

File No. PCAOB 2004-08
Consists of 16 Pages

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form 19b-4

Proposed Rule

By

Public Company Accounting Oversight Board

In accordance with Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of the Proposed Rule

(a) Pursuant to the provisions of Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule, "Temporary Transitional Provision for PCAOB Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements.*" The proposed rule is attached as Exhibit A to this rule filing.

(b) The proposed rule would be a temporary transitional provision for "Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements.*"

(c) File No. PCAOB-2004-03

2. Procedures of the Board

(a) The Board approved the proposed rule, and authorized it for filing with the SEC, at its Open Meeting on November 30, 2004. No other action by the Board is necessary for the filing of this proposed rule.

(b) Questions regarding this rule filing may be directed to Gordon Seymour, Deputy General Counsel (202-207-9034; seymourg@pcaobus.org) or Thomas Ray, Deputy Chief Auditor (202-207-9112; rayt@pcaobus.org).

3. Board's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rules

(a) Purpose

As more fully explained in Exhibit 2 to this filing, The Board adopted the proposed rule in response to an exemptive order of the Commission (the

Exemptive Order).¹ The Exemptive Order allows certain issuers an additional 45 days to file *Management's annual report on internal control over financial reporting*, required by Item 308(a) of Regulation S-K, and the related *Attestation report of the registered public accounting firm*, required by Item 308(b) of Regulation S-K. The proposed rule would temporarily relieve auditors, in connection with the audit of an issuer relying on the Exemptive Order, from certain provisions of PCAOB Auditing Standard No. 2. The proposed rule would permit eligible auditors to date a report on management's assessment of the effectiveness of internal control over financial reporting later than the date of the report on the same issuer's financial statements. The proposed rule would also permit these auditors to omit reference in the auditor's separate report on the issuer's financial statements to the auditor's report on management's assessment of the effectiveness of internal control over financial reporting.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

4. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule would temporarily relieve auditors, in connection with the audit of an issuer relying on the Exemptive Order, from certain provisions of Auditing Standard No. 2.

¹ Exchange Act Release No. 50754 (Nov. 30, 2004).

5. Board's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

The Board determined that public comment was not practicable in light of the timing of the Exemptive Order and the imminence of the filing requirements at issue.

6. Extension of Time Period for Commission Action

The Board does not consent to an extension of the time period specified in Section 19(b)(2) of the Securities Exchange Act of 1934.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Board requests that the Commission accelerate the effectiveness of the proposed rule pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934. The Board adopted the proposed rule in light of the Exemptive Order, which applies to certain issuers with fiscal years ending between and including November 15, 2004 and February 28, 2005. These issuers must file Form 10-K shortly. In connection with the audit of an issuer relying on the Exemptive Order, the proposed rule would temporarily relieve auditors from certain provisions of Auditing Standard No. 2. This relief is necessary for the effective implementation of the Exemptive Order. Accordingly, the Board's rule should be effective as soon after the Exemptive Order as reasonably possible.

8. Proposed Rules Based on Rules of Another Board or of the Commission

The proposed rules are not based on the rules of another board or of the Commission.

9. Exhibits

Exhibit A – Text of the Proposed Rules

Exhibit 1 – Form of Notice of Proposed Rule for Publication in the Federal Register.

Exhibit 2 – PCAOB Release No. 2004-014 (November 30, 2004)

10. Signatures

Pursuant to the requirements of the Act and the Securities Exchange Act of 1934, as amended, the Board has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Public Company Accounting Oversight Board

By: _____
William J. McDonough
Chairman

Exhibit A – Text of the Proposed Rule

SECTION 3. PROFESSIONAL STANDARDS

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Part 1 – General Requirements

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Rule 3201T. Temporary Transitional Provision for PCAOB Auditing Standard No. 2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements."

(a) Notwithstanding Auditing Standard No. 2, in connection with the audit of an issuer that does not file Management's annual report on internal control over financial reporting in reliance on SEC Release No. 34-50754, Order Under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Specified Provisions of Exchange Act Rules 13a-1 and 15d-1 (November 30, 2004), a registered public accounting firm and its associated persons need not:

(1) Date the auditor's report on management's assessment of the effectiveness of internal control over financial reporting with the same date as the auditor's report on the issuer's financial statements, provided that the date of the auditor's report on management's assessment of the effectiveness of internal control over financial reporting is later than the date of the auditor's report on the issuer's financial statements; or

(2) Add a paragraph to the auditor's separate report on the financial statements of an issuer that refers to a separate report on management's assessment of the effectiveness of internal control over financial reporting.

(b) This temporary rule will expire on July 15, 2005.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. PCAOB-2004-08)

[Date]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Temporary Transitional Rule Relating to PCAOB Auditing Standard No. 2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements."

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on November 30, 2004, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule, described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule.

I. Board's Statement of the Terms of Substance of the Proposed Rule

On November 30, 2004, the Board adopted a temporary transitional provision for PCAOB Auditing Standard No. 2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements." (PCAOB Rule 3201T). The proposed rule text is set out below.

SECTION 3. PROFESSIONAL STANDARDS

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Part 1 – General Requirements

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Rule 3201T. Temporary Transitional Provision for PCAOB Auditing Standard No. 2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements."

(a) Notwithstanding Auditing Standard No. 2, in connection with the audit of an issuer that does not file *Management's annual report on internal control over financial reporting* in reliance on SEC Release No. 34-50754, Order Under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Specified Provisions of Exchange Act Rules 13a-1 and 15d-1 (November 30, 2004), a registered public accounting firm and its associated persons need not:

(1) Date the auditor's report on management's assessment of the effectiveness of internal control over financial reporting with the same date as the auditor's report on the issuer's financial statements, provided that the date of the auditor's report on management's assessment of the effectiveness of internal control over financial reporting is later than the date of the auditor's report on the issuer's financial statements; or

(2) Add a paragraph to the auditor's separate report on the financial statements of an issuer that refers to a separate report on management's assessment of the effectiveness of internal control over financial reporting.

(b) This temporary rule will expire on July 15, 2005.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule.

A. Board's Statement of the Purpose Of, and Statutory Basis for, the Proposed Rule

(a) Purpose

The Board adopted the proposed rule in response to an exemptive order of the Commission (the Exemptive Order).¹ The Exemptive Order allows certain issuers an additional 45 days to file *Management's annual report on internal control over financial reporting*, required by Item 308(a) of Regulation S-K, and the related Attestation report of the *registered public accounting firm*, required by Item 308(b) of Regulation S-K. The proposed rule would temporarily relieve auditors, in connection with the audit of an issuer relying on the Exemptive Order, from certain provisions of PCAOB Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements* ("Auditing Standard No. 2"). The proposed rule would permit eligible auditors to date a report on management's assessment of the effectiveness of internal control over financial reporting later than the date of the report on the same issuer's financial statements. The proposed rule would also permit these auditors to omit reference in the auditor's separate report on the issuer's financial statements to the auditor's report on management's assessment of the effectiveness of internal control over financial reporting.

Specifically, Rule 3201T consists of two paragraphs. Paragraph (a) provides that the proposed rule would apply to registered public accounting firms and their associated persons in connection with the audit of an issuer relying on the Exemptive Order. Such auditors are temporarily relieved from certain

¹ Exchange Act Release No. 50754 (Nov. 30, 2004).

provisions of Auditing Standard No. 2, described in subparagraphs (a)(1) and (a)(2). Subparagraph (a)(1) permits eligible auditors to date a report on management's assessment of the effectiveness of internal control over financial reporting later than the date of the report on the same issuer's financial statements. Subparagraph (a)(2) permits these auditors to omit reference in the auditor's separate report on the issuer's financial statements to the auditor's report on management's assessment of the effectiveness of internal control over financial reporting. Paragraph (b) provides that the rule expires on July 15, 2005.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule would temporarily relieve auditors, in connection with the audit of an issuer relying on the Exemptive Order, from certain provisions of Auditing Standard No. 2.

C. Board's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

The Board determined that public comment was not practicable in light of the timing of the Exemptive Order and the imminence of the filing requirements at issue.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents the Commission will:

- (a) by order approve such proposed rule; or
- (b) institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the requirements of Title I of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All

submissions should refer to File No. PCAOB-2004-08 and should be submitted within [] days.

By the Commission.

Secretary



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an accelerated filer that has a fiscal year ending between and including November 15, 2004 and February 28, 2005 and a market value below a certain threshold an additional 45 days to file *Management's annual report on internal control over financial reporting*, required by Item 308(a) of Regulation S-K, and the related *Attestation report of the registered public accounting firm*, required by Item 308(b) of Regulation S-K. Among other things, the order requires an issuer relying on this exemption to file all of the other information required in Form 10-K within the 75 day period specified in the form and complete its Form 10-K by filing an amendment to include the omitted management and auditor reports not later than 45 days after the end of that 75 day period.

In light of this exemptive order, the PCAOB is adopting a temporary transitional rule, Rule 3201T, "Temporary Transitional Provision for PCAOB Auditing Standard No. 2, 'An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements.'" The temporary rule provides that, notwithstanding Auditing Standard No. 2, in connection with the audit of an issuer that does not file *Management's annual report on internal control over financial reporting* at the same time as it files its financial statements in reliance on the Commission's order, an auditor need not date the auditor's report on management's assessment of the effectiveness of internal control over financial reporting with the same date as the auditor's report on the issuer's financial statements,^{2/} as long as the date of the report on management's assessment is later than the date of the report on the financial statements. In addition, such auditors need not include in the auditor's separate report on the financial statements a paragraph that refers to the report on management's assessment of the effectiveness of internal control over financial reporting.^{3/} The temporary rule expires on July 15, 2005.

The Board's practice is to seek, whenever practicable, public comment prior to adopting a rule and submitting it to the Commission for approval. The Board has determined that this is the unusual case in which public comment is not practicable, in light of the imminence of the filing requirements at issue. The Commission issued its order "[t]o ensure that there is a continuing and orderly flow of annual report information to investors and the U.S. capital markets, and to ensure that certain annual report filers and their registered public accounting firms are able to file complete and accurate

^{2/} See, e.g., Paragraph 171, Auditing Standard No. 2.

^{3/} See, e.g., Paragraph 170, Auditing Standard No. 2.



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reports regarding the effectiveness of the filers' internal control over financial reporting...."^{4/} The Commission's order applies to certain issuers with fiscal years ending between and including November 15, 2004 and February 28, 2005. These issuers must file Form 10-K shortly. Accordingly, the Board is not seeking public comment on this rule. Rather, the Board has determined to adopt the rule and to submit it to the Commission for accelerated approval. The rule will not take effect unless approved by the SEC.

On the 30th day of November, in the year 2004, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/

J. Gordon Seymour
Acting Secretary

November 30, 2004

APPENDIX –

Propose Rule 3201T

^{4/} Exchange Act Release No. 50754 (Nov. 30, 2004).



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Appendix – Proposed Rule 3201T

RULES OF THE BOARD

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SECTION 3. PROFESSIONAL STANDARDS

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Part 1 – General Requirements

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Rule 3201T. Temporary Transitional Provision for PCAOB Auditing Standard No. 2, "An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements."

(a) Notwithstanding Auditing Standard No. 2, in connection with the audit of an issuer that does not file *Management's annual report on internal control over financial reporting* in reliance on SEC Release No. 34-50754, Order Under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Specified Provisions of Exchange Act Rules 13a-1 and 15d-1 (November 30, 2004), a registered public accounting firm and its associated persons need not:

(1) Date the auditor's report on management's assessment of the effectiveness of internal control over financial reporting with the same date as the auditor's report on the issuer's financial statements, provided that the date of the auditor's report on management's assessment of the effectiveness of internal control over financial reporting is later than the date of the auditor's report on the issuer's financial statements; or

(2) Add a paragraph to the auditor's separate report on the financial statements of an issuer that refers to a separate report on management's assessment of the effectiveness of internal control over financial reporting.

(b) This temporary rule will expire on July 15, 2005.