

We also are proposing to exclude issuers availing themselves of the multiple listing exemption from the disclosure requirements relating to their use of that exemption. These issuers, or their controlling parents, would be required to comply with the proposed audit committee requirements as a result of a separate listing. Accordingly, disclosure of the use of that exemption would not serve the purpose of highlighting for investors those issuers that are different from most other listed issuers. However, if such an issuer also was availing itself of another exemption from the proposed requirements (*i.e.*, the temporary exemption from the independence requirements for new listed issuers), disclosure of the use of that exemption would be required.

2. Identification of the Audit Committee in Annual Reports

An issuer subject to the proxy rules of Section 14 of the Exchange Act¹⁰⁴ 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.¹⁰⁵ 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 proposing to require disclosure of the members of the audit committee to be included or incorporated by reference in the listed issuer's annual report.¹⁰⁶ 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 propose to require a

regulatory reports to the Commission and are not intended primarily as disclosure documents for investors.

¹⁰⁴ 15 U.S.C. 78n.

¹⁰⁵ See Item 7(d)(1) of Schedule 14A. Identical information is required with respect to nominating and compensation committees of the board of directors.

¹⁰⁶ Because this information is proposed to be included in Part III of annual reports on Forms 10-K and 10-KSB, companies subject to the proxy rules would 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, would continue to be required only in proxy or information statements that involve the election of directors.

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 propose 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 do propose that they disclose if the entire board of directors is acting as the audit committee. We also propose similar changes for registered management investment companies.¹⁰⁷

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 respect to the election of directors.¹⁰⁸ First, the audit committee must provide a report disclosing whether the audit committee has reviewed and discussed the audited financial statements with management and discussed certain matters with the independent auditors.¹⁰⁹ Second, issuers must disclose whether the audit committee is governed by a charter, and if so, include a copy of the charter as an appendix to the proxy statement at least once every three years.¹¹⁰ Finally, the issuer must disclose whether the members of the audit committee are independent. Under the existing requirements, issuers whose securities are listed on the NYSE or AMEX or quoted on Nasdaq must

¹⁰⁷ Item 22(b)(14) of Schedule 14A and proposed Item 8 of proposed Form N-CSR. Proposed Form N-CSR would be 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. 25723 (Aug. 30, 2002) [67 FR 57298]. The Commission proposed amendments to Form N-CSR in Investment Company Act Release No. 25739 (Sep. 20, 2002) [67 FR 60828]; Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208]; Investment Company Act Release No. 25838 (Dec. 2, 2002); Investment Company Act Release No. 25845 (Dec. 10, 2002); and Investment Company Act Release No. 25870 (Dec. 18, 2002).

¹⁰⁸ See Item 7(d)(3) of Schedule 14A. These disclosure requirements were adopted in Release No. 34-42266 (Dec. 22, 1999).

¹⁰⁹ See Item 7(d)(3)(i) of Schedule 14A. The requirements for the audit committee report are specified in Items 306 of Regulations S-B [17 CFR 228.306] and S-K [17 CFR 229.306]. Under the existing requirements, if the company does not have an audit committee, the board committee tasked with similar responsibilities, or the full board of directors, is responsible for the disclosure.

¹¹⁰ See Items 7(d)(3)(ii) and (iii) of Schedule 14A.

disclose whether the audit committee members are independent, as defined in the applicable listing standards.¹¹¹ These issuers also must disclose if its board of directors has determined to appoint one director to its audit committee due to an exceptional and limited circumstances exception in the applicable listing standards.¹¹² Issuers whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq also are required to disclose whether its audit committee members are independent. These issuers may choose which definition of independence to use from any of the NYSE, AMEX or Nasdaq listing standards.¹¹³

Regarding the independence disclosure, all national securities exchanges and national securities associations under our proposals would need to have independence standards for audit committee members, not just the NYSE, AMEX and Nasdaq. The specification in the existing requirements to listings on these three markets would therefore no longer be necessary. Further, our proposals would not allow for an exception to the independence requirements due to exceptional and limited circumstances. As a result, disclosure regarding use of this exception would be unnecessary.

Accordingly, we propose to update the disclosure requirements regarding the independence of audit committee members to reflect the new SROs rules to be adopted under Exchange Act Rule 10A-3. If the registrant was a listed issuer, it would still be required to disclose whether the members of its audit committee were independent. The listed issuer would need to use the definition of independence for audit committee members included in the listing standards applicable to the listed issuer. Further, 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 propose to clarify that if the registrant does not have a separately designated audit committee, or committee performing similar functions, the registrant must provide the disclosure with respect to all members of its board of directors.

Non-listed issuers that have separately designated audit committees would still be required to disclose whether their audit committee members were independent. In determining whether a member was independent,

¹¹¹ See Item 7(d)(3)(iv)(A)(1) of Schedule 14A.

¹¹² See Item 7(d)(3)(iv)(A)(2) of Schedule 14A.

¹¹³ See Item 7(d)(3)(iv)(B) of Schedule 14A. Whichever definition is chosen must be applied consistently to all members of the audit committee.