

a. Multiple Listings

Many companies today issue multiple classes of securities through various ownership structures on various markets. For example, a company may have a class of common equity securities listed on one market, several classes of debt listed on one or more other markets, and derivative securities listed on yet another market. If a company already was subject to the proposed standards as a result of one listing, there would be little or no additional benefit from having the requirements imposed on the company due to an additional listing. Further, once one national securities exchange or national securities association is responsible for monitoring the compliance of a company with the standards, there would be little or no additional benefit, and much overlap and duplicative effort, from requiring more than one of these SROs to monitor compliance.

In addition, issuers often issue non-equity securities through a wholly owned or majority-owned subsidiary for various reasons. Requiring these subsidiaries, which often have no purpose other than to issue or guarantee the securities, to be subject to the proposed audit committee requirements would add little additional benefit if the subsidiary is closely controlled by a parent issuer that is subject to the proposed requirements. Instead, imposing the requirement on these subsidiaries could create an onerous burden on the parent to recruit and maintain an audit committee meeting the requirements for each specific subsidiary.

Accordingly, we propose an exemption from the proposed requirements for additional listings of securities by a company at any time the company is subject to the proposed requirements as a result of the listing of a class of common equity or similar securities. The additional listings could be on the same market or on different markets. We condition this exemption on the listing of a class of common equity or similar securities because these securities would most likely represent the primary public listing of the company. Companies that do not have a class of common equity or similar securities listed would be subject to the proposed requirements in each affected market where its securities were listed.

We also propose to extend this exemption to listings of non-equity securities by a direct or indirect consolidated majority-owned subsidiary of a parent company, if the parent

company is subject to the proposed requirements as a result of the listing of a class of its equity securities. However, if the subsidiary were to list its own equity securities (other than non-convertible, non-participating preferred securities⁷⁴) the subsidiary would be required to meet the proposed requirements to protect its own public shareholders.

b. Security Futures Products and Standardized Options

The enactment of the Commodity Futures Modernization Act of 2000, or CFMA,⁷⁵ addressed the regulation of security futures products.⁷⁶ It permits national securities exchanges registered under Section 6 of the Exchange Act⁷⁷ and national securities associations registered under Section 15A(a) of the Exchange Act⁷⁸ 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 Act⁷⁹ 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.⁸⁰

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.⁸¹

Recognizing these fundamental differences, we propose to exempt from our proposed rule 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 propose a similar exemption for the listing of standardized options issued by a clearing agency registered under Section 17A of the Exchange Act.

Questions regarding proposed application to listed securities:

- Is the proposed exemption for the listings of other classes of securities of an issuer appropriate? Would the benefit of having multiple SROs monitoring compliance outweigh the potential duplicative and administrative burdens that would be imposed on issuers and SROs if there was not such an exemption? Should the exemption be conditioned on having a class of common equity or similar securities listed, or should any class of securities be sufficient?

- Similarly, is the proposed exemption of listings of non-equity securities by consolidated majority-owned subsidiaries appropriate? Instead, should all issuers of securities be required to maintain an audit committee meeting the proposed standards? What would be the burden on companies from mandating such a requirement? Should the exemption be limited to wholly owned subsidiaries or some other specified level of ownership? Is limiting the exemption to non-equity securities (other than non-convertible, non-participating preferred securities) of the subsidiary appropriate?

- Is the exclusion for securities futures products and standardized options appropriate? If not, how should these securities be handled?

- Although we do not propose to exempt other types of securities from

⁷⁴ Trust-preferred and similar securities also would fall within this category.

⁷⁵ Pub. L. No. 106-554, 114 Stat. 2763 (2000).

⁷⁶ 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.

⁷⁷ 15 U.S.C. 78f.

⁷⁸ 15 U.S.C. 78o-3(A).

⁷⁹ 15 U.S.C. 78q-1.

⁸⁰ 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.

⁸¹ However, the clearing agency may receive a clearing fee from its members.