

other classes of securities of the issuer, and other classes of securities of a direct or indirect consolidated majority-owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of the majority-owned subsidiary), is not subject to the requirements of this section.

(2)(i) The listing of securities of a foreign private issuer will not be subject to the requirements of paragraphs (b)(1) or (b)(2) of this section if the foreign private issuer meets the following requirements:

(A) The securities of the foreign private issuer are also listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;

(B) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, separate from the board of directors that are established and selected pursuant to home country legal or listing provisions requiring or permitting such a board or similar body;

(C) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;

(D) Home country legal or listing provisions set forth standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;

(E) Such board or body, or statutory auditors, are directly responsible, in accordance with standards prescribed by home country legal or listing provisions, for the oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work or performing other audit, review or attest services for the issuer; and

(F) Such board or body, or statutory auditors, are responsible, to the extent permitted by law, for the appointment and retention of any registered public accounting firm engaged by the issuer. Such responsibility may be vested in such board or body, or statutory auditors, in any manner, including without limitation by law or listing provision or delegation.

(ii) For purposes of foreign private issuers relying on the exemption in this paragraph (c)(2), the term *audit committee* in paragraphs (b)(3), (b)(4) and (b)(5) of this section refers to the foreign private issuer's board of auditors or similar body, or its statutory auditors.

(3) The listing of a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q-1) or that is exempt from the registration requirements of section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.

(4) The listing of a standardized option, as defined in § 240.9b-1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q-1) is not subject to the requirements of this section.

(5) The securities of the following listed issuers are exempt from the requirements of this section:

(i) Asset-Backed Issuers (as defined in § 240.13a-14(g) and § 240.15d-14(g)); and

(ii) Unit investment trusts (as defined in 15 U.S.C. 80a-4(2)).

(d) *Disclosure.* Any listed issuer availing itself of any exemption from the independence standards contained in paragraph (b)(1)(iv) of this section, or any general exemption contained in paragraph (c) of this section, other than the exemptions contained in paragraphs (c)(1) and (c)(5)(ii) of this section, must:

(1) Disclose its reliance on the exemption 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 this section in any proxy or information statement for a meeting of shareholders at which directors are elected that is filed with the Commission pursuant to the requirements of section 14 of the Act (15 U.S.C. 78n); and

(2) Disclose the information specified in paragraph (d)(1) of this section in, or incorporate such information by reference from such proxy or information statement filed with the Commission into, its annual report filed with the Commission pursuant to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(e) *Definitions.* Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply:

(1)(i) The term *affiliate* of, or a person *affiliated* with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer. A person will be deemed not to be in control of the issuer for purposes of this section if the person:

(A) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of equity securities of the issuer;

(B) Is not an executive officer of the issuer; and

(C) Is not a director of the issuer.

(ii) A director, executive officer, partner, member, principal or designee of an affiliate will be deemed to be an affiliate.

(2) In the case of foreign private issuers with two-tier boards of directors, the term *board of directors* means the supervisory or non-management board.

(3) The term *control* (including the terms *controlling*, *controlled by* and *under common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(4) The term *executive officer* has the meaning set forth in § 240.3b-7.

(5) The term *foreign private issuer* has the meaning set forth in § 240.3b-4(c).

(6) The term *indirect* acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member or principal or occupies a similar position and which provides accounting, consulting, legal, investment banking, financial or other advisory services or any similar services to the issuer.

(7) The terms *listed* and *listing* refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association or to issuers of such securities.

(8) Until the Public Company Accounting Oversight Board has established the registration of independent public accountants, the term *registered public accounting firm* means an independent public accountant engaged for the purposes indicated in this section.

Instructions to § 240.10A-3

1. The requirement in paragraph (b)(2) or (c)(2)(i)(F) of this section does not conflict with, and does not affect the application of, any requirement under an issuer's governing law or documents or other home country requirements that requires shareholders to ultimately elect, approve or ratify the selection of the issuer's auditor. The requirement instead relates to the assignment of responsibility to oversee the auditor's