

SCHWARTZ & BALLEN LLP

1990 M STREET, N.W. · SUITE 500
WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE
(202) 776-0720

schwartzandballen.com

MEMORANDUM

April 18, 2003

To Our Clients and Friends

Re: Audit Committee Standards

The Securities and Exchange Commission (“SEC”) has issued a final rule directing national securities exchanges and national securities associations (“SROs”) to prohibit the listing of any security of any issuer that is not in compliance with the audit committee standards established by the Sarbanes-Oxley Act of 2002. The SROs must adopt final rules implementing the SEC’s directive by December 1, 2003. Issuers must be in compliance with the SRO listing rules by the earlier of 1) their first annual shareholder meeting after January 15, 2004, or 2) October 31, 2004. Small businesses and foreign private investors must be compliant with the SRO listing rules by July 31, 2005

The final rule, which is effective April 25, 2003, is similar to the proposed rule issued in January but modifies certain definitions, compliance requirements and exemptions.

AUDIT COMMITTEE STANDARDS¹

The rules of each SRO must prohibit the initial and continued listing of any security of an issuer² that is not in compliance with the following standards.

Audit Committee Member Independence – Each member of the audit committee³ must be a member of the board of directors of the issuer and must be independent according to the following criteria.

¹ This memorandum describes requirements for companies other than investment companies.

² Issuers of asset-backed securities and exchange-traded unit investment trusts are excluded from these standards. Also exempt are trusts or other unincorporated associations without a board of directors whose activities are limited to passively holding or owning securities.

³ Under the Sarbanes-Oxley Act an audit committee is defined as a committee (or equivalent body) established by the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; if no such committee exists with respect to an issuer, the entire board of directors of the issuer is the audit committee.

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- A member cannot accept, directly or indirectly, any consulting, advisory or other compensatory⁴ fee from the issuer or a subsidiary of the issuer, other than in the capacity as member of the board of directors or of a board committee. This includes payments made to:
 - spouses, minor children, stepchildren or children or stepchildren sharing a home with a member; and
 - an entity in which an audit committee member is a partner, member, officer such as a managing director or executive officer (except for limited partners, non-managing members and others who have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking, or financial advisory services to the issuer.
- A member may not be an affiliated⁵ person of the issuer or any subsidiary of the issuer.
- Limited exceptions from the independence requirement are provided for foreign issuers.

Responsibilities - An audit committee must be directly responsible for the appointment, compensation, retention and oversight of the work of the 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 issuer. The public accounting firm must report directly to the audit committee. The audit committee must have the authority to retain and terminate the outside auditor, to approve all audit engagement fees and terms, as well as all significant non-audit engagements of the accounting firm.

Procedures for Handling Complaints – An audit committee must establish procedures for:

- the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls or auditing matters; and

⁴ Compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the issuer provided that such compensation is not contingent in any way on continued service.

⁵ An “affiliate” of or a person “affiliated” with means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the person specified. The final rule contains a safe harbor that deems a person who is not an executive officer or a shareholder owning, directly or indirectly, 10% or more of any class of voting equity securities of the issuer to not control the issuer. However, directors who are also employees of an affiliate, general partners and managing members, and executive officers of an affiliate are deemed to be affiliates.

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- the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.

Authority to Engage Advisors – An audit committee must have the authority to engage outside advisors, including counsel, as it determines necessary.

Funding – The issuer must provide for appropriate funding, as determined by the audit committee, for payment of:

- compensation to a public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer;
- compensation to any advisors employed by the audit committee; and
- ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

COMPLIANCE

Rules adopted by SROs must require a listed issuer to notify the SRO promptly after an executive officer of the issuer becomes aware of any material non-compliance by the issuer with the proposed requirements. The SROs are required to establish procedures to permit an issuer to cure a defect before the SRO prohibits the listing of, or delists a security of, the issuer.

DISCLOSURE

Disclosure regarding exemptions – With certain exceptions, issuers must disclose their reliance on exemptions and their assessment of the effect of the exemption on the ability of the audit committee to act independently and to satisfy the other standards of the proposed rule. Such disclosure must appear, or be incorporated by reference, in annual reports and proxy statements.

Identification of Audit Committee in Annual Reports – With certain exceptions, issuers must disclose the members of the audit committee in their annual report. If the issuer has not separately designated an audit committee, it must disclose that the entire board of directors is acting as the audit committee.

Updates to Existing Audit Committee Disclosures – Listed insurers are required, as they currently are, to disclose if their audit committee members are independent but must use the new standards for determining independence. If a listed issuer does not have a separately designated audit

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committee, it must provide the independence disclosure with respect to all the members of its board of directors.

EXEMPTIONS

Affiliates – A committee member may sit on the board of directors of a listed issuer and any affiliate as long as the member otherwise meets the independence requirements for each such entity.

Multiple Listings – If a company lists a common equity security and thus becomes subject to these auditing standards, additional listings of securities at the same time by the company are exempted from these standards. A similar exemption is made for listing of non-equity securities by a direct or indirect subsidiary that is consolidated or at least 50% beneficially owned by a parent company, if the parent company is subject to the auditing standards as a result of listing an equity security.

Foreign Issuers – Foreign issuers are not subject to the required standards if they meet several conditions, including:

- the foreign issuer has a board of auditors, or statutory auditors, established and selected in accordance with home country legal or listing provisions expressly requiring or permitting such board or auditors;
- the board of auditors, or statutory auditors, is separate from the board of directors or composed of one or more members of the board of directors and one or more members that are not also members of the board of directors;
- the board of auditors, or statutory auditors, is not elected by management of the issuer, and no executive officer of the issuer is a member of the board of auditors or a statutory auditor;
- home country legal or listing provisions set forth standards for the independence of the board of auditors, or statutory auditors, from the issuer or management of the issuer;
- the board of auditors, or statutory auditors, is responsible for the appointment, retention and oversight of the work of any registered public accounting firm engaged for the purpose or preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and
- the board of auditors, or statutory auditors, complies with the complaint, engagement of advisors and funding requirements discussed above.

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The final rule can be found at www.schwartzandballen.com/WhatsNew.htm.

If you have any questions concerning the final rule, please call
Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.