

these registrants would be allowed to choose any definition for audit committee member independence of a national securities exchange or national securities association that has been approved by the Commission.<sup>114</sup>

*Questions regarding the proposed disclosure changes:*

- Should companies be required to disclose publicly if they are taking advantage of an exemption to the proposed SRO requirements? If so, are the proposed locations of this disclosure appropriate? Should we permit incorporation by reference into the company's annual report? Should the disclosure be required as an exhibit to the company's filing? Is the disclosure of the company's assessment of whether and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other proposed requirements appropriate?

- Should foreign private issuers that avail themselves of the exemption for boards of auditors or similar structures be required to file an exhibit to their annual reports stating that they are doing so?

- Should a UIT be required to disclose that it is availing itself of the exemption from the audit committee requirements? If so, where should such disclosure be made? Exchange-traded UITs typically provide audited financial information in shareholder reports although these reports are not required by Commission rules.<sup>115</sup> Should disclosure of the exemption from audit committee requirements be required in these reports?

- Should an issuer relying on the multiple listing exemption be required to disclose that it is availing itself of that exemption? Should the disclosure only be required for subsidiaries relying on the exemption for their own listed securities?

- Should we require disclosure of basic information about an issuer's audit committee in its annual report, or is the current location of this disclosure for issuers subject to the proxy rules sufficient? Would disclosure of whether the entire board is acting as the audit committee be helpful?

- Given the new definition of audit committee in the Exchange Act, is it appropriate to clarify in the current disclosure requirements for audit committees that if the issuer does not have a separately designated audit committee, or committee performing similar functions, the issuer must provide the disclosure with respect to all members of its board of directors? How many issuers will this change affect?

- Are our proposed changes to the disclosure requirements regarding the independence of audit committee members appropriate? Is there a reason to continue to require non-listed issuers to choose from one of the NYSE's, AMEX's or Nasdaq's definitions for audit committee members?

- Listed issuers that are foreign private issuers are generally not subject to the proxy rules. Should we require disclosure regarding the independence of audit committee members for these issuers? If so, where should this disclosure appear?

- Is there any additional disclosure concerning audit committees that would be beneficial to investors? With the new requirements we propose for audit committees, is any existing disclosure we require regarding audit committees no longer needed?

#### *H. General Request for Comment*

We request and encourage any interested person to submit comments on the proposals, on any additional or different changes, and on any other matters that might have an impact on the proposals. We request comment from the point of view of national securities exchanges and national securities associations that would be required to comply with the proposals. We also request comment from the point of view of companies that would be subject to the listing requirements that would result from the proposals. We also request comment from the point of view of investors in the securities of these companies on their views of the proposals and any possible changes to the proposals. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

### **III. Paperwork Reduction Act**

#### *A. Background*

Our proposals contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").<sup>116</sup> We are

submitting our proposals to the Office of Management and Budget ("OMB") for review in accordance with the PRA.<sup>117</sup> The titles for the collection of information are:

(1) "Proxy Statements—Regulation 14A (Commission Rules 14a-1 through 14a-15 and Schedule 14A)" (OMB Control No. 3235-0059);

(2) "Information Statements—Regulation 14C (Commission Rules 14c-1 through 14c-7 and Schedule 14C)" (OMB Control No. 3235-0057);

(3) "Form 10-K" (OMB Control No. 3235-0063);

(4) "Form 10-KSB" (OMB Control No. 3235-0420);

(5) "Form 20-F" (OMB Control No. 3235-0288);

(6) "Form 40-F" (OMB Control No. 3235-0381);

(7) "Regulation S-K" (OMB Control No. 3235-0071);

(8) "Regulation S-B" (OMB Control No. 3235-0417); and

(9) "Form N-CSR" (OMB Control No. 3235-0570).

These regulations and forms were adopted pursuant to the Securities Act, the Exchange Act and the Investment Company Act and set forth the disclosure requirements for periodic reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Under our proposals, we would direct SROs to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards relating to the issuer's audit committee. We are making these proposals pursuant to the legislative mandate in Section 10A(m) of the Exchange Act, as added by Section 301 of the Sarbanes-Oxley Act. As part of our proposals, we are proposing several limited exemptions from the requirements to address the special circumstances of particular issuers. If an issuer was to avail itself of one of these exemptions, we propose that it would need to disclose this fact and its assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of

<sup>114</sup> Such definition would include the requirements of proposed Exchange Act Section 10A-3. These issuers would still be required to state which definition was used. Further, the requirement that the same definition must be applied consistently to all members of the audit committee would be retained.

<sup>115</sup> See, e.g., SPDR Trust, Series 1, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (Oct. 26, 1992) (order) and Fourth Amended and Restated Application, filed Aug. 7, 1992, File No. 812-7545, at 35.

<sup>116</sup> 44 U.S.C. 3501 *et seq.*

<sup>117</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.