁵ and 19²⁷⁶ of the Securities Act, sections 3(b), 10A, 12, 13, 14, 15, 23 and 36²⁷⁷ of the Exchange Act, sections 8,²⁷⁸ 20,²⁷⁹ 24(a),²⁸⁰ 30²⁸¹ and 38²⁸² of the Investment Company Act of 1940 and sections 3 and 301 of the Sarbanes-Oxley Act.

Text of Amendments

List of Subjects

17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Reporting and recordkeeping requirements, Securities, Investment Companies.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11 and 7202.

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■ 2. Amend § 228.401 by adding paragraph (f) to read as follows:

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

* * * * *

(f) *Identification of the audit committee.* (1) If you meet the following requirements, provide the disclosure in paragraph (f)(2) of this section:

(i) You are a listed issuer, as defined in § 240.10A-3 of this chapter;

(ii) You are filing either an annual report on Form 10-KSB (17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(iii) You are neither:

(A) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A-3(c)(2) of this chapter; nor

(B) Relying on any of the exemptions in § 240.10A-3(c)(4) through (c)(7) of this chapter.

(2)(i) State whether or not the small business issuer has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the small business issuer has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the small business issuer's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(ii) If applicable, provide the disclosure required by § 240.10A-3(d) of this chapter regarding an exemption from the listing standards for audit committees.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

■ 3. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll(d), 78mm, 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80b-11, and 7202, unless otherwise noted.

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■ 4. Amend § 229.401 by:

■ a. Revising Instruction 3 to paragraph (h); and

■ b. Adding paragraph (i).

The additions and revisions read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

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Instructions to Item 401(h)

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3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 401(h), the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A-3(c)(3), for purposes of this Item 401(h), the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term generally accepted accounting principles in paragraph (h)(2)(i) of this Item means the body of *generally accepted accounting principles* used by that issuer in its primary financial statements filed with the Commission.

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(i) *Identification of the audit committee.* (1) If you meet the following requirements, provide the disclosure in paragraph (i)(2) of this section:

(i) You are a listed issuer, as defined in § 240.10A-3 of this chapter;

(ii) You are filing either an annual report on Form 10-K or 10-KSB (17 CFR 249.310 or 17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(iii) You are neither:

(A) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A-3(c)(2) of this chapter; nor

²⁷⁰ 15 U.S.C. 77b.

²⁷¹ 15 U.S.C. 77f.

²⁷² 15 U.S.C. 77g.

²⁷³ 15 U.S.C. 77h.

²⁷⁴ 15 U.S.C. 77j.

²⁷⁵ 15 U.S.C. 77q.

²⁷⁶ 15 U.S.C. 77s.

²⁷⁷ 17 U.S.C. 78mm.

²⁷⁸ 15 U.S.C. 80a-8.

²⁷⁹ 15 U.S.C. 80a-20.

²⁸⁰ 15 U.S.C. 80a-24(a).

²⁸¹ 15 U.S.C. 80a-29.

²⁸² 15 U.S.C. 80a-37.