

of the proposed collections of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate whether the proposals will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, with reference to File No. S7-02-03. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7-02-03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

The proposals represent the implementation of a Congressional mandate. We recognize that implementation of the Sarbanes-Oxley Act will likely create costs and benefits to the economy. We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of these proposals.

A. Background

Section 10A(m)(1) of the Exchange Act, as added by Section 301 of the Sarbanes-Oxley Act, requires us to direct, by rule, the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards regarding issuer audit

committees. The new rule must become effective by April 26, 2003, which is 270 days after the date of enactment of the Sarbanes-Oxley Act and Section 10A(m) of the Exchange Act.

In general, according to the standards listed in Section 10A(m) of the Exchange Act, SROs would be prohibited from listing any security of an issuer that is not in compliance with the following standards:

- Each member of the audit committee of the issuer must be independent according to specified criteria;
- The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or related work or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee;
- Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters;
- Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties; and
- Each issuer must provide appropriate funding for the audit committee.

Our proposals would respond directly to the requirements in Section 10A(m) of the Exchange Act. In addition, our proposals would include several additional provisions, such as:

- Our proposals would revise existing disclosure requirements regarding the composition of audit committees by also requiring this disclosure in annual reports of listed issuers filed with the Commission;
- Our proposals would require a company availing itself of one of our proposed exemptions from the requirements to disclose publicly that it is doing so; and
- Our proposals would update existing disclosure requirements regarding audit committees to reflect changes made by the proposals and the Sarbanes-Oxley Act.

B. Potential Benefits

One of the main goals of the Sarbanes-Oxley Act is to improve investor confidence in the financial markets. The proposals in this release are among many required by the Sarbanes-Oxley Act.¹³⁹ They seek to help achieve the Act's goals by promoting strong, effective audit committees to perform their oversight role. By increasing the competence of audit committees, the proposals are designed to further greater accountability and quality of financial disclosure and oversight of the process by qualified and independent audit committees. Vigilant and informed oversight by a strong, effective and independent audit committee could help to counterbalance pressures to misreport results and impose increased discipline on the process of preparing financial information. Improved oversight may help detect fraudulent financial reporting earlier and perhaps thus deter it or minimize its effects. All of these benefits imply increased market efficiency due to improved information and investor confidence in the reliability of a company's financial disclosure and system of internal controls. These benefits are not readily quantifiable. However, as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees summarized regarding its own recommendations for audit committees:

Improving oversight of the financial reporting process necessarily involves the imposition of certain burdens and costs on public companies. Despite these costs, the Committee believes that a more transparent and reliable financial reporting process ultimately results in a more efficient allocation of and lower cost of capital. To the extent that instances of outright fraud, as well as other practices that result in lower quality financial reporting, are reduced with improved oversight, the benefits clearly justify these expenditures of resources.¹⁴⁰

In addition, we are proposing to require basic information about the composition of an issuer's audit committee in a listed issuer's annual report. The disclosure is currently only required in proxy or information statements where directors are being elected, and not all listed issuers are subject to the proxy rules or elect directors each year. 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 listed issuer that has not or has chosen not to separately designate an

¹³⁹ See note 30 above.

¹⁴⁰ See note 22 above.