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SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form 19b-4

Proposed Rules

By

Public Company Accounting Oversight Board

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

1. Text of the Proposed Rules

(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") proposed rules consisting of amendments to the Board's Funding Rules (Rules 7100 to 7106) and amendments to the Board's Rule 1001, Definitions of Terms Employed in Rules. The proposed rule changes are attached as Exhibit A to this rule filing.

(b) The proposed rule changes will have a direct effect on the Board's current Funding Rules (Rules 7100 through 7105) and Rule 1001. With respect to the Board's Funding Rules, the proposed rule changes will amend Rules 7100 through 7105 to include provisions for the allocation, assessment, and collection of the Board's accounting support fee from brokers and dealers, and amend certain provisions regarding the allocation, assessment, and collection of the Board's accounting support fee from issuers. With respect to Rule 1001, the proposed rule changes will delete, add, and amend certain definitions related to the amendments to the Board's Funding Rules.

(c) PCAOB Rules 1001 and 7100 – 7105 have been addressed in the following PCAOB filings in accordance with Rule 19b-4 under the Securities Exchange Act of 1934: PCAOB 2003-02, Board Funding: Establishment of Accounting Support Fee, filed April 18, 2003, PCAOB 2003-02, Amendment to Board Funding: Establishment of Accounting Support Fee, filed June 30, 2003,

and PCAOB 2003-03, Registration System for Public Accounting Firms, filed May 6, 2003.

2. Procedures of the Board

(a) The Board approved the proposed rules, and authorized them for filing with the SEC, at its open meeting on June 14, 2011. No other action by the Board is necessary for the filing of the proposed rules.

(b) Questions regarding this rule filing may be directed to Robert E. Burns, Associate General Counsel (202-207-9153, burnsr@pcaobus.org), or Nina Mojiri-Azad, Assistant General Counsel (202-207-9035; mojiriazadn@pcaobus.org).

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

(a) Purpose

Section 109 of the Act, as originally enacted, provided that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms^{1/}) would be collected from issuers^{2/} based on each issuer's

^{1/} Section 102(f) of the Act, states that registered public accounting firms shall pay fees sufficient for the Board to recover the costs of processing and reviewing registration applications and annual reports.

^{2/} Section 2(a)(7) of the Act and PCAOB rules define "issuer" to mean an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 ("Exchange Act")), the securities of which are registered under Section 12 of the Exchange Act, or that is required to file reports under Section 15(d) of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn. See PCAOB Rule 1001(i)(iii).

relative average, monthly equity market capitalization.^{3/} The amount due from issuers was referred to as the Board's "accounting support fee."

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act^{4/} (the "Dodd-Frank Act") granted the Board oversight of the audits of brokers and dealers registered with the Commission.^{5/} To provide funds for the Board's oversight of those audits, the Dodd-Frank Act amended Section 109 of the Act to require that the Board allocate a portion of the accounting support fee among brokers and dealers, or classes of brokers and dealers, based on their relative "net capital (before or after any adjustments)."^{6/}

As amended by the Dodd-Frank Act, Section 109 of the Act requires that the rules of the Board provide for the equitable allocation, assessment, and collection by the Board of the accounting support fee among issuers, brokers, and dealers, and allow "for differentiation among classes of issuers, brokers, and dealers, as appropriate."^{7/} This section further provides that "[t]he amount due

^{3/} Section 109(g) of the Act.

^{4/} Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

^{5/} For information regarding the audit of brokers' and dealers' financial statements and examination of reports regarding compliance with Commission requirements, see generally Rule 17a-5 under the Exchange Act and related SEC rules and forms.

^{6/} Sections 109(d)(2) and 109(h) of the Act, which state, in part, that amounts due from brokers and dealers "shall be in proportion to the net capital of the broker or dealer (before or after any adjustments)."

^{7/} Section 109(d)(2) of the Act. Pursuant to Section 109(e) of the Act, the Financial Accounting Standards Board ("FASB") accounting support fee is to be allocated among issuers. Brokers and dealers therefore will not be allocated a portion of the FASB annual accounting support fee.

from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board."^{8/}

Accordingly, the Board adopted amendments to its funding rules to allocate a portion of the accounting support fee among brokers and dealers,^{9/} to establish classes of brokers and dealers for funding purposes, to describe the methods for allocating the appropriate portion of the accounting support fee to each broker and dealer within each class, and to address the collection of the assessed share of the broker-dealer accounting support fee from brokers and dealers.

In addition, the proposed rules include amendments to the Board's funding rules with respect to the allocation, assessment, and collection of the accounting support fee among issuers. The proposed rules (i) revise the basis for calculating an issuer's market capitalization to include the market capitalization of all classes of the issuer's voting and non-voting common equity, and (ii) increase the average, monthly market capitalization thresholds in the funding rules for

^{8/} Section 109(h)(3) of the Act.

^{9/} The PCAOB is amending its rules to add definitions of "broker" and "dealer" consistent with the definitions that the Dodd-Frank Act added to Section 110 of the Act. These definitions incorporate the definition of "broker" in Section 3(a)(4) of the Exchange Act and "dealer" in Section 3(a)(5) of the Exchange Act, but only include those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement certified by a registered public accounting firm. See Sections 110(3) and (4) of the Act.

classes of equity issuers and investment companies. Further, based on eight years' experience administering the funding process, the proposed rules include technical amendments to the Board's funding rules.

On December 14, 2010, the Board published for public comment proposed amendments to its funding rules to provide for a portion of the accounting support fee to be allocated among brokers and dealers with average, quarterly tentative net capital of greater than \$5 million.^{10/} The Board sought comment on all aspects of the proposed rules. The Board received eight comments in total, consisting of four comments from accounting firms, two from associations of accountants or auditors, one from an organization representing independent broker-dealers, and one from a small broker and dealer. Generally, commenters supported the amendments. Accordingly, the rules adopted were substantially similar to those proposed on December 14, 2010.

(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 rules on funding will result in any burden on competition. The proposed rule changes would apply equally to all issuers, brokers, and dealers and pursuant to the statutory formula, issuers, brokers, and dealers will generally pay a fee that is proportionate to the size of

^{10/} PCAOB Release No. 2010-009, *Board Funding: Proposal for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules* (December 14, 2010); PCAOB Rulemaking Docket Matter No. 033 (the "proposing release").

their equity market capitalization, for issuers, and tentative net capital, for brokers and dealers. In addition, the proposed rules would provide for a fee of zero for issuers with average, monthly equity market capitalization of less than \$75 million (or, for investment company issuers, less than \$500 million) and for brokers and dealers with \$5 million or less of average, quarterly tentative net capital.

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

The Board released the proposed rules for public comment on December 14, 2010. See Exhibit 2(a)(A). The Board received eight written comment letters relating to its initial proposed rules. See Exhibits 2(a)(B) and 2(a)(C). The Board has carefully considered all comments it has received. The Board's response to the comments it received and the changes made to the rules in response to the comments received are summarized in Exhibits 2(a)(C) and 3 to this filing.

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)

Not applicable.

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

Not applicable.

9. Exhibits

Exhibit A – Text of the Proposed Rules.

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

Exhibit 2(a)(A) – PCAOB Release No. 2010-009 (December 14, 2010).

Exhibit 2(a)(B) – Alphabetical List of Comments on the rules proposed in PCAOB Release No. 2010-009.

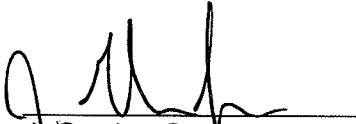
Exhibit 2(a)(C) – Written comments on the rules proposed in PCAOB Release No. 2010-009.

Exhibit 3 – PCAOB Release No. 2011-002 (June 14, 2010)

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: 
J. Gordon Seymour
General Counsel
and Secretary

June 21, 2011

Exhibit A – Text of the Proposed Rules

The relevant portions of Sections 1 and 7 of the Board's rules are amended as set out below. Language deleted by these amendments is struck through. Language that is added is underlined.

RULES OF THE BOARD**Section 1. GENERAL PROVISIONS****Rule 1001. Definitions of Terms Employed in Rules.**

* * *

(a)(i) ~~Accounting Support Fee~~[Reserved]

~~_____The term "Accounting Support Fee" means the fee described in Rule 7100Sarbanes-Oxley Act of 2002, as amended.~~

(a)(iii) Act

The term "Act" means the Sarbanes-Oxley Act of 2002, as amended.

* * *

(b)(iii) Broker

_____The term "broker" means a broker (as defined in Section 3(a)(4) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(b)(iv) Broker-Dealer Accounting Support Fee

_____The term "broker-dealer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among brokers and dealers pursuant to the rules of the Board.

* * *

(c)(iii) Common Equity

The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

* * *

(d)(iii) Dealer

The term "dealer" means a dealer (as defined in Section 3(a)(5) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

* * *

(i)(i) Issuer Market Capitalization

The terms "issuer market capitalization" and "market capitalization of an issuer" mean –

(1) Except as provided in paragraph (i)(i)(2) of this rule, the aggregate market value of all classes of an issuer's voting and non-voting common ~~common stock~~equity -that trade in the United States; or

(2) With respect to an issuer: (i) that is registered under Section 8 of the Investment Company Act or has elected to be regulated as a business development company pursuant to Section 54 of the Investment Company Act, and (ii) whose securities are not traded on a national securities exchange or whose quoted on Nasdaq share price is not otherwise publicly available, the issuer's net asset value.

(i)(v) Issuer Accounting Support Fee

The term "issuer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among issuers pursuant to the rules of the Board.

* * *

(in)(vi) Notice Invoice

The term "~~notice invoice~~" means the document sent by the Board to an issuer, broker, or dealer, pursuant to Rule 7103~~2~~, setting forth such issuer's, broker's, or dealer's share of the accounting support fee under Section 109 of the Act and Rules 7101, ~~and~~ 7102, and 7103.

* * *

(s)(v) Self-Regulatory Organization

The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of Sections 19(b), 19(c), and 23(b) of the Exchange Act) the Municipal Securities Rulemaking Board established by Section 15B of the Exchange Act.

* * *

(t)(ii) Tentative Net Capital

The term "tentative net capital" has the same meaning as such term is defined under Rule 15c3-1(c)(15) under the Exchange Act.

(t)(iii) Total Accounting Support Fee

The term "total accounting support fee" means the fee described in Rule 7100.

* * *

SECTION 7. FUNDING

* * *

Rule 7100. Accounting Support Fees.

The Board shall ~~calculate~~ establish a total accounting support fee each year in accordance with the Act. The total accounting support fee shall be equitably allocated between issuers (the "issuer accounting support fee") and brokers and dealers— (the "broker-dealer accounting support fee"). The accounting support fee shall equal the budget of the Board, as approved by the Commission, less the sum of all registration fees and annual fees received during the preceding calendar year from public accounting firms, pursuant to Section 102(f) of the Act and the Rules of the Board. ~~The accounting support fees shall then be equitably allocated among issuers, in accordance with Rule 7101(b), and among brokers and dealers, in accordance with Rule 7102(b).~~

Rule 7101. Allocation of Issuer Accounting Support Fee.**(a) Classes of Issuers**

For purposes of allocating the issuer accounting support fee, those entities that are issuers as of the date the issuer accounting support fee is calculated ~~under Rule 7100~~ shall be divided into four classes:

(1) Equity Issuers

All issuers whose average, monthly issuer market capitalization is greater than \$75 million during the ~~preceding~~ preceding the date the issuer accounting support fee is calculated ~~is greater than \$25 million~~, other than those described in paragraphs (a)(2) and (a)(3) of this Rule, and whose share price on a monthly, or more frequent, basis is publicly available.

Note: The Average, monthly issuer market capitalization will be based on closing stock share prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month measured during which trading in the common equity occurred.

(2) Investment Company Issuers

All issuers (i) who, as of the date the accounting support fee is calculated ~~under Rule 7100~~, are registered under Section 8 of the Investment Company Act or have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act, other than those described in paragraph (a)(3), (ii) whose average, monthly issuer market capitalization is greater than \$500 million during the

~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated ~~is greater than \$250 million~~, and (iii) whose share price (or net asset value) on a monthly, or more frequent, basis is publicly ~~available~~.

Note: ~~Average~~The, monthly issuer market capitalization will be based on closing ~~stock share~~ prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month ~~measured~~during which trading in the common equity occurred.

(3) Issuers Permitted Not to File Audited Financial Statements and Bankrupt Issuers that File Modified Reports

All issuers that, as of the date the issuer accounting support fee is calculated ~~under Rule 7100~~, (i) have a basis, under the federal securities laws, a Commission rule, or pursuant to other action of the Commission or its staff, not to file audited financial statements with the Commission, (ii) are employee stock purchase, savings, and similar plans, interests in which constitute securities registered under the Securities Act, or (iii) are subject to the jurisdiction of a bankruptcy court and ~~satisfy~~have provided an opinion of counsel that the issuer satisfies the modified reporting requirements of Commission Staff Legal Bulletin No. 2.

Note: ~~As of April 16, 2003, i~~Issuers within paragraph (a)(3)(i) of this Rule include (A) asset-backed issuers, (B) unit investment trusts, as defined in Section 4(2) of the Investment Company Act, that have not filed or updated a registration statement that became effective during the ~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated, and (C) Small Business Investment Companies registered on Form N-5 under the Investment Company Act, that have not filed or updated a registration statement that became effective during the calendar year preceding the date the issuer accounting support fee is calculated~~preceding year~~.

(4) All Other Public Company Issuers

All issuers other than those described in paragraphs (a)(1), (a)(2), or (a)(3) of this Rule.

(b) Allocation of Issuer Accounting Support Fee Among Issuers

The issuer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

(1) Equity and Investment Company Issuers

Each issuer described in paragraph (a)(1) and (a)(2) of this Rule shall be allocated a share of the issuer accounting support fee in an amount equal to the issuer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, monthly market capitalization of the issuer during the ~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated, except that for issuers described in paragraph (a)(2) of this Rule, the numerator is one-tenth of the average, monthly issuer market capitalization of the issuer; and

(ii) the denominator of which is the sum of the average, monthly market capitalizations of the issuers described in paragraph (a)(1) of this Rule and one-tenth of the average, monthly market capitalizations of the issuers described in paragraph (a)(2) of this Rule.

(2) All Other Classes

Each issuer described in paragraphs (a)(3) and (a)(4) of this Rule shall be allocated a share of the issuer accounting support fee equal to \$0.

(c) Adjustments

After the issuer accounting support fee is calculated ~~under Rule 7100~~ and allocated under this Rule, any adjustment to the share allocated to an issuer shall not affect the share allocated to any other issuer.

Rule 7102. Allocation of Broker-Dealer Accounting Support Fee

(a) Classes of Brokers and Dealers

For purposes of allocating the broker-dealer accounting support fee, those entities that are brokers or dealers as of the date the broker-dealer accounting support fee is calculated shall be divided into two classes:

(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million

All brokers and dealers whose average, quarterly tentative net capital is greater than \$5 million during the calendar year preceding the date the broker-dealer accounting support fee is calculated, other than those described in paragraphs (a)(2) of this Rule.

Note: Average, quarterly tentative net capital will be based on the tentative net capital reported by the broker or dealer in the calendar quarterly reports filed pursuant to Commission rules during the calendar year preceding the date the broker-dealer accounting support fee is calculated.

(2) Brokers and Dealers Permitted Not to File Audited Financial Statements and Brokers and Dealers Not Described in Paragraph (a)(1) of This Rule

All brokers and dealers that, as of the date the broker-dealer accounting support fee is calculated, (i) have a basis, under the federal securities laws, a Commission rule, or pursuant to other action of the Commission or its staff, not to file audited financial statements or (ii) are not described in paragraph (a)(1) of this Rule.

(b) Allocation of Broker-Dealer Accounting Support Fee

The broker-dealer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million

Each broker and dealer described in paragraph (a)(1) of this Rule shall be allocated a share of the broker-dealer accounting support fee in an amount equal to the broker-dealer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, quarterly tentative net capital of the broker or dealer during the calendar year preceding the date the broker-dealer accounting support fee is calculated; and

(ii) the denominator of which is the sum of the average, quarterly tentative net capital of the brokers and dealers described in paragraph (a)(1) of this Rule.

(2) All Other Brokers and Dealers

Each broker and dealer described in paragraph (a)(2) of this Rule shall be allocated a share of the broker-dealer accounting support fee equal to \$0.

(c) Adjustments

After the broker-dealer accounting support fee is calculated and allocated under this Rule, any adjustment to the share allocated to a broker or dealer shall not affect the share allocated to any other broker or dealer.

Rule 710~~32~~³. Assessment of Accounting Support Fees.

(a) Amount of Assessment

Each issuer and each broker and dealer is required to pay its share of the accounting support fee, as allocated under Rules 7101 and 7102~~2~~, rounded to the nearest hundred\$100.

Note: If the allocated an issuer's share of the accounting support fee to an issuer, broker, or dealer is less than \$50, that issuer the assessed share of the accounting support fee will not be assessed zero. If the issuer's allocated share of the accounting support fee is exactly \$50 or \$50 more than a the closest multiple of \$100, then the assessed share will be rounded up to the nearest \$100~~2~~.

(b) Notice of Assessment

The Board will use its best efforts to send an an notice invoice to each issuer, broker, and dealer, either electronically or by first-class mail, at the address shown in on such issuer's the most recent periodic report filed with the Commission by the issuer, or with the designated self-regulatory organization by the broker or dealer, at the address submitted to contained in the Commission's EDGAR system or the broker's or dealer's designated self-regulatory organization, or at such other address as the issuer, broker, or dealer provides to the Board. The Board's failure to send an issuer, broker, or dealer an notice invoice, or the issuer's failure to receive an an notice invoice sent by the Board, shall not constitute a waiver of the Board's right to assess the issuer, broker, or dealer such issuer for its share of the accounting support fee or of the issuer's, broker's, or dealer's responsibility to pay its share of the accounting support fee.

(c) Petition for Correction

Any issuer, broker, or dealer who disagrees with the class in which it has been placed, or with the calculation by which its share of the accounting support fee was determined, may petition the Board for a correction of the share of the accounting support fee it was allocated. Any such petition shall include an explanation of the nature of the claimed mistake in classification or calculation in writing and must be filed with the Board, on or before the 630th day after the notice invoice is sent, or within such longer period as the Board allows for good cause shown. After a review of such a petition, the Board will determine whether the allocation is consistent with Section 109 of the Act and the Board's rules thereunder and provide the issuer a written explanation of its decision. The provisions of Rule 710~~43~~³ shall be suspended while such a petition is pending before the Board.

Rule 71043. Collection of Accounting Support Fees.

(a) Accounting Support Fee Payment Due Date

Unless the Board directs otherwise, payment shall be due on the 30th day after the ~~notice-invoice~~ is sent. Beginning on the 31st day, payment shall be deemed past due and interest shall accrue at a rate of 6 percent per annum.

(b) ~~Confirmation-Determination~~ of Payment of Accounting Support Fees by Registered Accounting Firm

(1) Except as provided in paragraph (b)(2) of this Rule, no registered public accounting firm shall:

(i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's ~~financial statements, or~~

(ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or

(iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws

unless the registered public accounting firm has ascertained that the issuer (including any broker or dealer subsidiary of the issuer), broker, or dealer has outstanding no past-due share of the issuer accounting support fee or broker-dealer accounting support fee, whichever is applicable, or has a petition pursuant to Rule 71032(c) pending.

(2) A registered public accounting firm may:

(i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements, ~~or~~

(ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or

(iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws

even though the issuer (including any broker or dealer subsidiary of the issuer), broker, or dealer -has outstanding a past-due share of the accounting support fee and has not filed a petition under Rule 71032(c), if the issuer, broker, or dealer needs the audit report or consent in order to submit a report to, or make a filing with, the Commission or, in the case of an issuer only, to issue securities. The issuer-registered public accounting firm

shall submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with the Commission. This exception to paragraph (b)(1) of this Rule shall not continue longer than 15 business days after the earlier of the date of the notice's submission or the filing of the report with the Commission, and may not be invoked for more than one such period with respect to any share of the accounting support fee that the issuer, broker, or dealer is assessed under Rule 7103~~2~~.

Note 1: A registered public accounting firm may ascertain that an issuer, broker, or dealer has no outstanding past-due share of the accounting support fee by obtaining a representation from the issuer, broker, or dealer ~~or a confirmation from the Board that no past due share of the accounting support fee is outstanding.~~

Note 2: A notice pursuant to paragraph (b)(2) of this Rule must be submitted electronically by email to rule7104~~3~~stay@pcaobus.org.

Note 3: For purposes of Rule 7104, the term "audit" means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report. For purposes of Rule 7104, the term "audit report" means a document, report, notice, or other record (1) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or (ii) asserts no such opinion can be expressed.

(c) ~~Reports to the Commission of Non-payment of an Accounting Support Fee~~

(1) If an issuer has not paid its share of the issuer accounting support fee by the 60th day after the notice-invoice was sent, and the issuer does not have a petition pursuant to Rule 7102~~3~~(c) pending, the Board may send a second notice-invoice to such issuer by certified mail. If the Board has sent such a second notice-invoice and has not been paid by the 90th day after the original notice-invoice was sent, the Board may report the issuer's nonpayment to the Commission.

Note: Section 13(b)(2) of the Exchange Act provides, in part, that: "Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall – * * * (C) notwithstanding any other provision of law, pay the allocable

share of such issuer of a reasonable accounting support fee or fees, determined in accordance with Section 109 of the Sarbanes-Oxley Act of 2002."

(2) If a broker or dealer has not paid its share of the broker-dealer accounting support fee by the 60th day after the invoice was sent, and the broker or dealer does not have a petition pursuant to Rule 7103(c) pending, the Board may send a second invoice to such broker or dealer by certified mail. If the Board has sent such a second invoice and has not been paid by the 90th day after the original invoice was sent, the Board may report the broker's or dealer's nonpayment to the Commission and/or the broker's or dealer's designated self-regulatory organization.

Note: Section 109(h)(1) of the Act provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

(d) — Excess Fees

~~— If in any Board fiscal year, the Board receives fees in excess of the budget for that fiscal year, the Board shall hold those excess fees in escrow. Such escrowed excess fees shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's accounting support fee in that next fiscal year.~~

Rule 71054. Service as Designated Collection Agent.

If the Board is designated to serve as collection agent for an accounting support fee of a standard-setting body designated by the Commission pursuant to Section 19(b) of the Securities Act, the assessment and collection of the accounting support fee shall be governed by Rules 7103 ~~and 2 and 71043~~ as if the accounting support fee of the standard-setting body were the issuer accounting support fee of the Board.

Rule 7106. (d) — Excess FeesFunds.

If in any Board fiscal year, the Board receives ~~fees~~ funds in excess of the budget of the Board for that fiscal year, as approved by the Commission, the Board shall hold those excess ~~fees~~ funds in escrow. Such escrowed excess ~~fees~~ funds shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's total accounting support fee in that next fiscal year.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-XXXXX; File No. PCAOB-2011-02)****[Date]****Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Funding**

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), notice is hereby given that on June 21, 2011, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rules 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 rules from interested persons.

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

On June 14, 2011, the Board adopted amendments to its rules relating to the funding of the Board's operations (PCAOB Rules 7100 through 7106), and amended certain definitions that would appear in PCAOB Rule 1001, related to the Section 109 of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act^{1/} (the "Dodd-Frank Act") (collectively, "the proposed rules"). The text of the proposed rules is set out below. Language deleted by the proposed rules is struck through. Language that is added is underlined.

^{1/} Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

RULES OF THE BOARD

Section 1. GENERAL PROVISIONS

Rule 1001. Definitions of Terms Employed in Rules.

* * *

(a)(i) ~~Accounting Support Fee~~[Reserved]

~~_____The term "Accounting Support Fee" means the fee described in Rule 7100Sarbanes-Oxley Act of 2002, as amended.~~

(a)(iii) Act

The term "Act" means the Sarbanes-Oxley Act of 2002, as amended.

* * *

(b)(iii) Broker

_____The term "broker" means a broker (as defined in Section 3(a)(4) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(b)(iv) Broker-Dealer Accounting Support Fee

_____The term "broker-dealer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among brokers and dealers pursuant to the rules of the Board.

* * *

(c)(iii) Common Equity

The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

* * *

(d)(iii) Dealer

The term "dealer" means a dealer (as defined in Section 3(a)(5) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

* * *

(i)(i) Issuer Market Capitalization

The terms "issuer market capitalization" and "market capitalization of an issuer" mean –

(1) Except as provided in paragraph (i)(i)(2) of this rule, the aggregate market value of all classes of an issuer's voting and non-voting common ~~common stock~~equity -that trade in the United States; or

(2) With respect to an issuer: (i) that is registered under Section 8 of the Investment Company Act or has elected to be regulated as a business development company pursuant to Section 54 of the Investment Company Act, and (ii) whose securities are not traded on a national securities exchange or whose quoted on Nasdaq share price is not otherwise publicly available, the issuer's net asset value.

(i)(v) Issuer Accounting Support Fee

The term "issuer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among issuers pursuant to the rules of the Board.

* * *

(in)(vi) Notice Invoice

The term "~~notice invoice~~" means the document sent by the Board to an issuer, broker, or dealer, pursuant to Rule 7103~~2~~, setting forth such issuer's, broker's, or dealer's share of the accounting support fee under Section 109 of the Act and Rules 7101, ~~and~~ 7102, and 7103.

* * *

(s)(v) Self-Regulatory Organization

The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of Sections 19(b), 19(c), and 23(b) of the Exchange Act) the Municipal Securities Rulemaking Board established by Section 15B of the Exchange Act.

* * *

(t)(ii) Tentative Net Capital

The term "tentative net capital" has the same meaning as such term is defined under Rule 15c3-1(c)(15) under the Exchange Act.

(t)(iii) Total Accounting Support Fee

The term "total accounting support fee" means the fee described in Rule 7100.

* * *

SECTION 7. FUNDING

* * *

Rule 7100. Accounting Support Fees.

The Board shall ~~calculate~~ establish a total accounting support fee each year in accordance with the Act. The total accounting support fee shall be equitably allocated between issuers (the "issuer accounting support fee") and brokers and dealers— (the "broker-dealer accounting support fee"). The accounting support fee shall equal the budget of the Board, as approved by the Commission, less the sum of all registration fees and annual fees received during the preceding calendar year from public accounting firms, pursuant to Section 102(f) of the Act and the Rules of the Board. ~~The accounting support fees shall then be equitably allocated among issuers, in accordance with Rule 7101(b), and among brokers and dealers, in accordance with Rule 7102(b).~~

Rule 7101. Allocation of Issuer Accounting Support Fee.

(a) Classes of Issuers

For purposes of allocating the issuer accounting support fee, those entities that are issuers as of the date the issuer accounting support fee is calculated ~~under Rule 7100~~ shall be divided into four classes:

(1) Equity Issuers

All issuers whose average, monthly issuer market capitalization is greater than \$75 million during the ~~preceding~~ preceding the date the issuer accounting support fee is calculated ~~is greater than \$25 million~~, other than those described in paragraphs (a)(2) and (a)(3) of this Rule, and whose share price on a monthly, or more frequent, basis is publicly available.

Note: The Average, monthly issuer market capitalization will be based on closing stock share prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month measured during which trading in the common equity occurred.

(2) Investment Company Issuers

All issuers (i) who, as of the date the accounting support fee is calculated ~~under Rule 7100~~, are registered under Section 8 of the Investment Company Act or have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act, other than those described in paragraph (a)(3), (ii) whose average, monthly issuer market capitalization is greater than \$500 million during the

~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated ~~is greater than \$250 million~~, and (iii) whose share price (or net asset value) on a monthly, or more frequent, basis is publicly ~~available~~.

Note: ~~Average~~The, monthly issuer market capitalization will be based on closing ~~stock share~~ prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month ~~measured~~during which trading in the common equity occurred.

(3) Issuers Permitted Not to File Audited Financial Statements and Bankrupt Issuers that File Modified Reports

All issuers that, as of the date the issuer accounting support fee is calculated ~~under Rule 7100~~, (i) have a basis, under the federal securities laws, a Commission rule, or pursuant to other action of the Commission or its staff, not to file audited financial statements with the Commission, (ii) are employee stock purchase, savings, and similar plans, interests in which constitute securities registered under the Securities Act, or (iii) are subject to the jurisdiction of a bankruptcy court and ~~satisfy~~have provided an opinion of counsel that the issuer satisfies the modified reporting requirements of Commission Staff Legal Bulletin No. 2.

Note: ~~As of April 16, 2003, i~~Issuers within paragraph (a)(3)(i) of this Rule include (A) asset-backed issuers, (B) unit investment trusts, as defined in Section 4(2) of the Investment Company Act, that have not filed or updated a registration statement that became effective during the ~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated, and (C) Small Business Investment Companies registered on Form N-5 under the Investment Company Act, that have not filed or updated a registration statement that became effective during the calendar year preceding the date the issuer accounting support fee is calculated~~preceding year~~.

(4) All Other Public Company Issuers

All issuers other than those described in paragraphs (a)(1), (a)(2), or (a)(3) of this Rule.

(b) Allocation of Issuer Accounting Support Fee Among Issuers

The issuer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

(1) Equity and Investment Company Issuers

Each issuer described in paragraph (a)(1) and (a)(2) of this Rule shall be allocated a share of the issuer accounting support fee in an amount equal to the issuer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, monthly market capitalization of the issuer during the ~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated, except that for issuers described in paragraph (a)(2) of this Rule, the numerator is one-tenth of the average, monthly issuer market capitalization of the issuer; and

(ii) the denominator of which is the sum of the average, monthly market capitalizations of the issuers described in paragraph (a)(1) of this Rule and one-tenth of the average, monthly market capitalizations of the issuers described in paragraph (a)(2) of this Rule.

(2) All Other Classes

Each issuer described in paragraphs (a)(3) and (a)(4) of this Rule shall be allocated a share of the issuer accounting support fee equal to \$0.

(c) Adjustments

After the issuer accounting support fee is calculated ~~under Rule 7100~~ and allocated under this Rule, any adjustment to the share allocated to an issuer shall not affect the share allocated to any other issuer.

Rule 7102. Allocation of Broker-Dealer Accounting Support Fee

(a) Classes of Brokers and Dealers

For purposes of allocating the broker-dealer accounting support fee, those entities that are brokers or dealers as of the date the broker-dealer accounting support fee is calculated shall be divided into two classes:

(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million

All brokers and dealers whose average, quarterly tentative net capital is greater than \$5 million during the calendar year preceding the date the broker-dealer accounting support fee is calculated, other than those described in paragraphs (a)(2) of this Rule.

Note: Average, quarterly tentative net capital will be based on the tentative net capital reported by the broker or dealer in the calendar quarterly reports filed pursuant to Commission rules during the calendar year preceding the date the broker-dealer accounting support fee is calculated.

(2) Brokers and Dealers Permitted Not to File Audited Financial Statements and Brokers and Dealers Not Described in Paragraph (a)(1) of This Rule

All brokers and dealers that, as of the date the broker-dealer accounting support fee is calculated, (i) have a basis, under the federal securities laws, a Commission rule, or pursuant to other action of the Commission or its staff, not to file audited financial statements or (ii) are not described in paragraph (a)(1) of this Rule.

(b) Allocation of Broker-Dealer Accounting Support Fee

The broker-dealer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million

Each broker and dealer described in paragraph (a)(1) of this Rule shall be allocated a share of the broker-dealer accounting support fee in an amount equal to the broker-dealer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, quarterly tentative net capital of the broker or dealer during the calendar year preceding the date the broker-dealer accounting support fee is calculated; and

(ii) the denominator of which is the sum of the average, quarterly tentative net capital of the brokers and dealers described in paragraph (a)(1) of this Rule.

(2) All Other Brokers and Dealers

Each broker and dealer described in paragraph (a)(2) of this Rule shall be allocated a share of the broker-dealer accounting support fee equal to \$0.

(c) Adjustments

After the broker-dealer accounting support fee is calculated and allocated under this Rule, any adjustment to the share allocated to a broker or dealer shall not affect the share allocated to any other broker or dealer.

Rule 710~~32~~³. Assessment of Accounting Support Fees.

(a) Amount of Assessment

Each issuer and each broker and dealer is required to pay its share of the accounting support fee, as allocated under Rules 7101 and 7102~~2~~, rounded to the nearest hundred\$100.

Note: If the allocated an issuer's share of the accounting support fee to an issuer, broker, or dealer is less than \$50, that issuer the assessed share of the accounting support fee will not be assessed zero. If the issuer's allocated share of the accounting support fee is exactly \$50 or \$50 more than a the closest multiple of \$100, then the assessed share will be rounded up to the nearest \$100.

(b) Notice of Assessment

The Board will use its best efforts to send an an notice invoice to each issuer, broker, and dealer, either electronically or by first-class mail, at the address shown in on such issuer's the most recent periodic report filed with the Commission by the issuer, or with the designated self-regulatory organization by the broker or dealer, at the address submitted to contained in the Commission's EDGAR system or the broker's or dealer's designated self-regulatory organization, or at such other address as the issuer, broker, or dealer provides to the Board. The Board's failure to send an issuer, broker, or dealer an notice invoice, or the issuer's failure to receive an an notice invoice sent by the Board, shall not constitute a waiver of the Board's right to assess the issuer, broker, or dealer such issuer for its share of the accounting support fee or of the issuer's, broker's, or dealer's responsibility to pay its share of the accounting support fee.

(c) Petition for Correction

Any issuer, broker, or dealer who disagrees with the class in which it has been placed, or with the calculation by which its share of the accounting support fee was determined, may petition the Board for a correction of the share of the accounting support fee it was allocated. Any such petition shall include an explanation of the nature of the claimed mistake in classification or calculation in writing and must be filed with the Board, on or before the 630th day after the notice invoice is sent, or within such longer period as the Board allows for good cause shown. After a review of such a petition, the Board will determine whether the allocation is consistent with Section 109 of the Act and the Board's rules thereunder and provide the issuer a written explanation of its decision. The provisions of Rule 710~~43~~³ shall be suspended while such a petition is pending before the Board.

Rule 71043. Collection of Accounting Support Fees.

(a) Accounting Support Fee Payment Due Date

Unless the Board directs otherwise, payment shall be due on the 30th day after the ~~notice-invoice~~ is sent. Beginning on the 31st day, payment shall be deemed past due and interest shall accrue at a rate of 6 percent per annum.

(b) ~~Confirmation-Determination~~ of Payment of Accounting Support Fees by Registered Accounting Firm

(1) Except as provided in paragraph (b)(2) of this Rule, no registered public accounting firm shall:

(i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's ~~financial statements, or~~

(ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or

(iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws

unless the registered public accounting firm has ascertained that the issuer (including any broker or dealer subsidiary of the issuer), broker, or dealer has outstanding no past-due share of the issuer accounting support fee or broker-dealer accounting support fee, whichever is applicable, or has a petition pursuant to Rule 71032(c) pending.

(2) A registered public accounting firm may:

(i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements, ~~or~~

(ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or

(iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws

even though the issuer (including any broker or dealer subsidiary of the issuer), broker, or dealer -has outstanding a past-due share of the accounting support fee and has not filed a petition under Rule 71032(c), if the issuer, broker, or dealer needs the audit report or consent in order to submit a report to, or make a filing with, the Commission or, in the case of an issuer only, to issue securities. The issuer-registered public accounting firm

shall submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with the Commission. This exception to paragraph (b)(1) of this Rule shall not continue longer than 15 business days after the earlier of the date of the notice's submission or the filing of the report with the Commission, and may not be invoked for more than one such period with respect to any share of the accounting support fee that the issuer, broker, or dealer is assessed under Rule 7103~~2~~.

Note 1: A registered public accounting firm may ascertain that an issuer, broker, or dealer has no outstanding past-due share of the accounting support fee by obtaining a representation from the issuer, broker, or dealer ~~or a confirmation from the Board that no past due share of the accounting support fee is outstanding.~~

Note 2: A notice pursuant to paragraph (b)(2) of this Rule must be submitted electronically by email to rule7104~~3~~stay@pcaobus.org.

Note 3: For purposes of Rule 7104, the term "audit" means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report. For purposes of Rule 7104, the term "audit report" means a document, report, notice, or other record (1) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or (ii) asserts no such opinion can be expressed.

(c) ~~Reports to the Commission of Non-payment of an Accounting Support Fee~~

(1) If an issuer has not paid its share of the issuer accounting support fee by the 60th day after the notice-invoice was sent, and the issuer does not have a petition pursuant to Rule 7102~~3~~(c) pending, the Board may send a second notice-invoice to such issuer by certified mail. If the Board has sent such a second notice-invoice and has not been paid by the 90th day after the original notice-invoice was sent, the Board may report the issuer's nonpayment to the Commission.

Note: Section 13(b)(2) of the Exchange Act provides, in part, that: "Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall – * * * (C) notwithstanding any other provision of law, pay the allocable

share of such issuer of a reasonable accounting support fee or fees, determined in accordance with Section 109 of the Sarbanes-Oxley Act of 2002."

(2) If a broker or dealer has not paid its share of the broker-dealer accounting support fee by the 60th day after the invoice was sent, and the broker or dealer does not have a petition pursuant to Rule 7103(c) pending, the Board may send a second invoice to such broker or dealer by certified mail. If the Board has sent such a second invoice and has not been paid by the 90th day after the original invoice was sent, the Board may report the broker's or dealer's nonpayment to the Commission and/or the broker's or dealer's designated self-regulatory organization.

Note: Section 109(h)(1) of the Act provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

~~(d) — Excess Fees~~

~~— If in any Board fiscal year, the Board receives fees in excess of the budget for that fiscal year, the Board shall hold those excess fees in escrow. Such escrowed excess fees shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's accounting support fee in that next fiscal year.~~

Rule 71054. Service as Designated Collection Agent.

If the Board is designated to serve as collection agent for an accounting support fee of a standard-setting body designated by the Commission pursuant to Section 19(b) of the Securities Act, the assessment and collection of the accounting support fee shall be governed by Rules 7103 and ~~2 and 71043~~ as if the accounting support fee of the standard-setting body were the issuer accounting support fee of the Board.

Rule 7106. (d) — Excess Fees Funds.

If in any Board fiscal year, the Board receives ~~fees~~ funds in excess of the budget of the Board for that fiscal year, as approved by the Commission, the Board shall hold those excess ~~fees~~ funds in escrow. Such escrowed excess ~~fees~~ funds shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's total accounting support fee in that next fiscal year.

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

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified

in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

(a) Purpose

Section 109 of the Sarbanes-Oxley Act, as originally enacted, provided that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms^{2/}) would be collected from issuers^{3/} based on each issuer's relative average, monthly equity market capitalization.^{4/} The amount due from issuers was referred to as the Board's "accounting support fee."

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act^{5/} (the "Dodd-Frank Act") granted the Board oversight of the audits of brokers and dealers registered with the Commission.^{6/} To provide funds for the Board's oversight of

^{2/} Section 102(f) of the Sarbanes-Oxley Act, states that registered public accounting firms shall pay fees sufficient for the Board to recover the costs of processing and reviewing registration applications and annual reports.

^{3/} Section 2(a)(7) of the Sarbanes-Oxley Act and PCAOB rules define "issuer" to mean an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 ("Exchange Act")), the securities of which are registered under Section 12 of the Exchange Act, or that is required to file reports under Section 15(d) of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn. See PCAOB Rule 1001(i)(iii).

^{4/} Section 109(g) of the Sarbanes-Oxley Act.

^{5/} Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

^{6/} For information regarding the audit of brokers' and dealers' financial statements and examination of reports regarding compliance with Commission

those audits, the Dodd-Frank Act amended Section 109 of the Sarbanes-Oxley Act to require that the Board allocate a portion of the accounting support fee among brokers and dealers, or classes of brokers and dealers, based on their relative "net capital (before or after any adjustments)."^{7/}

As amended by the Dodd-Frank Act, Section 109 of the Sarbanes-Oxley Act requires that the rules of the Board provide for the equitable allocation, assessment, and collection by the Board of the accounting support fee among issuers, brokers, and dealers, and allow "for differentiation among classes of issuers, brokers, and dealers, as appropriate."^{8/} This section further provides that "[t]he amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board."^{9/}

requirements, see generally Rule 17a-5 under the Exchange Act and related SEC rules and forms.

^{7/} Sections 109(d)(2) and 109(h) of the Sarbanes-Oxley Act, which state, in part, that amounts due from brokers and dealers "shall be in proportion to the net capital of the broker or dealer (before or after any adjustments)."

^{8/} Section 109(d)(2) of the Sarbanes-Oxley Act. Pursuant to Section 109(e) of the Sarbanes-Oxley Act, the Financial Accounting Standards Board ("FASB") accounting support fee is to be allocated among issuers. Brokers and dealers therefore will not be allocated a portion of the FASB annual accounting support fee.

^{9/} Section 109(h)(3) of the Sarbanes-Oxley Act.

Accordingly, the Board adopted amendments to its funding rules to allocate a portion of the accounting support fee among brokers and dealers,^{10/} to establish classes of brokers and dealers for funding purposes, to describe the methods for allocating the appropriate portion of the accounting support fee to each broker and dealer within each class, and to address the collection of the assessed share of the broker-dealer accounting support fee from brokers and dealers.

In addition, the proposed rules include amendments to the Board's funding rules with respect to the allocation, assessment, and collection of the accounting support fee among issuers. The proposed rules (i) revise the basis for calculating an issuer's market capitalization to include the market capitalization of all classes of the issuer's voting and non-voting common equity, and (ii) increase the average, monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies. Further, based on eight years' experience administering the funding process, the proposed rules include technical amendments to the Board's funding rules.

On December 14, 2010, the Board published for public comment proposed amendments to its funding rules to provide for a portion of the accounting support fee to be allocated among brokers and dealers with average, quarterly tentative net capital of

^{10/} The PCAOB is amending its rules to add definitions of "broker" and "dealer" consistent with the definitions that the Dodd-Frank Act added to Section 110 of the Sarbanes-Oxley Act. These definitions incorporate the definition of "broker" in Section 3(a)(4) of the Exchange Act and "dealer" in Section 3(a)(5) of the Exchange Act, but only include those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement certified by a registered public accounting firm. See Sections 110(3) and (4) of the Sarbanes-Oxley Act.

greater than \$5 million.^{11/} The Board sought comment on all aspects of the proposed rules. The Board received eight comments in total, consisting of four comments from accounting firms, two from associations of accountants or auditors, one from an organization representing independent broker-dealers, and one from a small broker and dealer. Generally, commenters supported the amendments. As discussed more fully in Exhibit 3, on June 14, 2011, the Board adopted the proposed rules, which are substantially similar to those proposed on December 14, 2010.

(b) Statutory Basis

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

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules on funding will result in any burden on competition. The proposed rule changes would apply equally to all issuers, brokers, and dealers and pursuant to the statutory formula, issuers, brokers, and dealers will generally pay a fee that is proportionate to the size of their equity market capitalization, for issuers, and tentative net capital, for brokers and dealers. In addition, the proposed rules would provide for a fee of zero for issuers with average, monthly equity market capitalization of less than \$75 million (or, for investment company issuers, less than \$500 million) and for brokers and dealers with \$5 million or less of average, quarterly tentative net capital.

^{11/} PCAOB Release No. 2010-009, *Board Funding: Proposal for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules* (December 14, 2010); PCAOB Rulemaking Docket Matter No. 033 (the "proposing release").

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

The Board released the proposed rules for public comment in PCAOB Release No. 2010-009 (December 14, 2010). The Board received eight written comment letters relating to its initial proposed rules. The Board has carefully considered all comments received. The Board's response to the comments it received and the changes made to the rules in response to the comments received are discussed below.

Brokers and Dealers

As amended by the Dodd-Frank Act, Section 109 of the Sarbanes-Oxley Act requires that the rules of the Board provide for the equitable allocation, assessment, and collection by the Board of the accounting support fee among issuers, brokers, and dealers, and allow "for differentiation among classes of issuers, brokers, and dealers, as appropriate."^{12/} This section further provides that "[t]he amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board."^{13/}

^{12/} Section 109(d)(2) of the Sarbanes-Oxley Act. Pursuant to Section 109(e) of the Sarbanes-Oxley Act, the Financial Accounting Standards Board ("FASB") accounting support fee is to be allocated among issuers. Brokers and dealers therefore will not be allocated a portion of the FASB annual accounting support fee.

^{13/} Section 109(h)(3) of the Sarbanes-Oxley Act.

Accordingly, the Board is adopting amendments to its funding rules to allocate a portion of the accounting support fee among brokers and dealers,^{14/} to establish classes of brokers and dealers for funding purposes, to describe the methods for allocating the appropriate portion of the accounting support fee to each broker and dealer within each class, and to address the collection of the assessed share of the broker-dealer accounting support fee from brokers and dealers.

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, the PCAOB is to begin the allocation, assessment, and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board's 2011 fiscal year. Accordingly, the amendments to its funding rules for brokers and dealers are effective, subject to approval by the SEC, for the allocation, assessment, and collection of the accounting support fee for brokers and dealers in 2011.^{15/}

A. The Broker-Dealer Accounting Support Fee

The Report of the Senate Committee on Banking, Housing, and Urban Affairs that accompanied the legislation that would become the Dodd-Frank Act stated:

^{14/} The PCAOB is amending its rules to add definitions of "broker" and "dealer" consistent with the definitions that the Dodd-Frank Act added to Section 110 of the Sarbanes-Oxley Act. These definitions incorporate the definition of "broker" in Section 3(a)(4) of the Exchange Act and "dealer" in Section 3(a)(5) of the Exchange Act, but only include those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement certified by a registered public accounting firm. See Sections 110(3) and (4) of the Sarbanes-Oxley Act.

^{15/} The Board expects that the initial allocation, assessment, and collection of the accounting support fee for brokers and dealers will take place during the fall of 2011.

The Committee expects that the PCAOB will reasonably estimate the amounts required to fund the portions of its programs devoted to the oversight of audits of brokers and dealers, as contrasted to the oversight of audits of issuers, in deciding the total amounts to be allocated to, assessed, and collected from all brokers and dealers.... Cost accounting for each program is not required.^{16/}

In accordance with this expectation, the Board each year will reasonably estimate amounts required to fund the portions of the Board's programs devoted to the oversight of audits of issuers and the amounts required to fund the portions of its programs devoted to the oversight of the audits of brokers and dealers. At the time the Board establishes a total accounting support fee, it also will allocate the respective portions of the total accounting support fee among issuers (the "issuer accounting support fee") and among brokers and dealers (the "broker-dealer accounting support fee"). In accordance with Section 109(b) of the Sarbanes-Oxley Act, the Board's budget, which includes the total accounting support fee and the portion of the total accounting support fee to be allocated to issuers and the portion to be allocated to brokers and dealers, is subject to the Commission's approval.

B. Classes of Brokers and Dealers

The Board is establishing classes of brokers and dealers for funding purposes to allow for the equitable distribution of the accounting support fee. Establishing classes allows the Board to allocate the broker-dealer accounting support fee to those brokers and

^{16/} S. Rep. No. 176, 111th Cong., 2d Sess. (April 30, 2010) at 154.

dealers whose audits, due to their relative size and complexity, may require more Board time and resources during an inspection than other audits of brokers and dealers with relatively small and less complex operations.

Further, because Section 109 requires that allocations be based on a broker's or dealer's net capital "before or after any adjustments," the Board is basing the classes of brokers and dealers on the average "tentative net capital" reported at the end of the calendar quarters during the previous calendar year. "Tentative net capital" is defined in the Board's rules to have the same meaning that the term has in Rule 15c3-1(c)(15) under the Exchange Act.^{17/} This definition generally provides that the "tentative net capital" of a broker or dealer is its net capital before deducting certain securities haircuts and changes in inventory used in calculating the broker's or dealer's net capital. Because the investment decisions made by a broker or dealer can influence the amount of these deductions and thus influence the net capital calculation, "tentative net capital" may be a more consistent basis for allocation of the broker-dealer accounting support fee. Both net capital and tentative net capital amounts are reported by brokers and dealers on their quarterly FOCUS reports filed on Form X-17A-5.^{18/}

In considering the effect of this measurement criterion at the proposal phase, the Board reviewed the tentative net capital of 4,656 brokers and dealers as of the third and

^{17/} "Tentative net capital" is the net capital of a broker or dealer before certain adjustments. See Rule 15c3-1(c)(15) under the Exchange Act.

^{18/} See generally, Rule 17a-5 under the Exchange Act. The tentative net capital and net capital amounts may be reported in Part I, II, and IIA of the FOCUS report and are unaudited.

fourth quarters of 2009 and the first and second quarters of 2010.^{19/} Registered brokers and dealers had average, quarterly tentative net capital amounts for the four quarters ranging up to approximately \$15.8 billion. Thirty-three brokers and dealers, however, held approximately 80.1% of the total average, quarterly tentative net capital maintained by all 4,656 brokers and dealers. In addition, only 120 brokers and dealers each had average, quarterly tentative net capital in excess of \$100 million, 452 brokers and dealers each had average, quarterly tentative net capital in excess of \$10 million, and 638 brokers and dealers had average, quarterly tentative net capital in excess of \$5 million. The Board has reviewed the tentative net capital of 4,750 brokers and dealers as of the four calendar quarters of 2010 and noted no significant differences with amounts reviewed during the proposal phase of this project.

Approximately 86.3% of the brokers and dealers included in the statistics reviewed by the staff have average, quarterly tentative net capital of less than \$5 million. At the same time, the total average, quarterly tentative net capital for all brokers and dealers in that group was approximately 1.1% of the total average, quarterly tentative net capital for all brokers and dealers. Conversely, approximately 13.7% of all brokers and dealers have approximately 98.9% of the total average, quarterly tentative net capital.

^{19/} The data used by the Board for these purposes represents data for brokers and dealers that (i) are members of Financial Industry Regulatory Authority ("FINRA") and have designated FINRA as their designated examining authority ("DEA"); or (ii) are members of FINRA and have designated another self-regulatory organization as their DEA but file FOCUS information with FINRA on a voluntary basis.

Based on the above analysis, which illustrates the significant number of brokers and dealers with average, quarterly tentative net capital of less than \$5 million, the Board is establishing two classes of brokers and dealers for purposes of the accounting support fee: (1) those with average, quarterly tentative net capital greater than \$5 million and (2) those with average, quarterly tentative net capital less than or equal to \$5 million or not filing audited financial statements pursuant to a Commission rule or other action of the Commission or its staff (sometimes referred to as a "\$5 million threshold" in this release).^{20/} The average would be based on the tentative net capital as of the end of the calendar quarters of the calendar year immediately prior to the Board's calculation of the broker-dealer accounting support fee.^{21/}

C. Allocation of the Broker-Dealer Accounting Support Fee

Consistent with Section 109 of the Sarbanes-Oxley Act, the PCAOB funding rules being adopted today allocate to brokers and dealers in the class with average, quarterly tentative net capital greater than \$5 million a share of the broker-dealer accounting support fee based on a ratio where the numerator is the average, quarterly tentative net

^{20/} Brokers or dealers with larger tentative net capital amounts may be "clearing" or "carrying" brokers and dealers rather than "introducing" brokers and dealers. Because of the nature of their businesses, audits of the compliance reports for clearing or carrying brokers and dealers may require more testing and documentation than audits of introducing brokers and dealers. PCAOB inspections of audits of brokers' and dealers' financial statements and examinations of reports regarding compliance with Commission and regulatory requirements of brokers and dealers with larger amounts of tentative net capital, consequently, may require more Board resources.

^{21/} Brokers and dealers generally file quarterly reports within 17 business days after the end of the calendar quarter. See, for example, Rules 17a-5(a)(2)(ii) and (iii) under the Exchange Act.

capital of the broker or dealer for the calendar quarters of the immediately prior calendar year and the denominator is the sum of the average, quarterly tentative net capital of all the brokers and dealers in this class.

Under the funding rules being adopted today, brokers and dealers with average, quarterly tentative net capital equal to or less than \$5 million will be allocated a share of the broker-dealer accounting support fee equal to zero.^{22/} The Board chose the \$5 million tentative net capital threshold because it was concerned that, due to the concentration of the industry's aggregate tentative net capital among relatively few brokers and dealers, the allocation of the broker-dealer accounting support fee below the \$5 million threshold could impose a relatively costly administrative burden on many smaller brokers and dealers. At the same time, based on the Board's analysis, allocating a share of the broker-dealer accounting support fee equal to zero to such small entities should have a negligible effect on the share of the broker-dealer accounting support fee allocated to the larger brokers and dealers.

^{22/} Assigning a broker or dealer a share of the accounting support fee equal to zero when its average, quarterly tentative net capital is equal to or less than \$5 million does not affect the Board's oversight of the audits of that broker or dealer. The Dodd-Frank Act amendments to the Sarbanes-Oxley Act state that if the Board establishes a program of inspection for audits of brokers and dealers, it shall consider whether differing inspection schedules are appropriate for auditors of brokers or dealers that do not receive, hold, or handle customer securities, and that the Board may exempt certain auditors from its inspection program and, consequently, from registration with the Board. See Section 104(a)(2) of the Sarbanes-Oxley Act. Any Board decisions in these matters would be made only after additional rulemakings specific to the Board's inspection and registration programs for auditors of brokers and dealers and would be subject to Commission approval. If the Board decides at a later time that auditors of certain groups of brokers or dealers are exempt from the Board's inspection program and, therefore, eligible to withdraw from registration with the PCAOB, no share or portion of any accounting support fee paid by any broker or dealer would be refundable.

For example, based on the data for the third and fourth quarters of 2009 and the first and second quarters of 2010, assuming a broker-dealer accounting support fee of \$15 million,^{23/} if no average, quarterly tentative net capital threshold was applied, 1,557 brokers and dealers would be allocated a share of the broker-dealer accounting support fee of \$100 or more.^{24/} The aggregate share of the broker-dealer accounting support fee allocated to brokers and dealers with average, quarterly tentative net capital of \$5 million or less, however, would be \$141,700, representing 0.9% of the assumed \$15 million broker-dealer accounting support fee.

Under the \$5 million threshold, assuming a broker-dealer accounting support fee of \$15 million, approximately 638 brokers and dealers would be allocated a share of the broker-dealer accounting support fee. Under this threshold, 919 fewer brokers and dealers are allocated a share of the broker-dealer accounting support fee. In addition, under the \$5 million threshold, the share of the broker-dealer accounting support fee assessed to brokers and dealers with average, quarterly tentative net capital less than \$45 million (but above the \$5 million threshold) would be the same as under the no threshold

^{23/} On November 23, 2010, the Board approved its 2011 budget, which included a total accounting support fee of approximately \$202.3 million. The allocated portion of the total accounting support fee to brokers and dealers, which is referred to as the broker-dealer accounting support fee, was approximately \$14.4 million for 2011. There is no assurance that future broker-dealer accounting support fees will be the same as the 2011 broker-dealer accounting support fee.

^{24/} The allocated share for each of the remaining 3,099 brokers and dealers would be less than \$50 and, therefore, under the Board's rules rounded down to zero. See PCAOB Rule 7103(a).

scenario discussed above.^{25/} The share of the broker-dealer accounting support fee assessed to brokers and dealers with average, quarterly tentative net capital greater than \$45 million under the \$5 million threshold would increase by less than 2.0% of the assessed share of the fee under the no threshold scenario.

Because the accounting support fee will be divided into an issuer accounting support fee and a broker-dealer accounting support fee, it is possible that affiliated entities may be allocated separate shares of both the issuer and broker-dealer accounting support fees. For example, if an issuer has one or more broker or dealer subsidiaries, the issuer may be allocated a share of the issuer accounting support fee and each broker or dealer subsidiary may be allocated a share of the broker-dealer accounting support fee. The allocations are designed to support oversight programs tailored to the audits of different types of entities. The issuer is responsible for payment of the allocated share of the issuer accounting support fee and each broker-dealer subsidiary is responsible for payment of its allocated share of the broker-dealer accounting support fee.

^{25/} The allocated share of the broker-dealer accounting support fee for 48 out of 441 brokers and dealers with average, quarterly tentative net capital between \$5 million and \$45 million may increase by \$100 because the additional allocated amount would result in the unrounded allocated share being \$50 more than a multiple of \$100 and, therefore, under the Board's rules rounded up to the nearest \$100. See PCAOB Rule 7103(a). For a more detailed discussion of the Board's analysis, see the proposing release.

D. Collection

The Board is adopting amendments to its rules regarding the assessment and collection of the accounting support fee to include appropriate references to brokers and dealers.

Currently, if a share of the accounting support fee allocated to an issuer is past-due^{26/} and the issuer has not filed a petition with the Board seeking correction of its assigned share, then, with certain exceptions, no registered public accounting firm is permitted to sign an unqualified audit opinion with respect to that issuer's financial statements or to sign a consent to the use of prior audit opinions for that issuer. The same concept is being extended to brokers and dealers in that no registered public accounting firm is permitted to sign an audit report or a document, report, notice, or other record concerning procedures or controls for a broker or dealer if its share of the broker-dealer accounting support fee is past-due and no petition for correction has been filed. In addition, for issuers with one or more broker or dealer subsidiaries, if the share of the accounting support fee allocated either to the issuer or any of its broker or dealer subsidiaries is past due and no petition for correction has been filed with respect to that share, no registered public accounting firm may sign an audit report for that issuer.

^{26/} Pursuant to PCAOB Rule 7104(a), payment is due 30 days after the notice setting forth the allocated share of the accounting support fee to the issuer is sent. Under the Board's current rules, the "notice" referenced in Rule 7104(a) relates to the document sent by the Board setting forth an entity's share of the accounting support fee under Section 109 of the Sarbanes-Oxley Act and the Board's funding rules. The Board is adopting amendments to replace the term "notice" with "invoice" in its funding rules so as not to cause any confusion with the definition of "audit" and "audit report," which both now contain a reference to "notice."

As explained in the proposing release, to avoid unnecessarily preventing issuers from timely access to the capital markets, the funding rules contain a limited exception to this prohibition on the signing of audit reports and the issuance of consents. The exception was originally adopted because an issuer may have a past-due share of the accounting support fee at a time when, in order to access or preserve its ability to access the capital markets in a timely manner, the issuer needs to submit a report to, or make a filing with, the Commission and the issuer must include an auditor's opinion or consent in that report or filing. If circumstances cause an issuer to rely upon the exception, however, the funding rules have required the issuer to submit an electronic notice to the Board no later than the next business day after the filing is made with the Commission.^{27/} The rule limits the use of the exception to a single 15 business day period beginning on the earlier of the date of the filing with the Commission or the date of the notice to the Board.

The Board is extending this exception so that it will be available when brokers and dealers, including brokers or dealers that are subsidiaries of issuers, have an outstanding past-due share of the accounting support fee. Under the rules being adopted today, therefore, if the conditions of the rule are met, a registered public accounting firm may sign an unqualified audit opinion or provide a consent to the use of a previously issued audit report with respect to the financial statements of not only an issuer but also a

^{27/} See PCAOB Release No. 2003-02, Amended SEC Filing Form 19b-4 (June 30, 2003). As discussed elsewhere in this release, the Board is amending this rule to require that the notice be filed by the registered public accounting firm instead of the issuer.

broker or dealer even though the issuer, broker, dealer, or a broker or dealer subsidiary of an issuer, has outstanding a past-due share of the accounting support fee and has not filed a petition for correction. For example, if a broker subsidiary of an issuer has an outstanding past-due share of the broker-dealer accounting support fee, and the broker subsidiary needs an audit report in order to submit a report to, or make a filing with, the Commission, then, provided the specific conditions in Rule 7104(b) are met, the subsidiary's registered public accounting firm is permitted to sign an unqualified audit opinion with respect to that broker subsidiary's financial statements or issue a consent to include an audit report issued previously.

Under the terms of the rule, however, the exception may be invoked only once with respect to any share of the accounting support fee that a broker or dealer is assessed in a given year.^{28/} Accordingly, using the example above, the exception could not be invoked again with respect to the outstanding broker-dealer accounting support fee balance if the broker's issuer parent later needs an audit report in order to submit a report to, or make a filing with, the Commission. The outstanding broker-dealer accounting support fee balance would have to be paid before the issuer parent's registered public accounting firm signs an unqualified audit opinion or issues a consent to include an audit report issued previously with respect to that issuer's financial statements. After the broker-dealer accounting support fee is paid, however, the issuer parent could invoke the

^{28/} See PCAOB Rule 7104(b), which states "[t]his exception to paragraph (b)(1) of this Rule . . . may not be invoked for more than one such period with respect to any share of the accounting support fee that the issuer, broker, or dealer is assessed under Rule 7103."

exception with respect to an outstanding, past-due share of the issuer's accounting support fee.

A note added to the funding rules states that for the purposes of the prohibition on signing unqualified audit reports for issuers, brokers, and dealers with past-due shares of the accounting support fee, the term "audit" means an examination of the financial statements, reports, documents, procedures, controls, and notices of any issuer, broker, or dealer by a registered accounting firm for the purpose of expressing an opinion on the financial statements or providing an audit report. "Audit report" in these circumstances means a document, report, notice, or other record prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws and in which the auditor either (i) sets forth an opinion of the firm regarding the financial statement, report, notice, or other document, procedures, or controls, or (ii) asserts that no such opinion can be expressed.^{29/} These are the same definitions found in new Section 110 of the Sarbanes-Oxley Act. These definitions recognize that auditors today not only examine entities' financial statements but, for larger issuers, auditors also examine internal control over financial reporting, and, for brokers and dealers, auditors further issue mandated reports under Rule 17a-5 and other applicable regulations.

^{29/} In connection with other rulemaking projects, the Board may consider amending its rules to apply more broadly the definitions of "audit" and "audit report" in Section 110 of the Sarbanes-Oxley Act. If such rulemaking occurs, the Board may revisit the need for this Note in the funding rules.

In addition, consistent with the provisions in the funding rules applicable to issuers, the revised funding rules provide that if the Board does not receive payment within 30 days of a broker or dealer being notified of its share of the accounting support fee, the payment will be deemed past due and interest will accrue at a rate of 6% per year. If payment is not received by the 90th day after the original notice was sent, the Board may report the nonpayment to the Commission or the broker's or dealer's designated examining authority, which may pursue appropriate disciplinary action in accordance with its rules.^{30/} Section 109(h)(1) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

E. Public Comment Process and Board Responses

In response to the proposed rules, the Board received three comment letters that addressed establishing classes of brokers and dealers and allocating the broker-dealer accounting support fee. Commenters supported these rules and, in particular, the proposal to have portions of the fee paid only by brokers and dealers with at least \$5 million in tentative net capital.^{31/}

Additional commenters raised issues regarding re-designated Rule 7104(b), *Determination of Payment of Accounting Support Fees by Registered Accounting Firm.*

^{30/} For issuers, nonpayment of PCAOB accounting support fee would continue to be a violation of Section 13(b)(2)(C) of the Exchange Act.

^{31/} Letters from the National Association of Independent Broker Dealers, Terminus Securities LLC, and the California Society of Certified Public Accountants.

This rule is designed to encourage payment of the accounting support by issuers, brokers, and dealers by prohibiting auditors from signing certain audit opinions and consents to the use of prior opinions unless the appropriate fee has been paid to the PCAOB. An exception to this prohibition, however, is available under specific circumstances. If under the circumstances described in Rule 7104(b) a registered public accounting firm signs an unqualified audit opinion or issues a consent to include an audit report issued previously, that firm must submit a notice to the Board that it and the issuer, broker, or dealer are relying on the exception.^{32/} The commenters questioned whether the rule is necessary, opposed shifting the requirement to submit the notice from the issuer (or broker or dealer)^{33/} to the auditor,^{34/} and one commenter requested that Note 1 to this rule include the word "solely" to indicate that an auditor may determine that the fee has been paid solely by obtaining a representation from management to that effect.^{35/}

The Board adopted the predecessor to new Rule 7104(b) in 2003 as part of the original funding rules. As stated in the adopting release for the funding rules in 2003, the collection measures in the rules are intended to ensure the reliability of the independent

^{32/} See PCAOB Release No. 2003-02, Amended SEC Filing Form 19b-4 (June 30, 2003). As discussed elsewhere in this release, the Board is amending this rule to require that the notice be filed by the registered public accounting firm instead of the issuer.

^{33/} The original PCAOB rule applied only to issuers. The amended rule applies to issuers, brokers, and dealers.

^{34/} See the letters from the Center for Audit Quality; Deloitte & Touche LLP; KPMG LLP; McGladrey & Pullen, LLP; and PricewaterhouseCoopers LLP.

^{35/} See the letter from Deloitte & Touche LLP.

funding source the Sarbanes-Oxley Act provides for the Board and to promote fairness to all entities allocated a share of the accounting support fee.^{36/} This rule may be part of the reason collection of the accounting support fee has worked as intended and the Board has experienced a high collection rate of the accounting support fee. Accordingly, subject to Commission approval, the rule will continue to be part of the Board's funding rules.

Some commenters opposed shifting to auditors the requirement to submit a notice to the Board that the exception in Rule 7104(b) has been used and that an auditor opinion or consent has been signed and filed with the Commission despite non-payment of the accounting support fee. These commenters indicated that the issuer, and potentially the broker or dealer, should make this submission because (1) it is the issuer (or broker or dealer) that is delinquent with its share of the fee, (2) it is the issuer (or broker or dealer) that is filing its documents with the Commission, and (3) a process already has been established with issuers under the existing rule.^{37/} One commenter noted statements in the proposing release expressing that it is the issuer's circumstances that cause the use of the exception and that submission of the notice is not a condition for reliance on the exception and does not affect the validity of the auditor's opinion or consent. The commenter indicated that given those statements, it is not appropriate to shift the burden for the notice to the auditor.^{38/}

^{36/} See Board Funding: Establishment of Accounting Support Fee, PCAOB Release No. 2003-003 (April 18, 2003).

^{37/} See the letters from the Center for Audit Quality; Deloitte & Touche LLP; KPMG LLP; McGladrey & Pullen, LLP; and PricewaterhouseCoopers LLP.

^{38/} See the letter from McGladrey & Pullen, LLP.

Shifting the responsibility to the auditor to make the submission, however, better aligns the rule with the Board's general oversight authority over registered public accounting firms. Furthermore, over the past eight years, the Board has received only a few notices under this rule. A cursory review of SEC filings by issuers with outstanding accounting support fee balances, however, provides anecdotal evidence that more notices should have been filed. Such omissions to file might be due to issuers being relatively unfamiliar with PCAOB rules or unaware of the potential consequences of not complying with a PCAOB rule. Auditors should be more familiar with the Board's rules. Also, placing the obligation on auditors to file such notices may make application of the rule more readily subject to the Board's review. Accordingly, the rule is being adopted as proposed.

Finally, one commenter asked that the word "solely" be added to Note 1 to proposed Rule 7104(b) in order to make clear that to satisfy the obligation to determine that the fee has been paid by the issuer, broker, or dealer, the auditor only has to receive a management representation to that effect.^{39/} While the Board has said that it is sufficient if an auditor determines an issuer's payment of the accounting support fee by obtaining a management representation of payment,^{40/} auditors also may determine such payments through other means. For example, an auditor also may determine an issuer's payment of the accounting support fee by checking the "List of Issuers with No Outstanding Past-

^{39/} See the letter from Deloitte & Touche LLP.

^{40/} See Question 26 of the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, dated April 22, 2011. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

Due Share of the Accounting Support Fee" that is posted on the Board's website.^{41/}

Adding the word "solely" to the Note could result in some firms mistakenly believing that the Board prefers management representations over other equivalent means of determining such payments. The rule, therefore, is being adopted as proposed.

Issuers

The Board also is adopting amendments to its existing rules for the allocation, assessment, and collection of the issuer accounting support fee. The amendments to the issuer funding rules are effective, subject to approval by the Commission, for the allocation, assessment, and collection of the 2012 accounting support fee for issuers.^{42/}

A. Definitions of Market Capitalization and Common Equity

The Board's rules historically have defined the terms "issuer market capitalization" and "market capitalization of an issuer" to be the aggregate market value of all classes of an issuer's common stock that trade in the United States. Determining an issuer's market capitalization based on its outstanding common stock, however, has led to interpretive issues, such as whether an entity's "common stock" includes limited partnership units or interests, securities convertible into common stock, rights or options to purchase common stock, and other categories of securities.

^{41/} The list is located at http://pcaobus.org/About/Ops/Documents/Support%20Fee/Issuers_Paid.pdf.

^{42/} The Board's allocation, assessment, and collection of the accounting support fee for issuers typically takes place during the first half of the Board's fiscal year.

To reduce issues regarding the meaning of "common stock" in the Board's rules, the Board is amending the definition of "issuer market capitalization" and "market capitalization of an issuer" to replace the reference to "common stock" with a reference to "voting and non-voting common equity." As amended, references in the Board's rules to an issuer's "market capitalization" are to the issuer's aggregate market value of all classes of voting and non-voting common equity traded in the United States.^{43/}

The definition of "common equity" being adopted by the Board tracks the definition in Rule 12b-2 under the Exchange Act. As applied by the Board for funding purposes, the amount of common equity considered in deriving an issuer's market capitalization is based on any class of common stock or equivalent interest, any beneficial interest in a trust or a limited partnership interest, and any other security that the Commission, by rule, deems to treat as common equity.

B. Classes of Issuers

The Board also is adopting amendments to the descriptions of the existing classes of issuers. The funding rules adopted by the Board in 2003 identified four classes of issuers: (1) equity issuers whose average, monthly market capitalization during the preceding calendar year is greater than \$25 million, (2) investment company issuers (and entities that have elected to be regulated as business development companies) whose average, monthly market capitalization during the preceding calendar year is greater than \$250 million, (3) issuers that, as of the date the accounting support fee is calculated (i) do

^{43/} See PCAOB Rule 1001(i)(i)(1).

not have to file financial statements pursuant to Commission rule or other action of the staff of the Commission, (ii) are employee stock purchase, savings, and similar plans, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2 ("SLB No. 2"), and (4) all other issuers.

The Board is amending the description of the classes of issuers in two significant ways. First, the Board is raising the average, monthly market capitalization threshold for the first two classes of issuers. Second, the Board is changing the description of issuers that are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of SLB No. 2.

1. Change in Average, Monthly Market Capitalization Threshold

The Board is adopting amendments that raise the average, monthly market capitalization threshold during the preceding calendar year for the first class of issuers from \$25 million to \$75 million. Equity issuers with a market capitalization between \$25 million and \$75 million, therefore, are moving from the first class to the fourth class and will be allocated a share of the accounting support fee equal to zero. The Board notes that the aggregate issuer accounting support fee collected from equity issuers with average, monthly market capitalizations between \$25 million and \$75 million during the past seven years has been a relatively small part (less than 0.4%) of the Board's total

accounting support fee from equity issuers.^{44/} At the same time, approximately 1,100 equity issuers, representing approximately 22.6% of all equity issuers assessed a fee in 2010, have average, monthly market capitalization within that range.^{45/} In addition, not allocating a share of the issuer accounting support fee to these issuers appears to have a negligible effect on the amounts allocated to other issuers.

The Board similarly is raising the average, monthly market capitalization threshold for the second class of issuers consisting of investment company issuers (and business development companies) currently subject to allocation of the support fee from \$250 million to \$500 million.^{46/} Investment companies (including business development

^{44/} The Board's use and calculation of \$75 million in market capitalization for funding purposes should not be confused with the criteria to determine whether an issuer is deemed an "accelerated filer," as defined by Rule 12b-2 under the Exchange Act. Under that rule, an issuer is an accelerated filer if, among other things, it has an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates (i.e., public float) of \$75 million or more as of the end of the entity's second quarter. See Release No. 33-8128 (September 5, 2002).

^{45/} The aggregate FASB accounting support fee collected on behalf of FASB from equity issuers with average, monthly market capitalizations between \$25 million and \$75 million for the 2010 accounting support fee was a relatively small part (less than 0.4%) of the FASB accounting support fee from equity issuers despite the fact that approximately 1,100 equity issuers, representing approximately 22.6% of all equity issuers assessed a fee, have average, monthly market capitalization within that range.

^{46/} Under the Board's original funding rules, market capitalization for an investment company issuer whose shares are not traded on a national exchange or quoted on NASDAQ was the investment company's net asset value. As noted in the proposing release, since the Board's adoption of its funding rules in 2003, NASDAQ Stock Market LLC has become a national securities exchange under Commission rules. In light of this change, the Board proposed to revise PCAOB Rule 1001(i)(i)(2) by replacing the reference to NASDAQ with a reference to the "OTC Bulletin Board." After further consideration, however, the Board does not believe the proposed reference in the rule to the "OTC Bulletin Board" is necessary and believes it is preferable for its rules not to refer to any particular market that is currently in operation. Accordingly, PCAOB Rule

companies) with average, monthly market capitalizations between \$250 million and \$500 million, therefore, are moving from the second class to the fourth class and will be allocated a share of the accounting support fee equal to zero. The Board notes that the aggregate fees collected from investment company issuers (including business development companies) with average, monthly market capitalizations between \$250 million and \$500 million during the past seven years have been a relatively small part (approximately 5.1%) of the Board's total accounting support fee from investment companies.^{47/} At the same time, approximately 1,450 investment companies, representing approximately 33.4% of all investment companies assessed a share of the issuer accounting support fee in 2010, have average, monthly market capitalization within that range.^{48/} In addition, as discussed below, not allocating a share of the issuer

1001(i)(i)(2) is being amended today to replace the phrase "quoted on NASDAQ" with the phrase "whose share price is not otherwise publicly available." This is consistent with the current requirement contained in Rule 7101(a)(2), which references the public availability of the share price in describing investment company issuers eligible to be assessed a share of the issuer accounting support fee. Therefore, starting in 2012, the market capitalization for an issuer that is an investment company whose shares are not traded on a national exchange or whose share price is not otherwise publically available, will be the investment company's net asset value.

^{47/} Approximately 7.9% of the 2010 accounting support fee was allocated to investment companies. Under the Board's funding rules, when allocating the issuer accounting support fee to investment companies, 10% of the investment company issuer's actual average monthly market capitalization or net asset value is used in the calculation. Accordingly, the amount of the issuer accounting support fee allocated to investment companies over the past seven years has represented a relatively small portion (average of approximately 6.2%) of the total issuer accounting support fee assessed.

^{48/} The aggregate fees collected on behalf of FASB from investment company issuers (including business development companies) with average, monthly market capitalizations between \$250 million and \$500 million for the 2010 accounting support fee was a relatively small part (approximately 5.3%) of the FASB accounting support fee

accounting support fee to these investment companies appears to have a negligible effect on the amounts allocated to other investment companies.

Raising the threshold for the first class of issuers from \$25 million in average, monthly market capitalization to \$75 million and raising the threshold for the second class of issuers from \$250 million in average, monthly market capitalization to \$500 million should have a negligible effect on the amounts allocated to issuers under Section 109 of the Sarbanes-Oxley Act.^{49/}

Generally, equity issuers with average, monthly market capitalization of approximately \$600 million or greater are likely to see an increase in their allocated share of the issuer accounting support fee.^{50/} Each entity's allocated share of the fee increases, however, by approximately 1% or less. For investment company issuers, on average, the allocated share of the accounting support fee increases for entities with average, monthly market capitalization of approximately \$4 billion or greater, with the entity's allocated

from investment companies despite the fact that approximately 1,450 investment companies, representing approximately 33.4% of all investment companies assessed a share of the FASB accounting support fee in 2010, have average, monthly market capitalization within that range.

^{49/} The changes to the thresholds for the first and second classes of issuers are also applicable to the allocation of the FASB accounting support fee, which pursuant to Section 109(e) of the Sarbanes-Oxley Act is allocated among issuers only.

^{50/} The allocated share of the issuer accounting support fee for 465 out of 1,190 equity issuers with average, monthly market capitalization between \$75 million and \$600 million may increase by \$100 because the additional allocated amount could result in the unrounded allocated share being \$50 more than a multiple of \$100 and, therefore, under the Board's rules, rounded up to the nearest \$100. See PCAOB Rule 7103(a).

share of the fee increasing by approximately 2% or less.^{51/} Accordingly, the amendments to the average, monthly market capitalization for class one and two issuers should not result in a significant increase in any issuer's assessed share of the accounting support fee.^{52/} The Board has reviewed the impact of increasing the threshold for equity company issuers and investment company issuers using the information from the allocation, assessment, and collection of the 2011 accounting support fee for issuers and noted no significant differences with amounts reviewed during the proposal phase of this project.

2. Modified Reporting Requirements of SLB No. 2

The Board also is amending the description of the class of issuers that are not assessed a share of the accounting support fee because they are in bankruptcy. As noted above, under the Board's funding rules adopted in 2003, issuers that are under the jurisdiction of a bankruptcy court and "satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2" are in the third class and are assigned a share of the accounting support fee equal to zero.^{53/}

^{51/} The allocated share of the issuer accounting support fee for 327 out of 2,367 investment companies with average, monthly market capitalization between \$500 million and \$4 billion may increase by \$100 because the additional allocated amount could result in the unrounded allocated share being \$50 more than a multiple of \$100 and, therefore, under the Board's rules rounded up to the nearest \$100. See PCAOB Rule 7103(a).

^{52/} For a detailed discussion of the Board's analysis, see the proposing release.

^{53/} SEC Staff Legal Bulletin No. 2 (CF) (April 15, 1997), available at <http://sec.gov/interps/legal/slbcf2.txt>, reflects the views of the Commission's Division of Corporation Finance that companies under the jurisdiction of a bankruptcy court are not

SLB No. 2 states that an issuer under the jurisdiction of a bankruptcy court may request that the Commission's Division of Corporation Finance ("Division") provide a "no-action" letter indicating that the Division will not recommend enforcement action if the issuer files with the Commission modified reports in lieu of the reports required under the Exchange Act. SLB No. 2 describes the information and assertions that should be in a request for a "no-action" letter, including information related to the issuer's financial condition, prior compliance with Exchange Act filing requirements, the timing of the announcement by the issuer of its bankruptcy filing, the issuer's ability to continue to file Exchange Act reports, and a description of the current market for and trading in the issuer's securities.^{54/}

Although acceptance of modified reports is at the discretion of the Commission staff, there is no requirement in SLB No. 2 or elsewhere that an issuer in bankruptcy ask the Division for a "no-action" letter prior to filing modified reports. Such "no-action" requests are voluntary. An issuer in bankruptcy may choose to file modified reports without providing the Division with the information and assertions in SLB No. 2.^{55/} Because the Board's funding rules, however, are based on whether an issuer has "satisf[ied] the modified reporting requirements" of SLB No. 2, when the issuer has not

relieved of their reporting obligations under the securities laws but, upon the satisfaction of certain conditions, may file reports that "differ in form or content" from the reports required under the Exchange Act.

^{54/} Id.

^{55/} The Commission may deem such a filing to be deficient and not to satisfy the issuer's obligations under the Exchange Act and Commission rules and forms.

requested or not received a "no-action" letter from the Division, the PCAOB staff has been placed in the position of having to evaluate available public information to determine whether the conditions in SLB No. 2 are satisfied. To address such situations, PCAOB staff generally has requested that issuers provide an analysis demonstrating its compliance with the conditions set forth in SLB No. 2 and/or an opinion of counsel that the issuer meets the conditions set forth in SLB No. 2.^{56/}

The Board is amending its rules to require that in order to be assigned a share of the accounting support fee equal to zero, an issuer that is subject to the jurisdiction of a bankruptcy court and asserts that it falls within the third class of issuers provide an opinion of counsel that the issuer satisfied the modified reporting requirements of Commission Staff Legal Bulletin No. 2 as of the date that the issuer accounting support fee is calculated. This amendment is consistent with the staff's past practices as noted above. The impact of this amendment is believed to be negligible on the amounts allocated and assessed to issuers under Section 109 of the Sarbanes-Oxley Act.^{57/}

C. Public Comment Process and Board Responses

One commenter supported the Board's proposals to amend the basis for calculating the issuer's market capitalization to include the market capitalization of all

^{56/} See Question 15 of the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, dated April 22, 2011. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

^{57/} For the 2008-2010 accounting support fees, 26 equity issuers that were allocated a share of the accounting support fee had filed for bankruptcy.

classes of an issuer's voting and non-voting common equity and to increase the average monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies.^{58/} The Board did not receive any comments on the proposed description of the class of issuers that are not assessed a share of the accounting support fee because they are in bankruptcy.

As noted above, additional commenters raised issues regarding re-designated Rule 7104(b), *Determination of Payment of Accounting Support Fees by Registered Accounting Firm*. This rule is designed to encourage payment of the accounting support fee by issuers, brokers, and dealers by prohibiting auditors from signing certain audit opinions and consents to the use of prior opinions unless the appropriate fee has been paid to the PCAOB. An exception to this prohibition, however, is available under specific circumstances and conditions, including the submission of a notice to the Board that the auditor and the issuer, broker or dealer are relying on the exception.^{59/} The commenters questioned whether the rule is necessary, opposed shifting the requirement to submit the notice from the issuer (or broker or dealer)^{60/} to the auditor,^{61/} and one

^{58/} See the letter from the California Society of Certified Public Accountants.

^{59/} See PCAOB Release No. 2003-02, Amended SEC Filing Form 19b-4 (June 30, 2003). As discussed elsewhere in this release, the Board is amending this rule to require that the notice be filed by the registered public accounting firm instead of the issuer.

^{60/} The original PCAOB rule applied only to issuers. The amended rule applies to issuers, brokers, and dealers.

^{61/} See the letters from the Center for Audit Quality; Deloitte & Touche LLP; KPMG LLP; McGladrey & Pullen, LLP; and PricewaterhouseCoopers LLP.

commenter requested that Note 1 to this rule include the word "solely" to indicate that an auditor may determine that the fee has been paid solely by obtaining a representation from management to that effect.^{62/} For the reasons discussed above in part II.E. of this release, the rule is being adopted as proposed.

Other amendments to the Board's Funding Rules

The Board also is adopting certain technical changes to its funding rules. The most significant of these changes are listed below.

- Rule 7100 – The Board is making certain changes to Rule 7100 to reflect that the Board establishes a total accounting support fee each year as part of its budget process.^{63/} In addition, the amendment to Rule 7100 reflects the Board's obligation under Section 109 of the Sarbanes-Oxley Act to equitably allocate the total accounting support fee between issuers, as a group, and brokers and dealers, as a group.

^{62/} See the letter from Deloitte & Touche LLP.

^{63/} The PCAOB Budget is approved by the Board in the preceding calendar year and must be approved by the Commission. PCAOB Rule 7101(a) refers to the date the issuer accounting supporting fee is calculated. This date is referred to as the "calculation date." As discussed in Question 4 of the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, the issuer calculation date represents the date as of which the allocation of the issuer accounting support fee is determined for equity issuers and investment company issuers. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>. See also Rule 7102(a), as amended, which contains a similar reference to the date the broker-dealer accounting support fee is calculated. Under the amendments to the funding rules, this date is referred to as the "broker-dealer calculation date."

- Notes to Rule 7101 – The Board is adopting technical changes to the notes to Rules 7101(a)(1) and (2) to clarify how an entity's monthly market capitalization is calculated and that such calculation includes market capitalization information for all classes of the issuer's voting and non-voting common equity, consistent with the amendments to the definition of "issuer market capitalization" discussed above.
- Rule 7103(c) – The Board is extending the time frame within which any issuer, broker, or dealer may petition the Board for correction of the class in which it has been placed or its allocated share of the accounting support fee. Under the amended rules, an issuer, broker, or dealer would have 60 days, rather than 30 days, after an invoice is sent to submit a petition for correction. In addition, the Board is codifying its existing practice of considering petitions received after the deadline when there is good cause to do so.^{64/}
- Rule 7104(b) – The Board is adopting amendments to replace the word "Confirmation" with "Determination" in the caption for Rule 7104(b) and to delete the reference in Note 1 to the rule to obtaining a confirmation from the Board that no past due share of the accounting support fee is outstanding. This amendment clarifies that registered public accounting firms are not required to confirm with the Board whether an issuer broker, or dealer has any outstanding past due share of the accounting support fee prior to signing an

^{64/} See Question 6 in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

unqualified audit opinion, consenting to including an audit report issued previously, or signing a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws. Confirmation with the Board is one of a number of procedures that a registered public accounting firm may use in determining whether an issuer, broker, or dealer has any outstanding past-due share of the accounting support fee.^{65/}

The Board did not receive any comments on these technical amendments,^{66/} and they are being adopted as proposed.

Effective Date

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, the PCAOB is required to begin the allocation, assessment, and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board's 2011 fiscal year. Accordingly, the amendments to the Board's funding rules are effective, subject to approval by the SEC, for the allocation, assessment, and collection of

^{65/} See Questions 22-26 in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

^{66/} As noted above, commenters raised issues with respect to other aspects of Rule 7104(b), including the procedures an auditor may use to determine whether an issuer, broker, or dealer has an outstanding past-due share of the accounting support fee. See parts II.E. and III.C. of this release.

the 2011 broker-dealer accounting support fee for brokers and dealers and its 2012 issuer accounting support fee for issuers.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission

Action

Within 45 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 self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change 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. Comments may be submitted by any of the following methods:

Electronic comments:

1. Use the Commission's Internet comment form (<http://www.sec.gov/rules/pcaob.shtml>); or
2. Send an e-mail to rule-comments@sec.gov. Please include File Number PCAOB-2011-02 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number PCAOB-2011-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/pcaob/shtml>). 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 website viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. PCAOB-2011-02 and should be submitted on or before [insert 21 days from publication in the Federal Register].

By the Commission.

Elizabeth M. Murphy
Secretary



1666 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 207-9100
Facsimile: (202) 862-8430
www.pcaobus.org

BOARD FUNDING)

PROPOSAL FOR ALLOCATION OF)
THE BOARD'S ACCOUNTING)
SUPPORT FEE AMONG ISSUERS,)
BROKERS, AND DEALERS, AND)
OTHER AMENDMENTS TO THE)
BOARD'S FUNDING RULES)

PCAOB Release No. 2010-009
December 14, 2010

PCAOB Rulemaking
Docket Matter No. 033

Summary: The Public Company Accounting Oversight Board ("PCAOB" or the "Board") is proposing to amend its funding rules to provide for the equitable allocation and assessment among brokers and dealers of the appropriate portion of the accounting support fee established under the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed amendments would also make certain revisions to the Board's existing rules for the allocation among issuers of the accounting support fee. The funding rules are in Section 7 of the PCAOB Rules and related definitions are in PCAOB Rule 1001. Certain issuers, brokers, and dealers would be affected by the proposed amendments to the Board's funding rules.

Public
Comment: Interested persons may submit written comments to the Board. Such comments should be sent to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments also may be submitted via email to comments@pcaobus.org or through the Board's Web site at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 033 in the subject or reference line and should be received by the Board no later than February 15, 2011.



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Board

Contacts: Robert E. Burns, Associate General Counsel (202/207-9153, burnsr@pcaobus.org); Nina Mojiri-Azad, Assistant General Counsel (202/207-9035, mojiriazadn@pcaobus.org); or Annie Braswell, Accounting Supervisor (202/207-9223, braswella@pcaobus.org).

I. Introduction

Section 109 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), as originally enacted, provided that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms^{1/}) would be collected from issuers^{2/} based on each issuer's relative average, monthly equity market capitalization.^{3/} The amount due from issuers was referred to as the Board's "accounting support fee."

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act^{4/} (the "Dodd-Frank Act") granted the Board oversight of the audits of brokers and dealers registered with the U.S. Securities and Exchange Commission ("SEC" or "Commission").^{5/} To provide funds for the Board's oversight of those audits, the Dodd-

^{1/} Section 102(f) of the Sarbanes-Oxley Act, states that registered public accounting firms shall pay fees sufficient for the Board to recover the costs of processing and reviewing registration applications and annual reports.

^{2/} Section 2(a)(7) of the Sarbanes-Oxley Act and PCAOB rules define "issuer" to mean an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 ("Exchange Act")), the securities of which are registered under Section 12 of the Exchange Act, or that is required to file reports under Section 15(d) of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 and that it has not withdrawn. See PCAOB Rule 1001(i)(iii).

^{3/} Section 109(g) of the Sarbanes-Oxley Act.

^{4/} Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

^{5/} For information regarding the audit of brokers' and dealers' financial statements and examination of reports regarding compliance with Commission



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Frank Act amended Section 109 of the Sarbanes-Oxley Act to require that the Board allocate a portion of the accounting support fee among brokers and dealers, or classes of brokers and dealers, based on their relative "net capital (before or after any adjustments)."^{6/} Accordingly, the Board is proposing amendments to its funding rules to provide for a portion of the accounting support fee to be allocated among brokers and dealers.^{7/}

The Board is also proposing amendments to its funding rules with respect to the allocation of the accounting support fee for issuers. The proposed amendments are intended to make the allocation and assessment process more efficient, and are based on the Board's experience of having conducted eight annual cycles of funding under its current funding rules. Under the proposed amendments, the basis for calculating an issuer's market capitalization would be revised to include the market capitalization of all classes of the issuer's voting and non-voting common equity. In addition, the Board is proposing to increase the average, monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies.

Appendix A to this release provides the proposed amendments as incorporated into the Board's rules. Appendix B to this release contains additional analyses related to the allocation of the accounting support fee among classes of brokers and dealers.

II. Brokers and Dealers

As amended by the Dodd-Frank Act, Section 109 of the Sarbanes-Oxley Act requires that the rules of the Board provide for the equitable allocation, assessment and

requirements, see generally Rule 17a-5 under the Exchange Act, and related SEC rules and forms.

^{6/} Sections 109(d)(2) and 109(h) of the Sarbanes-Oxley Act, which states, in part, that amounts due from brokers and dealers "shall be in proportion to the net capital of the broker or dealer (before or after any adjustments)."

^{7/} Pursuant to Section 109(e) of the Sarbanes-Oxley Act, the Financial Accounting Standards Board ("FASB") accounting support fee is to be allocated among issuers. Brokers and dealers therefore will not be allocated a portion of the FASB annual accounting support fee.



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collection by the Board of the accounting support fee among issuers, brokers, and dealers, and allow "for differentiation among classes of issuers, brokers, and dealers, as appropriate."^{8/} This section further provides that "[t]he amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board."^{9/}

Accordingly, the Board is proposing to amend its funding rules to allocate a portion of the accounting support fee among brokers and dealers,^{10/} to establish classes of brokers and dealers for funding purposes, to describe the methods for allocating the appropriate portion of the accounting support fee to each broker and dealer within each class, and to address the collection of assessed shares of the broker-dealer accounting support fee from brokers and dealers.

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, the PCAOB is to begin the allocation, assessment and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board's 2011 fiscal year. Accordingly, the Board anticipates that the proposed amendments to its funding rules for brokers and dealers would be effective, subject to approval by the SEC, for its 2011 funding cycle.^{11/}

^{8/} Section 109(d)(2) of the Sarbanes-Oxley Act.

^{9/} Section 109(h)(3) of the Sarbanes-Oxley Act.

^{10/} Under the proposal, PCAOB rules would be amended to add definitions of "broker" and "dealer" consistent with the definitions that the Dodd-Frank Act added to Section 110 of the Sarbanes-Oxley Act. These definitions would incorporate the definition of "broker" in Section 3(a)(4) of the Exchange Act and "dealer" in Section 3(a)(5) of the Exchange Act, but only include those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement certified by a registered public accounting firm. See Sections 110(3) and (4) of the Sarbanes-Oxley Act.

^{11/} The Board anticipates that its funding cycle for brokers and dealers will take place during the last half of the Board's fiscal year.



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A. The Broker-Dealer Accounting Support Fee

The Report of the Senate Committee on Banking, Housing, and Urban Affairs that accompanied the legislation that would become the Dodd-Frank Act, stated:

The Committee expects that the PCAOB will reasonably estimate the amounts required to fund the portions of its programs devoted to the oversight of audits of brokers and dealers, as contrasted to the oversight of audits of issuers, in deciding the total amounts to be allocated to, assessed, and collected from all brokers and dealers.... Cost accounting for each program is not required.^{12/}

In accordance with this expectation, the Board each year will reasonably estimate amounts required to fund the portions of the Board's programs devoted to the oversight of audits of issuers and the amounts required to fund the portions of its programs devoted to the oversight of the audits of brokers and dealers. Under the proposed rules, at the time the Board establishes a total accounting support fee, it also will allocate the respective portions of the total accounting support fee among issuers (the "issuer accounting support fee") and among brokers and dealers (the "broker-dealer accounting support fee"). In accordance with Section 109(b) of the Sarbanes-Oxley Act, the Board's budget, which includes the total accounting support fee and the portion of the total accounting support fee to be allocated to issuers and the portion to be allocated to brokers and dealers, is subject to the Commission's approval.

B. Classes of Brokers and Dealers

The Board is proposing to establish classes of brokers and dealers for funding purposes to allow for the equitable distribution of the accounting support fee. Establishing classes allows the Board to allocate the broker-dealer accounting support fee to those brokers and dealers whose audits, due to their relative size and complexity, may require more Board time and resources during an inspection than other audits of brokers and dealers with relatively small and less complex operations.

Further, because Section 109 requires that allocations be based on a broker's or dealer's net capital "before or after any adjustments," the Board is proposing to base the

^{12/} S. Rep. No. 176, 111th Cong., 2d Sess.(April 30, 2010) at 154.



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classes of brokers and dealers on the average "tentative net capital" reported at the end of the calendar quarters during the previous calendar year.^{13/} "Tentative net capital" would be defined in the Board's rules to have the same meaning that the term has in Rule 15c3-1(c)(15) under the Securities Exchange Act of 1934 ("Exchange Act").^{14/} This definition generally provides that the "tentative net capital" of a broker or dealer is its net capital before deducting certain securities haircuts and changes in inventory used in calculating the broker's or dealer's net capital. Because the investment decisions made by a broker or dealer can influence the amount of these deductions and thus influence the net capital calculation, "tentative net capital" may be a more consistent basis for allocation of the broker-dealer accounting support fee. Both tentative net capital and the net capital amounts are reported by brokers and dealers on their quarterly FOCUS reports filed on Form X-17A-5.^{15/}

In considering the effect of this measurement criterion, the Board has reviewed the tentative net capital of 4,656 brokers and dealers as of the third and fourth quarters of 2009 and the first and second quarters of 2010.^{16/} Below is the distribution of the number of brokers and dealers and the average, quarterly tentative net capital for the four referenced quarters:

^{13/} "Tentative net capital" is the net capital of a broker or dealer before certain adjustments. See Rule 15c3-1(c)(15) under the Exchange Act.

^{14/} Id.

^{15/} See generally, Rule 17a-5 under the Exchange Act. The tentative net capital and net capital amounts may be reported in Part I, II and IIA of the FOCUS report and are unaudited.

^{16/} The data examined by the Board and used in this release represents data for brokers and dealers that (i) are members of Financial Industry Regulatory Authority ("FINRA) and have designated FINRA as their designated examining authority ("DEA"); (ii) are members of FINRA and have designated another self regulatory organization ("SRO") as their DEA but file FOCUS information with FINRA on a voluntary basis; or (iii) are members of other SROs for which FINRA, through a regulatory service agreement, performs financial reviews.



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Average, Quarterly Tentative Net Capital Range	Number of Brokers or Dealers	Percentage of Total Brokers or Dealers	Total Average, Quarterly Tentative Net Capital (in \$ millions)	Percentage of Total Average, Quarterly Tentative Net Capital
Less than \$0	18	0.39%	(\$12)	-0.01%
\$0 - \$1,000,000	3,355	72.06%	\$707	0.36%
\$1,000,001 - \$5,000,000	645	13.85%	\$1,503	0.77%
\$5,000,001 - \$10,000,000	186	3.99%	\$1,317	0.67%
\$10,000,001 - \$25,000,000	176	3.78%	\$2,811	1.43%
\$25,000,001 - \$50,000,000	87	1.87%	\$3,008	1.54%
\$50,000,001 - \$75,000,000	43	0.92%	\$2,552	1.30%
\$75,000,001 - \$100,000,000	26	0.56%	\$2,291	1.17%
\$100,000,001 - \$250,000,000	50	1.07%	\$7,326	3.74%
\$250,000,001 - \$500,000,000	24	0.52%	\$8,237	4.20%
\$500,000,001 - \$1,000,000,000	13	0.28%	\$9,197	4.69%
\$1,000,000,001 +	33	0.71%	\$157,008	80.13%
Total	4,656		\$195,945	

The average, quarterly tentative net capital amounts for the four quarters ranged from negative amounts to approximately \$15.8 billion. As the above table reflects, however, 33 brokers and dealers held approximately 80.1% of the total average, quarterly tentative net capital maintained by all 4,656 broker and dealers. In addition, only 120 brokers and dealers each had average, quarterly tentative net capital in excess of \$100 million, 452 brokers and dealers each had average, quarterly tentative net capital in excess of \$10 million, and 638 brokers and dealers had average, quarterly tentative net capital in excess of \$5 million.

As the table also reflects, approximately 86.3% of the brokers and dealers have average, quarterly tentative net capital of less than \$5 million. At the same time, the total average, quarterly tentative net capital for all brokers and dealers in that group was approximately 1.1% of the total average, quarterly tentative net capital for all brokers and dealers. Conversely, approximately 13.7% of all brokers and dealers have approximately 98.9% of the total average, quarterly tentative net capital.



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Based on the above analysis, which illustrates the significant number of brokers and dealers with average, quarterly tentative net capital of less than \$5 million, the Board is proposing to establish two classes of brokers and dealers, those with average, quarterly tentative net capital greater than \$5 million and those with average, quarterly tentative net capital less than or equal to \$5 million or not filing audited financial statements pursuant to a Commission rule or other action of the Commission or its staff (sometimes referred to as a \$5 million threshold in this release).^{17/} The average would be based on the tentative net capital reported as of the end of the calendar quarters of the calendar year immediately prior to the Board's calculation of the broker-dealer accounting support fee.^{18/}

C. Allocation of the Broker-Dealer Accounting Support Fee

Consistent with Section 109 of the Sarbanes-Oxley Act, the proposed rule would allocate to brokers and dealers in the class with average, quarterly tentative net capital greater than \$5 million a share of the broker-dealer accounting support fee based on a ratio where the numerator is the average, quarterly tentative net capital of the broker or dealer for the calendar quarters of the immediately prior calendar year and the denominator is the sum of the average, quarterly tentative net capital of all the brokers and dealers in this class.

^{17/} Brokers or dealers with larger tentative net capital amounts may be "clearing" or "carrying" brokers and dealers rather than "introducing" brokers and dealers. Because of the nature of their businesses, audits of the compliance reports for clearing or carrying brokers and dealers may require more testing and documentation than audits of introducing brokers and dealers. PCAOB inspections of audits of brokers' and dealers' financial statements and examinations of reports regarding compliance with Commission and regulatory requirements of brokers and dealers with larger amounts of tentative net capital, consequently, may require more Board resources.

^{18/} Rules 17a-5(a) (2)(ii) and (iii) under the Exchange Act require brokers and dealers to file Part II or Part IIA of Form X-17A-5 "within 17 business days after the end of the calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than the end of the calendar quarter."



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In a manner similar to the allocation for issuers, the proposed amendments would allocate to those brokers and dealers with average, quarterly tentative net capital equal to or less than \$5 million a share of the broker-dealer accounting support fee equal to zero.^{19/} Because of the concentration of the industry's aggregate tentative net capital among relatively few brokers and dealers, the allocation of the broker-dealer accounting support fee without the \$5 million threshold may impose a relatively costly administrative burden on many smaller brokers and dealers. At the same time, allocating a share of the broker-dealer accounting support fee equal to zero to such small entities would have a negligible effect on the share of the broker-dealer accounting support fee allocated to the larger brokers and dealers.

For example, based on the data for the third and fourth quarters of 2009 and the first and second quarters of 2010, assuming a broker-dealer accounting support fee of \$15 million,^{20/} if no average, quarterly tentative net capital threshold was applied, 1,557

^{19/} Assigning a broker or dealer a share of the accounting support fee equal to zero when its average, quarterly tentative net capital is equal to or less than \$5 million would not affect the Board's oversight of the audits of that broker or dealer. The Dodd-Frank Act amendments to the Sarbanes-Oxley Act state that, if the Board establishes a program of inspection for audits of brokers and dealers, it shall consider whether differing inspection schedules are appropriate for auditors of brokers or dealers that do not receive, hold, or handle customer securities, and that the Board may exempt certain auditors from its inspection program and, consequently, from registration with the Board. See Section 104(a)(2) of the Sarbanes-Oxley Act. Any Board decisions in these matters would be made only after additional rulemakings specific to the Board's inspection and registration programs for auditors of brokers and dealers and would be subject to Commission approval. If the Board decides at a later time that auditors of certain groups of brokers or dealers are exempt from the Board's inspection program and, therefore, eligible to withdraw their registration from the PCAOB, no share or portion of any accounting support fee paid by any broker or dealer would be refundable.

^{20/} On November 23, 2010, the Board approved its 2011 budget, which included a total accounting support fee of approximately \$202.3 million. The allocated portion of the total accounting support fee to brokers and dealers, which is referred to as the broker-dealer accounting support fee, was approximately \$14.4 million for 2011. There is no assurance that future broker-dealer accounting support fees will be the same as the 2011 broker-dealer accounting support fee.



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brokers and dealers would be allocated a share of the broker-dealer accounting support fee of \$100 or more.^{21/} The aggregate share of the broker-dealer accounting support fee allocated to brokers and dealers with average, quarterly tentative net capital of \$5 million or less, however, would be \$141,700, representing 0.9% of the assumed \$15 million broker-dealer accounting support fee.

Under the proposed \$5 million threshold, assuming a broker-dealer accounting support fee of \$15 million, 638 brokers and dealers would be allocated a share of the broker-dealer accounting support fee. Although under this threshold, 919 fewer brokers and dealers would be allocated a share of the broker-dealer accounting support fee, generally brokers and dealers with average, quarterly tentative net capital greater than \$45 million would experience an increase of less than 2% in their assessed share of the broker-dealer accounting support fee.^{22/} Furthermore, as discussed below, generally decreasing or increasing the average, quarterly tentative net capital threshold does not appear to have a significant impact on the amount of the broker-dealer accounting support fee allocated to particular brokers and dealers subject to the fee.

The Board has analyzed the allocation of the broker-dealer accounting support fee under various average, quarterly tentative net capital thresholds assuming broker-dealer accounting support fee amounts of \$20 million, \$40 million, and \$60 million. Appendix B to this release contains summaries of these analyses.

Assuming no average, quarterly tentative net capital threshold, 1,776, 2,309, and 2,613 brokers and dealers would be allocated a share of the broker-dealer accounting support fee of \$100 or more if the broker-dealer accounting support fee was \$20 million, \$40 million or \$60 million, respectively. Although under these scenarios more brokers and dealers are assessed a share of the broker-dealer accounting support fee as the

^{21/} The allocated share for each of the remaining 3,099 brokers and dealers would be less than \$50 and, therefore, under the Board's rules rounded down to zero. See PCAOB Rule 7102(a).

^{22/} The allocated share of the broker-dealer accounting support fee for 48 out of 441 broker and dealers with average, quarterly tentative net capital between \$5 million and \$45 million may increase by \$100 because the additional allocated amount would result in the unrounded allocated share being greater than \$50 and, therefore, under the Board's rules rounded up to the nearest \$100. See PCAOB Rule 7102(a).



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broker-dealer accounting support fee increases, only approximately 1% of the broker-dealer accounting support fee would be allocated to brokers and dealers with average, quarterly tentative net capital of \$5 million or less under each scenario. In fact, 92% of the broker-dealer accounting support fee would be assessed to the 100 brokers and dealers with the largest average, quarterly tentative net capital. Under each broker-dealer accounting support fee evaluated, this distribution does not change significantly due to the concentration of the industry's aggregate tentative net capital among relatively few brokers and dealers.

Under a \$5 million threshold, an increase in the broker-dealer accounting support fee appears to cause an increase in the share of the broker-dealer accounting support fee allocated to all brokers or dealers. However, the brokers and dealers with the largest average, quarterly tentative net capital would see a larger dollar increase in their allocated share of the broker-dealer accounting support fee versus all other brokers and dealers. This is reflected by the fact that the 100 brokers and dealers with the largest average, quarterly tentative net capital would continue to bear 93% of the broker-dealer accounting support fee if the broker-dealer accounting support fee is \$20 million, \$40 million, or \$60 million. Based on the above analyses, under a \$5 million threshold, an increase to the broker-dealer accounting support fee generally would result in a larger allocated share of the fee to the 100 brokers and dealers with the largest average, quarterly tentative net capital.

Because the accounting support fee would be divided into an issuer accounting support fee and a broker-dealer accounting support fee, it is possible that affiliated entities may be allocated separate shares of both the issuer and broker-dealer accounting support fees. For example, if an issuer has one or more broker or dealer subsidiaries, the issuer may be allocated a share of the issuer accounting support fee and each broker or dealer subsidiary may be allocated a share of the broker-dealer accounting support fee. The allocations are designed to support oversight programs tailored to the audits of different types of entities. The issuer would be responsible for payment of the allocated share of the issuer accounting support fee and each subsidiary would be responsible for payment of the allocated share of the broker-dealer accounting support fee.



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D. Collection

The Board's current rules regarding the assessment and collection of the accounting support fee would be amended under the proposal to include appropriate references to brokers and dealers.

Currently, if a share of the accounting support fee allocated to an issuer is past-due^{23/} and the issuer has not filed a petition with the Board seeking correction of its assigned share, then, with certain exceptions,^{24/} no registered public accounting firm is permitted to sign an unqualified audit opinion with respect to that issuer's financial statements or to sign a consent to the use of prior audit opinions for that issuer. Under the proposal, the same concept would be extended to brokers and dealers in that no

^{23/} Pursuant to PCAOB Rule 7103(a), payment is due 30 days after the notice setting forth the allocated share of the accounting support fee to the issuer. Under the Board's current rules, the "notice" referenced in Rule 7103(a) relates to the document sent by the Board setting forth an entity's share of the accounting support fee under Section 109 of the Sarbanes-Oxley Act and the Board's funding rules. The Board is proposing to replace the term "notice" with "invoice" in its funding rules so as not to cause any confusion with the definition of "audit" and "audit report", which both now contain a reference to "notice."

^{24/} To avoid unnecessarily preventing issuers from timely access to the capital markets, the funding rules contain a limited exception to the prohibition on the signing of audit reports and the issuance of consents. An issuer may have a past-due share of the accounting support fee, including possibly through mistake, inadvertence, or confusion, at a time when, in order to access or preserve its ability to access the capital markets in a timely manner, the issuer needs to submit a report to, or make a filing with, the Commission and the issuer must include an auditor's opinion or consent in that report or filing. If circumstances cause an issuer to rely upon the exception, however, the rule requires the issuer to submit an electronic notice to the Board no later than the next business day after the filing is made with the Commission. The rule limits the use of the exception to a single 15 business day period beginning on the earlier of the date of the filing with the Commission or the date of the notice to the Board. See PCAOB Rule 7103(b)(2) and PCAOB Release No. 2003-02, Amended SEC Filing Form 19b-4 (June 30, 2003). The Board is proposing an amendment to Rule 7103(b)(2) by requiring that the notice be filed by the registered public accounting firm instead of the issuer.



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registered public accounting firm would be permitted to sign an audit report or a document, report, notice, or other record concerning procedures or controls for a broker or dealer if its share of the broker-dealer accounting support fee was past-due and no petition for correction had been filed. For issuers with one or more broker or dealer subsidiaries, if the share of the accounting support fee allocated either to the issuer or any broker or dealer subsidiary is past due and no petition for correction had been filed by either the issuer or subsidiary, no registered public accounting firm would be permitted to sign an audit report or a document, report, notice, or other record concerning procedures or controls for the issuer or for any of its broker or dealer subsidiaries.

A note to the funding rules would state that for the purposes of the prohibition on signing unqualified audit reports for issuers, brokers, and dealers with past-due shares of the accounting support fee, the term "audit" would mean an examination of the financial statements, reports, documents, procedures, controls, and notices of any issuer, broker, or dealer by a registered accounting firm for the purpose of expressing an opinion on the financial statements or providing an audit report. "Audit report" in these circumstances would mean a document, report, notice, or other record prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws and in which the auditor either (i) sets forth an opinion of the firm regarding the financial statement, report, notice, or other document, procedures, or controls, or (ii) asserts that no such opinion can be expressed.^{25/} These are the same definitions found in new Section 110 of the Sarbanes-Oxley Act. These definitions recognize that auditors today not only examine entities' financial statements but, for larger companies, auditors also examine internal control over financial reporting, and, for brokers and dealers, auditors further issue mandated reports under Rule 17a-5 and other applicable regulations.

In addition, similar to issuers, if the Board does not receive payment within 30 days of a broker or dealer being notified of its share of the accounting support fee, the payment shall be deemed past due and interest shall accrue at a rate of 6% per year. If payment is not received by the 90th day after the original notice was sent, then the

^{25/} In connection with other rulemaking projects, the Board may consider amending its rules to apply more broadly the definitions of "audit" and "audit report" in Section 110 of the Sarbanes-Oxley Act. If such rulemaking occurs, the Board may revisit the need for the proposed Note in the funding rules.



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Board may report the nonpayment to the Commission or the designated examining authority, which may pursue appropriate disciplinary action in accordance with its rules.^{26/} Section 109(h)(1) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

III. Issuers

The Board also is proposing certain amendments to its existing rules for the allocation, assessment, and collection of the issuer accounting support fee. The Board has conducted its funding under these rules since 2003. While the rules generally have functioned as intended, the Board's experience has led it to believe that the allocation and assessment process could be more efficient. The Board anticipates that the proposed amendments to its funding rules would be effective, subject to approval by the Commission, for its 2012 funding cycle for issuers.^{27/}

A. Definitions of Market Capitalization and Common Equity

The Board's rules currently define the terms "issuer market capitalization" and "market capitalization of an issuer" to be the aggregate market value of all classes of an issuer's common stock that trade in the United States.^{28/} Determining an issuer's market capitalization based on its outstanding common stock, however, has led to interpretive issues such as whether to include in the calculation certain categories of securities such as limited partnership units or interests, securities convertible into common stock, and rights or options to purchase common stock.

To reduce issues regarding the meaning of "common stock" in the Board's rules, the Board proposes to amend the definition of "issuer market capitalization" and "market capitalization of an issuer" to replace the reference to "common stock" with a reference

^{26/} For issuers, nonpayment of PCAOB accounting support fees would continue to be a violation of Section 13(b)(2)(C) of the Exchange Act.

^{27/} The Board's funding cycle for issuers typically takes place during the first half of the Board's fiscal year.

^{28/} PCAOB Rule 1001(i)(i)(1).



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to "voting and non-voting common equity." These terms, therefore, would refer to the issuer's aggregate market value of all classes of voting and non-voting common equity traded in the United States.

The Board's proposed definition of "common equity" would track the definition in Rule 12b-2 under the Exchange Act. As applied by the Board for funding purposes, the amount of common equity considered in deriving an issuer's market capitalization would be based on any class of common stock or equivalent interest, any beneficial interest in a trust or a limited partnership interest, and any other security that the Commission, by rule, deems to treat as common equity.

B. Classes of Issuers

The Board also proposes to change the descriptions of the existing classes of issuers. Under the Board's current funding rules, there are four classes of issuers: (1) equity issuers whose average, monthly market capitalization during the preceding calendar year is greater than \$25 million, (2) investment company issuers (and entities that have elected to be regulated as business development companies) whose average, monthly market capitalization during the preceding calendar year is greater than \$250 million, (3) issuers that, as of the date the accounting support fee is calculated (i) do not have to file financial statements pursuant to Commission rule or other action of the staff of the Commission, (ii) are employee stock purchase, savings, and similar plans, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2 ("SLB No. 2"), and (4) all other issuers.

The Board is proposing to amend the description of the classes of issuers in two significant ways. First, the Board is proposing to raise the average, monthly market capitalization threshold for the first two classes of issuers. Second, the Board is proposing to change the description of issuers that are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of SLB No. 2.

1. Change in Average, Monthly Market Capitalization Threshold

The Board is proposing to raise the average, monthly market capitalization threshold during the preceding calendar year for the first class of issuers from \$25 million to \$75 million. Companies with a market capitalization between \$25 million and



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\$75 million, therefore, would move from the first class to the fourth class and be allocated a share of the accounting support fee equal to zero. The Board notes that the aggregate issuer accounting support fee collected from equity issuers with average, monthly market capitalizations between \$25 million and \$75 million^{29/} during the past six funding cycles have been a relatively small part (less than 0.4%) of the Board's total accounting support fee from equity issuers. At the same time, approximately 1,100 equity issuers, representing approximately 23% of all equity issuers assessed a fee, have average, monthly market capitalization within that range.^{30/} As discussed further below, not allocating a share of the issuer accounting support fee to these issuers appears to have a negligible effect on the amounts allocated to other issuers.

The Board similarly is proposing to raise the average, monthly market capitalization threshold for the second class of issuers consisting of investment company issuers (and business development companies) currently subject to allocation of the support fee from \$250 million to \$500 million.^{31/} Investment companies (including

^{29/} The Board's use and calculation of \$75 million in market capitalization for funding purposes should not be confused with the criteria to determine whether issuers are deemed an "accelerated filer", as defined by Rule 12b-2 under the Exchange Act. Under that rule, an issuer is an accelerated filer if, among other things, it has an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates (i.e., public float) of \$75 million or more as of the end of the entity's second quarter. See Release No. 33-8128 (September 5, 2002)

^{30/} The aggregate FASB accounting support fee collected on behalf of FASB from equity issuers with average, monthly market capitalizations between \$25 million and \$75 million during the 2010 funding cycle was a relatively small part (less than 0.4%) of the FASB accounting support fee from equity issuers despite the fact that approximately 1,100 equity issuers, representing approximately 24% of all equity issuers assessed a fee, have average, monthly market capitalization within that range.

^{31/} Market capitalization for an issuer that is an investment company whose shares are not traded on a national exchange or quoted on NASDAQ is the investment company's net asset value. See PCAOB Rule 1001(i)(i)(2). Since the Board's adoption of its funding rules in 2003, NASDAQ Stock Market LLC has become a national exchange under Commission rules. In light of this change, and to more clearly reflect



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business development companies) with market capitalizations between \$250 million and \$500 million, therefore, would move from the second class to the fourth class and be allocated a share of the accounting support fee equal to zero. The Board notes that the aggregate fees collected from investment company issuers (including business development companies) with average, monthly market capitalizations between \$250 million and \$500 million during the past six funding cycles have been a relatively small part (approximately 5%) of the Board's total accounting support fee from investment companies. At the same time, approximately 1,480 investment companies, representing approximately 33% of all investment companies assessed a share of the issuer accounting support fee, have average, monthly market capitalization within that range.^{32/} As discussed further below, not allocating a share of the issuer accounting support fee to these investment companies appears to have a negligible effect on the amounts allocated to other investment companies.

its current practice, the Board is proposing to revise PCAOB Rule 1001(i)(i)(2) by replacing the reference to NASDAQ with a reference to the "OTC Bulletin Board."

Approximately 7.9% of the 2010 accounting support fee was allocated to investment companies. Under the Board's current funding rules, when allocating the issuer accounting support fee to investment companies, 10% of the investment company issuer's actual average monthly market capitalization or net asset value is used in the calculation. Accordingly, the amount of the issuer accounting support fee allocated to investment companies over the past six funding cycles has represented a relatively small portion (average of approximately 6%) of the total issuer accounting support fee assessed.

^{32/} The aggregate fees collected on behalf of FASB from investment company issuers (including business development companies) with average, monthly market capitalizations between \$250 million and \$500 million during the 2010 funding cycle was a relatively small part (approximately 5%) of the FASB accounting support fee from investment companies despite the fact that approximately 1,450 investment companies, representing approximately 33% of all investment companies assessed a share of the FASB accounting support fee, have average, monthly market capitalization within that range.



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2. Effects of Change in Average, Monthly Market Capitalization on Issuers

Raising the threshold for the first class of issuers from \$25 million in average, monthly market capitalization to \$75 million and raising the threshold for the second class of issuers from \$250 million in average, monthly market capitalization to \$500 million should have a negligible effect on the amounts allocated to issuers under Section 109 of the Sarbanes-Oxley Act.^{33/}

Below is the distribution of the accounting support fee allocated among issuers in classes one and two in 2010 based on the current and proposed average, monthly market capitalization thresholds.

Fee Range	Number of Issuer Invoices		Change
	2010 Funding Cycle (Current Thresholds)	2010 Funding Cycle (Proposed Thresholds)	
\$100-500.....	1,698	-	(1,698)
\$501-1,000.....	1,788	920	(868)
\$1,001-5,000.....	3,012	3,021	9
\$5,001-10,000.....	868	865	(3)
\$10,001-50,000.....	1,289	1,294	5
\$50,001-100,000.....	251	255	4
\$100,001-500,000.....	258	258	-
\$500,001-1,000,000.....	27	27	-
\$1,000,001+.....	24	24	-
Total	9,215	6,664	(2,551)

Note: The numbers reflected under the "Proposed Thresholds" column reflect only changes in the market capitalization thresholds for issuers in class one and two. The information provided in this column does not incorporate any other proposed changes to the funding rules.

^{33/} The proposed changes to the thresholds for the first and second classes of issuers would also be applicable to the allocation of the FASB accounting support fee, which pursuant to Section 109(e) of the Sarbanes-Oxley Act, is allocated among issuers only.



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Generally, equity issuers with average, monthly market capitalization of approximately \$600 million or greater are likely to see an increase in their allocated share of the issuer accounting support fee.^{34/} The entity's allocated share of the fee increases, however, by approximately 1% or less. For investment company issuers, on average, the allocated share of the accounting support fee would increase for entities with average, monthly market capitalization of approximately \$4 billion or greater, with the entity's allocated share of the fee increasing by approximately 2% or less.^{35/} Accordingly, the proposed change to the average, monthly market capitalization for class one and two issuers should not result in a significant increase in any issuer's assessed share of the accounting support fee.

3. Modified Reporting Requirements of SLB No. 2

The Board is also proposing to change the description of the class of issuers that are not assessed a share of the accounting support fee because they are in bankruptcy. As noted above, under the Board's current funding rules, companies that are under the jurisdiction of a bankruptcy court and "satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2" are in the third class and are assigned a share of the accounting support fee equal to zero.^{36/}

^{34/} The allocated share of the issuer accounting support fee for 465 out of 1,190 equity issuers with average, monthly market capitalization between \$75 million and \$600 million would increase by \$100 because the additional allocated amount would result in the unrounded allocated share being greater than \$50 and, therefore, under the Board's rules, rounded up to the nearest \$100. See PCAOB Rule 7102(a).

^{35/} The allocated share of the issuer accounting support fee for 327 out of 2,367 investment companies with average, monthly market capitalization between \$500 million and \$4 billion may increase by \$100 because the additional allocated amount would result in the unrounded allocated share being greater than \$50 and, therefore, under the Board's rules rounded up to the nearest \$100. See PCAOB Rule 7102(a).

^{36/} SEC Staff Legal Bulletin No. 2 (CF) (April 15, 1997), available at <http://sec.gov/interps/legal/slbcf2.txt>, reflects the views of the Commission's Division of Corporation Finance that companies under the jurisdiction of a bankruptcy court are not relieved of their reporting obligations under the securities laws but, upon the satisfaction



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SLB No. 2 states that an issuer under the jurisdiction of a bankruptcy court may request that the Commission's Division of Corporation Finance ("Division") provide a "no-action" letter indicating that the Division will not recommend enforcement action if the issuer files with the Commission modified reports in lieu of the reports required under the Exchange Act. SLB No. 2 describes the information and assertions that should be in a request for a "no-action" letter, including information related to the issuer's financial condition, prior compliance with Exchange Act filing requirements, the timing of the announcement by the issuer of its bankruptcy filing, the issuer's ability to continue to file Exchange Act reports, and a description of the current market for and trading in the issuer's securities.^{37/}

Although acceptance of modified reports is at the discretion of the Commission, there is no requirement in SLB No. 2 or elsewhere that an issuer in bankruptcy ask the Division for a "no-action" letter prior to filing modified reports. Such "no-action" requests are voluntary. An issuer in bankruptcy may choose to file modified reports without providing the Division with the information and assertions in SLB No. 2.^{38/} Because the Board's funding rules, however, are based on whether an issuer has "satisf[ie]d the modified reporting requirements" of SLB No. 2, when the issuer has not requested or not received a "no-action" letter from the Division, the PCAOB staff has been placed in the position of having to evaluate available public information to determine whether the conditions in SLB No. 2 are satisfied. To address such situations, PCAOB staff generally has requested that issuers provide an analysis demonstrating its compliance with the conditions set forth in SLB No. 2 and/or an opinion of counsel that the company meets the conditions set forth in SLB No. 2.^{39/}

of certain conditions, may file reports that "differ in form or content" from the reports required under the Exchange Act.

^{37/} Id.

^{38/} The Commission may deem such a filing to be deficient and not to satisfy the issuer's obligations under the Exchange Act and Commission rules and forms.

^{39/} See Question 14 of the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, dated March 15, 2010. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.



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The Board proposes to amend its rules to require that in order to be assigned a share of the accounting support fee equal to zero, an issuer that is subject to the jurisdiction of a bankruptcy court and asserts that it falls within the third class of issuers provide an opinion of counsel that the issuer satisfied the modified reporting requirements of Commission Staff Legal Bulletin No. 2 as of the date that the issuer accounting support fee is calculated. This proposed amendment is consistent with the staff's past practices as noted above. The impact of this proposed amendment is believed to be negligible on the amounts allocated and assessed to issuers under Section 109 of the Sarbanes-Oxley Act.^{40/}

IV. Other amendments to the Board's Funding Rules

The Board also is proposing certain technical changes to its funding rules. The most significant of these changes are listed below.

- Rule 7100 – The Board is proposing to make certain changes to Rule 7100 to reflect that the Board establishes a total accounting support fee each year as part of its budget process.^{41/} In addition, the proposed amendment to Rule 7100 would reflect the Board's obligation under Section 109 of the Sarbanes-Oxley Act to equitably allocate the total accounting support fee between issuers, as a group, and brokers and dealers, as a group.

^{40/} During the 2008-2010 funding cycles, 26 equity companies that were allocated a share of the accounting support fee had filed for bankruptcy.

^{41/} The PCAOB Budget is approved by the Board in the preceding calendar year and must be approved by the Commission. PCAOB Rule 7101(a) refers to the date the issuer accounting supporting fee is calculated. This date is referred to as the "calculation date" during the Board's funding cycle. As discussed in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, the issuer calculation date will represent the date as of which the allocation of the issuer accounting support fee is determined for equity issuers and investment company issuers. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>. See also Proposed Rule 7102(a), which contains a similar reference to the date the broker-dealer accounting support fee is calculated. Under the proposed rules, this date will be referred to as the "broker-dealer calculation date" during the Board's funding cycle.



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- Notes to Rule 7101 – The Board is proposing certain technical changes to the notes to Rules 7101(a)(1) and (2) to clarify how an entity's monthly market capitalization is calculated and that such calculation will include market capitalization information for all classes of the issuer's voting and non-voting common equity, consistent with the proposed change to the definition of "issuer market capitalization" discussed above.
- Rule 7103(c) – The Board is proposing to extend the time frame within which any issuer, broker, or dealer may petition the Board for correction of the class in which it has been placed or its allocated share of the accounting support fee. Under the proposed rules, an issuer, broker, or dealer would have 60 days after an invoice is sent to submit a petition for correction rather than the 30 days under the current rules. In addition, the Board is proposing to codify its existing practice of considering petitions received after the deadline when there is good cause to do so.^{42/}
- Rule 7104(b) – The Board is proposing to replace the word "Confirmation" with "Determination" in the caption for Rule 7104(b) and to delete the reference in Note 1 to the rule to obtaining a confirmation from the Board that no past due share of the accounting support fee is outstanding. This proposed amendment will clarify that registered public accounting firms are not required to confirm with the Board whether an issuer, broker or dealer has any outstanding past due share of the accounting support fee prior to signing an unqualified audit opinion, consenting to including an audit report issued previously or signing a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer, required under the securities laws. Confirmation with the Board is one of a number of procedures that a registered public accounting firm may use in determining whether an issuer, broker, or dealer has any outstanding past due share of the accounting support fee.^{43/}

^{42/} See Question 6 in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

^{43/} See Questions 21-25 in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.



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V. Effective Date

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, the PCAOB shall begin the allocation, assessment and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board's 2011 fiscal year. Accordingly, the Board anticipates that the proposed amendments to its funding rules would be effective, subject to approval by the SEC, for its 2011 funding cycle for brokers and dealers and its 2012 funding cycle for issuers.

VI. Request for Public Comment

Interested persons are encouraged to submit their views to the Board. The Board seeks comment on all aspects of these proposed rules. In particular, the Board seeks comment on the following questions:

1. For brokers and dealers, are the class levels appropriate? If not, what levels would be appropriate, and what empirical information is available to support those levels?
2. Is tentative net capital an appropriate measure of "net capital (before or after any adjustments)"? If not, what criteria should be used, and what empirical information is available to support that criteria?
3. For issuers, are changes to the definitions of "market capitalization" appropriate to reflect all classes of an issuer's voting and non-voting common equity appropriate? Should the Board consider also including all classes of preferred stock, all classes of convertible preferred stock, warrants, or options when calculating an issuer's market capitalization?
4. Are the proposed market capitalization thresholds for equity issuers and investment company issuers appropriate? If not, what market capitalization thresholds for equity issuers and investment company issuers should the Board consider for allocation of the issuer accounting support fee among issuers?
5. Does requiring an issuer in bankruptcy to provide an opinion of counsel that it satisfies the modified reporting requirements of Commission Staff Legal Bulletin No. 2 in order to be placed in a class that is assigned a share of the accounting



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support fee equal to zero place an undue hardship on such issuers? Is there another test that could be used to determine the appropriate funding classification for such issuers?

Written comments should be sent to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments also may be submitted by e-mail to comments@pcaobus.org or through the Board's Web site at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 33 in the subject or reference line and should be received by the Board no later than February 15, 2011.

On the 14th day of December, in the year 2010, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD

/s/ J. Gordon Seymour

J. Gordon Seymour
Secretary
December 14, 2010

- Appendix A – Proposed Amendment to Board Rules (PCAOB Rules 1001, 7100 through 7106).
- Appendix B – Broker-Dealer Accounting Support Fee Analyses



Appendix A – Proposed Amendments to Board Rules

The Board proposes to amend the Sections 1 and 7 of its rules as set out below. Language deleted by the proposed amendments is struck through. Language that is added is underlined.

RULES OF THE BOARD

SECTION 1. GENERAL PROVISIONS

Rule 1001. Definitions of Terms Employed in Rules.

* * *

~~(a)(i) Accounting Support Fee~~

~~The term "Accounting Support Fee" means the fee described in Rule 7100 Sarbanes-Oxley Act of 2002, as amended.~~

(a)(iii) Act

The term "Act" means the Sarbanes-Oxley Act of 2002, as amended.

* * *

(b)(iii) Broker

The term "broker" means a broker (as defined in Section 3(a)(4) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.



(b)(iv) Broker-Dealer Accounting Support Fee

The term "broker-dealer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among brokers and dealers pursuant to the rules of the Board.

* * *

(c)(ii) Common Equity

The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

* * *

(d)(iii) Dealer

The term "dealer" means a dealer (as defined in Section 3(a)(5) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

* * *

(i)(i) Issuer Market Capitalization

The terms "issuer market capitalization" and "market capitalization of an issuer" mean –

- (1) Except as provided in paragraph (i)(i)(2) of this rule, the aggregate market value of all classes of an issuer's voting and non-voting common common stock/equity that trade in the United States; or
- (2) With respect to an issuer: (i) that is registered under Section 8 of the Investment Company Act or has elected to be regulated as a business development company pursuant to Section 54 of the Investment Company



Act, and (ii) whose securities are not traded on a national securities exchange or quoted on ~~Nasdaq~~the OTC Bulletin Board, the issuer's net asset value.

(i)(ii) Issuer Accounting Support Fee

The term "issuer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among issuers pursuant to the rules of the Board.

* * *

(i)(vi) Notice Invoice

The term "~~notice invoice~~" means the document sent by the Board to an issuer, broker, or dealer, pursuant to Rule 710~~32~~, setting forth such issuer's, broker's, or dealer's share of the accounting support fee under Section 109 of the Act and Rules 7101, 7102, and 710~~32~~.

* * *

(s)(v) Self-Regulatory Organization

The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of Sections 19(b), 19(c), and 23(b) of the Exchange Act) the Municipal Securities Rulemaking Board established by Section 15B of the Exchange Act.

* * *

(t)(ii) Tentative Net Capital

The term "tentative net capital" has the same meaning as such term is defined under Rule 15c3-1(c)(15) under the Exchange Act.



(t)(iii) Total Accounting Support Fee

The term "total accounting support fee" means the fee described in Rule 7100.

* * *

SECTION 7. FUNDING

Rule 7000. [Reserved]

[Reserved]

Rule 7100. Accounting Support Fees.

The Board shall ~~calculate~~ establish a ~~total~~ total accounting support fee each year in accordance with the Act. The total accounting support fee shall be equitably allocated between issuers (the "issuer accounting support fee") and brokers and dealers— (the "broker-dealer accounting support fee"). ~~The accounting support fee shall equal the budget of the Board, as approved by the Commission, less the sum of all registration fees and annual fees received during the preceding calendar year from public accounting firms, pursuant to Section 102(f) of the Act and the Rules of the Board. The accounting support fees shall then be equitably allocated among issuers, in accordance with Rule 7101(b), and among brokers and dealers, in accordance with Rule 7102(b).~~

Rule 7101. Allocation of Issuer Accounting Support Fee.

(a) Classes of Issuers

For purposes of allocating the issuer accounting support fee, those entities that are issuers as of the date the issuer accounting support fee is calculated ~~under Rule 7100~~ shall be divided into four classes:

(1) Equity Issuers

All issuers whose average, monthly issuer market capitalization is greater than \$75 million during the ~~preceding~~ preceding calendar year preceding the date the issuer accounting support fee is calculated ~~is greater than \$25 million~~, other than those described in



paragraphs (a)(2) and (a)(3) of this Rule, and whose share price on a monthly, or more frequent, basis is publicly available.

Note: ~~The Average, mm~~ monthly issuer market capitalization will be based on closing ~~stock-share~~ prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month ~~measured~~during which trading in the common equity occurred.

(2) Investment Company Issuers

All issuers (i) who, as of the date the accounting support fee is calculated ~~under Rule 7100~~, are registered under Section 8 of the Investment Company Act or have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act, other than those described in paragraph (a)(3), (ii) whose average, monthly issuer market capitalization is greater than \$500 million during the ~~preceding~~ preceding the date the issuer accounting support fee is calculated is greater than \$250 million, and (iii) whose share price (or net asset value) on a monthly, or more frequent, basis is publicly-available.

Note: ~~AverageThe,~~ monthly issuer market capitalization will be based on closing ~~stock-share~~ prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month ~~measured~~during which trading in the common equity occurred.

(3) Issuers Permitted Not to File Audited Financial Statements and Bankrupt Issuers that File Modified Reports

All issuers that, as of the date the issuer accounting support fee is calculated ~~under Rule 7100~~, (i) have a basis, under the federal securities laws, a Commission rule or pursuant to other action of the Commission or its staff, not to file audited financial statements with the Commission, (ii) are employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy have provided an opinion of counsel that the issuer satisfies the modified reporting requirements of Commission Staff Legal Bulletin No. 2.

Note: ~~As of April 16, 2003, i~~ issuers within paragraph (a)(3)(i) of this Rule include (A) asset-backed issuers, (B) unit investment trusts, as defined in Section 4(2) of



the Investment Company Act, that have not filed or updated a registration statement that became effective during the ~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated, and (C) Small Business Investment Companies registered on Form N-5 under the Investment Company Act, that have not filed or updated a registration statement that became effective during the calendar year preceding the date the issuer accounting support fee is calculated~~preceding year~~.

(4) All Other Public Company Issuers

All issuers other than those described in paragraphs (a)(1), (a)(2), or (a)(3) of this Rule.

(b) Allocation of issuer Accounting Support Fee Among Issuers

The issuer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

(1) Equity and Investment Company Issuers

Each issuer described in paragraph (a)(1) and (a)(2) of this Rule shall be allocated a share of the issuer accounting support fee in an amount equal to the issuer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, monthly issuer market capitalization of the issuer during the ~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated, except that for issuers described in paragraph (a)(2) of this Rule, the numerator is one-tenth of the average, monthly issuer market capitalization of the issuer; and

(ii) the denominator of which is the sum of the average, monthly issuer market capitalizations of the issuers described in paragraph (a)(1) of this Rule and one-tenth of the average, monthly issuer market capitalizations of the issuers described in paragraph (a)(2) of this Rule.



(2) All Other Classes

Each issuer described in paragraphs (a)(3) and (a)(4) of this Rule shall be allocated a share of the issuer accounting support fee equal to \$0.

(c) Adjustments

After the issuer accounting support fee is calculated ~~under Rule 7100~~ and allocated under this Rule, any adjustment to the share allocated to an issuer shall not affect the share allocated to any other issuer.

Rule 7102. Allocation of Broker-Dealer Accounting Support Fee

(a) Classes of Brokers and Dealers

For purposes of allocating the broker-dealer accounting support fee, those entities that are brokers or dealers as of the date the broker-dealer accounting support fee is calculated shall be divided into two classes:

(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million

All brokers and dealers whose average, quarterly tentative net capital is greater than \$5 million during the calendar year preceding the date the broker-dealer accounting support fee is calculated, other than those described in paragraphs (a)(2) of this Rule.

Note: Average, quarterly tentative net capital will be based on the tentative net capital reported by the broker or dealer in the calendar quarterly reports filed pursuant to Commission rules during the calendar year preceding the date the broker-dealer accounting support fee is calculated.

(2) Brokers and Dealers Permitted Not to File Audited Financial Statements and Brokers and Dealers Not Described in Paragraph (a)(1) of This Rule

All brokers and dealers that, as of the date the broker-dealer accounting support fee is calculated, (i) have a basis, under the federal securities laws, a Commission rule



or pursuant to other action of the Commission or its staff, not to file audited financial statements or (ii) are not described in paragraph (a)(1) of this Rule.

(b) Allocation of Broker-Dealer Accounting Support Fee

The broker-dealer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million

Each broker and dealer described in paragraph (a)(1) of this Rule shall be allocated a share of the broker-dealer accounting support fee in an amount equal to the broker-dealer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, quarterly tentative net capital of the broker or dealer during the calendar year preceding the date the broker-dealer accounting support fee is calculated; and

(ii) the denominator of which is the sum of the average, quarterly tentative net capital of the brokers and dealers described in paragraph (a)(1) of this Rule.

(2) All Other Brokers and Dealers

Each broker and dealer described in paragraph (a)(2) of this Rule shall be allocated a share of the broker-dealer accounting support fee equal to \$0.

(c) Adjustments

After the broker-dealer accounting support fee is calculated and allocated under this Rule, any adjustment to the share allocated to a broker or dealer shall not affect the share allocated to any other broker or dealer.



Rule 710~~32~~. Assessment of Accounting Support Fees.

(a) Amount of Assessment

Each issuer and each broker and dealer is required to pay its share of the accounting support fee, as allocated under Rules 7101 and 7102, rounded to the nearest hundred\$100.

Note: If the allocated an issuer's share of the accounting support fee to an issuer, broker, or dealer is less than \$50, that issuerthe assessed shares of the accounting support fee will not be assessedzero. If the issuer's allocated share of the accounting support fee is exactly \$50 or \$50 more than a the closest multiple of \$100, then the assessed share will be rounded up to the nearest \$100; otherwise, the assessed share will be rounded down to the nearest \$100.

(b) Notice of Assessment

The Board will use its best efforts to send an notice invoice to each issuer, broker, and dealer, either electronically or by first-class mail, at the address shown in on such issuer'sthe most recent periodic report filed with the Commission by the issuer, or with the designated self-regulatory organization by the broker or dealer, at the address submitted tocontained in the Commission's EDGAR system or the broker's or dealer's designated self-regulatory organization, or at such other address as the issuer, broker, or dealer provides to the Board. The Board's failure to send an issuer, broker, or dealer an noticeinvoice, or the issuer's failure to receive an notice invoice sent by the Board, shall not constitute a waiver of the Board's right to assess the issuer, broker, or dealer such issuer for its share of the accounting support fee or of the issuer's, broker's, or dealer's responsibility to pay its share of the accounting support fee.

(c) Petition for Correction

Any issuer, broker, or dealer who disagrees with the class in which it has been placed, or with the calculation by which its share of the accounting support fee was determined, may petition the Board for a correction of the share of the accounting support fee it was allocated. Any such petition shall include an explanation of the nature of the claimed mistake in classification or calculation, in writing and must be filed with the Board, on or before the 630th day after the notice invoice is sent, or within such longer period as the Board allows for good cause shown. After a review of such a



petition, the Board will determine whether the allocation is consistent with Section 109 of the Act and the Board's rules thereunder and provide the issuer a written explanation of its decision. The provisions of Rule 710~~43~~ shall be suspended while such a petition is pending before the Board.

Rule 710~~43~~. Collection of Accounting Support Fees.

(a) Accounting Support Fee Payment Due Date

Unless the Board directs otherwise, payment shall be due on the 30th day after the ~~notice-invoice~~ is sent. Beginning on the 31st day, payment shall be deemed past due and interest shall accrue at a rate of 6 percent per annum.

(b) ~~Confirmation-Determination~~ of Payment of Accounting Support Fees by Registered Accounting Firm

(1) Except as provided in paragraph (b)(2) of this Rule, no registered public accounting firm shall (i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements, or (ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or (iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer, required under the securities laws unless the registered public accounting firm has ascertained that the issuer, broker, dealer, or a subsidiary thereof has outstanding no past-due share of the issuer accounting support fee or broker-dealer accounting support fee, whichever is applicable, or has a petition pursuant to Rule 710~~32~~(c) pending.

(2) A registered public accounting firm may (i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements, or (ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or (iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer, required under the securities laws even though the issuer, broker, or dealer has outstanding a past-due share of the accounting support fee and has not filed a petition under Rule 710~~32~~(c), if the issuer, broker, or dealer needs the audit report or consent in order to submit a report to, or make a filing with, the Commission or, in the case of an issuer only, to issue securities. The issuer-registered public accounting firm shall submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with the Commission. This exception to paragraph (b)(1) of this Rule shall not continue longer



than 15 business days after the earlier of the date of the notice's submission or the filing of the report with the Commission, and may not be invoked for more than one such period with respect to any share of the accounting support fee that the issuer is assessed under Rule 710~~3~~².

Note 1: A registered public accounting firm may ascertain that an issuer, broker, or dealer has no outstanding past-due share of the accounting support fee by obtaining a representation from the issuer, broker, or dealer ~~or a confirmation from the Board that no past due share of the accounting support fee is outstanding.~~

Note 2: A notice pursuant to paragraph (b)(2) of this Rule must be submitted electronically by email to rule710~~4~~³stay@pcaobus.org.

Note 3: For purposes of Rule 7104, the term "audit" means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statement or providing an audit report. For purposes of Rule 7104, the term "audit report" means a document, report, notice, or other record (1) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or (ii) asserts no such opinion can be expressed.

(c) Reports to the Commission of Non-payment of an Accounting Support Fee

(1) If an issuer has not paid its share of the issuer accounting support fee by the 60th day after the notice invoice was sent, and the issuer does not have a petition pursuant to Rule 710~~2~~³(c) pending, the Board may send a second notice invoice to such issuer by certified mail. If the Board has sent such a second notice invoice and has not been paid by the 90th day after the original notice invoice was sent, the Board may report the issuer's nonpayment to the Commission.

Note: Section 13(b)(2) of the Exchange Act provides, in part, that: "Every issuer which has a class of securities registered pursuant to section 12 of this title and



every issuer which is required to file reports pursuant to section 15(d) of this title shall – * * * (C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable accounting support fee or fees, determined in accordance with Section 109 of the Sarbanes-Oxley Act of 2002."

(2) If a broker or dealer has not paid its share of the broker-dealer accounting support fee by the 60th day after the invoice was sent, and the broker or dealer does not have a petition pursuant to Rule 7103(c) pending, the Board may send a second invoice to such broker or dealer by certified mail. If the Board has sent such a second invoice and has not been paid by the 90th day after the original invoice was sent, the Board may report the broker's or dealer's nonpayment to the Commission and/or the broker's or dealer's designated self-regulatory organization.

Note: Section 109(h)(1) of the Act provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

(d) Excess Fees

If in any Board fiscal year, the Board receives fees in excess of the budget for that fiscal year, the Board shall hold those excess fees in escrow. Such escrowed excess fees shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's accounting support fee in that next fiscal year.

Rule 71054. Service as Designated Collection Agent.

If the Board is designated to serve as collection agent for an accounting support fee of a standard-setting body designated by the Commission pursuant to Section 19(b) of the Securities Act, the assessment and collection of the accounting support fee shall be governed by Rules 7103 and 2 and 71043 as if the accounting support fee of the standard-setting body were the issuer accounting support fee of the Board.

Rule 7106. (d) Excess Fees Funds.

If in any Board fiscal year, the Board receives fees funds in excess of the budget of the Board for that fiscal year, as approved by the Commission, the Board shall hold those excess fees funds in escrow. Such escrowed excess fees funds shall be released



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| to the Board at the beginning of the next fiscal year and shall reduce the Board's [total](#) accounting support fee in that next fiscal year.



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Appendix B – Broker-Dealer Accounting Support Fee Analyses

This appendix contains analyses of the allocation of the broker-dealer accounting support fee under various average, quarterly tentative net capital thresholds based on a \$15 million, \$20 million, \$40 million and \$60 million broker-dealer accounting support fee.

Based on \$15M Broker-Dealer Accounting Support Fee							
Fee Range	MINIMUM AVERAGE QUARTERLY TENTATIVE NET CAPITAL						
	None	\$1M	\$5M	\$10M	\$25M	\$50M	
\$100-500	1,023	749	103	-	-	-	-
\$501-1,000	152	152	151	67	-	-	-
\$1,001-5,000	226	226	228	228	117	30	
\$5,001-10,000	60	59	58	58	60	60	
\$10,001-50,000	57	58	59	59	59	59	
\$50,001-100,000	13	13	13	14	13	13	
\$100,001-500,000	17	17	17	17	18	18	
\$500,001-1,000,000	6	6	6	6	6	5	
\$1,000,001+	3	3	3	3	3	4	
Total Number of ASF Invoices	1,557	1,283	638	452	276	189	
Percent Paid by Top 100	92%	92%	93%	93%	95%	96%	
Lowest Fee	\$ 100.00	\$ 100.00	\$ 400.00	\$ 800.00	\$ 2,000.00	\$ 4,000.00	
Largest Fee	\$ 1,216,400.00	\$ 1,217,800.00	\$ 1,227,200.00	\$ 1,235,600.00	\$ 1,253,900.00	\$ 1,274,100.00	



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Based on \$20M Broker-Dealer Accounting Support Fee						
Fee Range	MINIMUM AVERAGE QUARTERLY TENTATIVE NET CAPITAL					
	None	\$1M	\$5M	\$10M	\$25M	\$50M
\$100-500	1,158	665	18	-	-	-
\$501-1,000	172	171	172	2	-	-
\$1,001-5,000	256	256	257	259	83	-
\$5,001-10,000	68	69	69	69	70	65
\$10,001-50,000	75	75	75	75	76	76
\$50,001-100,000	14	14	14	14	13	13
\$100,001-500,000	22	22	22	22	23	24
\$500,001-1,000,000	4	4	4	4	4	4
\$1,000,001+	7	7	7	7	7	7
Total Number of ASF Invoices	1,776	1,283	638	452	276	189
Percent Paid by Top 100	92%	92%	93%	93%	95%	96%
Lowest Fee	\$ 100.00	\$ 100.00	\$ 500.00	\$ 1,000.00	\$ 2,700.00	\$ 5,400.00
Largest Fee	\$ 1,620,800.00	\$ 1,623,700.00	\$ 1,636,300.00	\$ 1,647,500.00	\$ 1,671,900.00	\$ 1,698,900.00

Based on \$40M Broker-Dealer Accounting Support Fee						
Fee Range	MINIMUM AVERAGE QUARTERLY TENTATIVE NET CAPITAL					
	None	\$1M	\$5M	\$10M	\$25M	\$50M
\$100-500	1,444	418	-	-	-	-
\$501-1,000	234	234	6	-	-	-
\$1,001-5,000	355	354	354	173	-	-
\$5,001-10,000	85	86	87	86	83	-
\$10,001-50,000	121	121	120	121	121	117
\$50,001-100,000	23	23	24	25	25	24
\$100,001-500,000	32	32	32	32	32	33
\$500,001-1,000,000	4	4	4	4	4	4
\$1,000,001+	11	11	11	11	11	11
Total Number of ASF Invoices	2,309	1,283	638	452	276	189
Percent Paid by Top 100	92%	92%	93%	93%	95%	96%
Lowest Fee	\$ 100.00	\$ 200.00	\$ 1,000.00	\$ 2,100.00	\$ 5,300.00	\$ 10,800.00
Largest Fee	\$ 3,238,600.00	\$ 3,247,400.00	\$ 3,272,600.00	\$ 3,295,000.00	\$ 3,343,800.00	\$ 3,397,700.00



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Based on \$60M Broker-Dealer Accounting Support Fee						
Fee Range	MINIMUM AVERAGE QUARTERLY TENTATIVE NET CAPITAL					
	None	\$1M	\$5M	\$10M	\$25M	\$50M
\$100-500	1,610	279	-	-	-	-
\$501-1,000	240	240	-	-	-	-
\$1,001-5,000	413	414	287	99	-	-
\$5,001-10,000	114	113	112	112	35	-
\$10,001-50,000	150	151	153	155	154	102
\$50,001-100,000	29	29	28	28	28	28
\$100,001-500,000	34	34	35	35	36	36
\$500,001-1,000,000	12	12	12	12	12	12
\$1,000,001+	11	11	11	11	11	11
Total Number of ASF Invoices	2,613	1,283	638	452	276	189
Percent Paid by Top 100	92%	92%	93%	93%	95%	96%
Lowest Fee	\$ 100.00	\$ 300.00	\$ 1,500.00	\$ 3,100.00	\$ 8,000.00	\$ 16,200.00
Largest Fee	\$ 4,856,400.00	\$ 4,871,100.00	\$ 4,908,900.00	\$ 4,942,500.00	\$ 5,015,700.00	\$ 5,096,600.00

**Exhibit 2(a)(B)****Alphabetical List of Comments**

Accounting Principles and Auditing Standards Committee of the California Society of Certified Public Accountants

Center for Audit Quality

Deloitte & Touche LLP

KPMG LLP

McGladrey & Pullen, LLP

National Association of Independent Broker Dealers

PricewaterhouseCoopers LLP

Terminus Securities, LLC



1800 Gateway Drive, Ste 200
San Mateo CA 94404-4072
(800) 922-5272
www.calcpa.org

February 8, 2011

Office of the Secretary
PCAOB
1666 K Street, N.W.
Washington D.C. 20006-2803

Re: Comments Regarding PCAOB Rulemaking Docket Matter No. 33
Proposal for Allocation of the Board's Accounting Support Fee Among Issuers,
Brokers, and Dealers, and Other Amendments to the Board's Funding Rules

Board Members:

The Accounting Principles and Auditing Standards Committee (the AP&AS "Committee") of the California Society of Certified Public Accountants ("CalCPA") is pleased to provide our comments to the PCAOB on the proposal to modify the current support fee allocation process to incorporate brokers and dealers.

The AP&AS Committee is the senior technical committee of CalCPA. CalCPA has approximately 35,000 members. The Committee is composed of 50 members, of whom 67 percent are from local or regional firms, 23 percent are sole practitioners in public practice, 5 percent are in industry and 5 percent are in academia. Several of our member's firms audit brokers and dealers.

The Committee supports the proposal as it represents a fair and reasonable methodology to allocate the additional support fees required to enable the Board to conduct its interim program of inspection of brokers and dealers as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Committee also supports the Board's proposals to (1) amend the basis for calculating an issuer's market capitalization to include the market capitalization of all classes of the issuer's voting and non-voting common equity, and (2) increase the average monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies.

We thank the Board for the opportunity to comment on the proposed standard. We would be glad to discuss our opinions with the Board should they have any questions or require any additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "JoAnn Guattery".

JoAnn Guattery, Chair
Accounting Principles and Auditing Standards Committee
California Society of Certified Public Accountants



February 15, 2011

EXECUTIVE DIRECTOR

Cynthia M. Fornelli

GOVERNING BOARD

Chairman

James S. Turley, Chairman and CEO
Ernst & Young LLP

Vice Chair

Michele J. Hooper, President and CEO
The Directors' Council

Vice Chair

Barry C. Melancon, President and CEO
AICPA

Charles M. Allen, CEO
Crowe Horwath LLP

Stephen Chipman, CEO and Executive Partner
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Columbia University

Robert E. Moritz, Chairman and Senior Partner
PricewaterhouseCoopers LLP

Lynn S. Paine, Professor of Business
Administration and Senior Associate Dean,
Director of Faculty Development
Harvard Business School

Barry Salzberg, CEO
Deloitte LLP

Dave Scudder, Managing Partner
McGladrey & Pullen, LLP

John B. Veihmeyer, U.S. Chairman and CEO
KPMG LLP

Jack Weisbaum, CEO
BDO USA, LLP

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, D.C. 20006-2803

Re: Request for Public Comment: Proposed Funding Rule Amendments for Allocating the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, PCAOB Rulemaking Docket Matter No. 33

Dear Office of the Secretary:

The Center for Audit Quality (CAQ) is an autonomous public policy organization dedicated to enhancing investor confidence and public trust in the global capital markets. The CAQ fosters high quality performance by public company auditors, convenes and collaborates with other stakeholders to advance the discussion of critical issues requiring action and intervention, and advocates policies and standards that promote public company auditors' objectivity, effectiveness and responsiveness to dynamic market conditions. Based in Washington, D.C., the CAQ is affiliated with the American Institute of Certified Public Accountants (AICPA). The CAQ appreciates the opportunity to respond to the Public Company Accounting Oversight Board (PCAOB or the Board) on its *Proposal for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules* (proposed rules). Our comments herein are solely focused on a proposed amendment to the Board's current Rule 7103, *Collection of Accounting Support Fees*. This letter represents the observations of the CAQ, but not necessarily the views of any specific firm, individual or CAQ Governing Board member.

Under the Board's current Rule 7103(b)(2), "[t]he issuer shall submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with the [U.S. Securities and Exchange] Commission" (the Commission) when the issuer is delinquent on its share of the accounting support fee. The Board is proposing an amendment to this rule, under proposed Rule 7104(b)(2), by requiring that the notice be filed by the registered public accounting firm *instead* of the issuer. However, there is not a clear understanding as to the rationale for the change in this reporting requirement. We believe this requirement should not be amended and that it remain a requirement of the issuer for the following reasons: 1) it is the issuer that is delinquent with its share of the accounting support fee; 2) it is the issuer that is filing its documents with the Commission; and 3) a process has already been established with issuers under the existing rule. If the Board determines that this requirement should be amended as proposed, we ask that the Board explain its rationale for the change in requirements relative to notifying the Board when an issuer, broker or dealer is

delinquent on its share of the accounting support fee and an audit opinion or consent has been included in a filing to the Commission.

The CAQ appreciates the opportunity to comment on the proposed rule and would welcome the opportunity to respond to any questions you may have regarding the comments included in this letter.

Sincerely,



Cynthia M. Fornelli
Executive Director
Center for Audit Quality

cc: PCAOB
James R. Doty, Chairman
Lewis H. Ferguson, Member
Daniel L. Goelzer, Member
Jay D. Hanson, Member
Steven B. Harris, Member
George Diacont, Director, Division of Registration and Inspections

SEC
Chairman Mary L. Schapiro
Commissioner Luis A. Aguilar
Commissioner Kathleen L. Casey
Commissioner Troy A. Paredes
Commissioner Elisse B. Walter
James L. Kroeker, Chief Accountant
Brian T. Croteau, Deputy Chief Accountant



Deloitte & Touche LLP
 Ten Westport Road
 P.O. Box 820
 Wilton, CT 06897-0820
 USA

www.deloitte.com

February 15, 2011

Public Company Accounting Oversight Board
 Office of the Secretary
 1666 K Street, N.W.
 Washington, D.C. 20006-2803

Re: Request for Public Comment on the Proposal for Allocation of the Board’s Accounting Support Fee Among Issuers, Brokers, and Dealers, And Other Amendments to the Board’s Funding Rules (PCAOB Release No. 2010-009, December 14, 2010, Rulemaking Docket Matter No. 033)

Deloitte & Touche LLP appreciates the opportunity to respond to the request for comments from the Public Company Accounting Oversight Board (the “PCAOB” or the “Board”) on its *Proposal for Allocation of the Board’s Accounting Support Fee Among Issuers, Brokers, and Dealers, And Other Amendments to the Board’s Funding Rules* (PCAOB Release No. 2010-009 (the “Release”), December 14, 2010, Rulemaking Docket Matter No. 033 (the “Proposed Rules”). Our comments herein are focused on the sections of the current and Proposed Rules that impact registered public accounting firms, specifically the confirmation or determination of payment of accounting support fees and reports of non-payment. We believe these rules and the related required procedures are unnecessary and can detract auditors from focusing on performing procedures directly related to the audit of the financial statements and internal control over financial reporting.

Under current PCAOB Rule 7103(b)(1), auditors are required to ascertain that an issuer¹ has outstanding no past-due share of the accounting support fee or has a petition pursuant to PCAOB Rule 7102(c) *before* issuing an auditors’ report or consenting to the use of an auditors’ report. This rule results in the auditor performing several procedures to obtain the appropriate evidence that there is no past-due accounting support fee. These procedures include the following:

- Evaluating whether an issuer meets the criteria such that it is subject to a fee.
- Examining the invoices supporting the accounting support fees owed.
- Tracing amounts owed per the invoice to supporting audit evidence.

¹ Under proposed Rule 7104(b)(1) this requirement would also apply to brokers and dealers.

- Checking the PCAOB's website to determine if the issuer is on the list as having no past due fee. If the issuer is not on the list, sending a confirmation to the PCAOB to ascertain whether a fee has been paid and/or to confirm that the issuer is not subject to a fee.
- Obtaining a management representation that there is no past-due accounting support fee or that a petition appealing the amount of the fee has been filed.
- If a petition has been filed, obtaining a copy of the petition.
- Documenting the procedures performed and conclusions reached.

If, after performing the appropriate procedures outlined above the auditor determines that there is a past due accounting support fee, current PCAOB Rules² allow for certain exceptions as explained in the PCAOB Frequently Asked Questions (FAQs) as follows:

- Rule 7103(b)(1) does not prohibit a registered public accounting firm from signing an unqualified opinion, or issuing a consent to include an audit opinion issued previously, with respect to the financial statements of an issuer who has an outstanding past-due share of the accounting support fee if that issuer has a petition for correction pending as to that outstanding share.
- PCAOB Rule 7103(b)(2) allows for an exception when an issuer needs the auditor report or consent in order to submit a report to, or make a filing with the Commission or to issue securities. To avoid unnecessarily preventing issuers in these situations from submitting a report to, or making a filing with, the SEC or from issuing securities, Rule 7103(b)(2) creates a one-time, time-limited exception to the prohibition in Rule 7103(b)(1). This exception may be invoked once per assessment.
- Further, the Board does not enforce Rule 7103(b) against a registered public accounting firm that signs an unqualified audit opinion, or issues a consent to include an audit opinion issued previously, with respect to the financial statements of an issuer whose outstanding past-due shares of the accounting support fees of the PCAOB or the FASB total less than \$50 each.

Since adopting these rules and related FAQs, the PCAOB has developed its internal accounting and financial systems and has hired personnel and implemented mechanisms to identify and collect payment from delinquent issuers. When these rules were first adopted and implemented, the Board's mechanisms were in their infancy; and we appreciate why the Board may have believed the requirement that auditors ascertain whether there is a past due accounting support fee would serve as an appropriate means of collecting its fees. However, we believe the Board's systems and resources now in place provide such a function. We also recognize that the Board may prefer to have in place another mechanism (in addition to the collection actions the Board and its staff can take) to compel payment. We believe that the Board should consider alternative regulatory mechanisms or resources and not auditors for this purpose.

Issuers currently have sufficient incentive to pay the support fee in order to avoid paying late fees and violating SEC rules. Additionally, based on the PCAOB's financial statements, the PCAOB's collection rate has been close to 100% every year beginning in 2004 (approximately

² These exceptions continue to exist in the Proposed Rules.

99.7% for 2009 and 99.9% for each year prior to 2009).³ These collection rates, which have been high since the first year of funding, provide evidence that additional procedures by auditors to assist in collection efforts are unnecessary. The fact that the PCAOB is now seeking fees from brokers and dealers should not affect whether this mechanism remains in place. The PCAOB should not assume there will be any more difficulty collecting fees from the largest brokers and dealers than there has been in collecting fees from issuers.

Furthermore, under both current and Proposed Rules even if there is a past due fee, auditors are permitted in most cases to issue the report or consent. As a result, the intended outcome of the rules (i.e., to encourage payment of fees by not allowing an independent auditor to issue a report or consent) is unlikely to occur, and there does not appear to be a clear purpose for determining whether an accounting support fee is past due.

Based on the above, we recommend that the PCAOB delete current Rule 7103(b)(1) and not move forward with Proposed Rule 7104(b)(1). Following this recommendation, Rule 7103(b)(2) and Proposed Rule 7104(b)(2) would no longer be necessary.⁴

Alternatively, we understand pursuant to Note 1 to Proposed Rule 7104(b)(2) that an auditor may satisfy the obligation to “ascertain” whether there is a past due accounting support fee based solely on getting a management representation. This Note, however, may be perceived as contrary to the Proposed Rules. If the Board determines to move forward with the Proposed Rules, we recommend that the Board remove any uncertainty in this regard by inserting the word “solely” in Note 1 so that it is clear that the auditor’s only obligation with respect to this requirement is to obtain a management representation.

If you have any questions or would like to discuss these matters further, please do not hesitate to contact William Platt 203-761-3755. We thank you for your consideration of these matters.

Very truly yours,

/s/ Deloitte & Touche LLP

³ Collection rate information obtained from PCAOB Annual Reports.

⁴ Rule 7103(b)(2) currently requires that when an issuer has a past due fee and meets one of the exceptions explained in this letter, that the issuer submit to the Board a notice of the signing of the opinion or issuance of the consent no later than the next business day after the filing is made with the Commission. Under Proposed Rule 7104(b)(2), this would change such that the registered public accounting firm would be required to submit the notice to the Board. If the Board moves forward with the Proposed Rule 7104(b)(2) despite our objections, we believe this requirement should remain a requirement of the issuer, as it is the issuer that is past due with its accounting support fee payment, it is the issuer making the filing with the Commission, and a process is already in place for issuers to execute such notices.

cc: James Doty, PCAOB Chairman
Lewis Ferguson, PCAOB Member
Daniel L. Goelzer, PCAOB Member
Jay Hanson, PCAOB Member
Steven B. Harris, PCAOB Member
Martin F. Baumann, PCAOB Chief Auditor and Director of Professional Standards

Mary L. Schapiro, SEC Chairman
Luis A. Aguilar, SEC Commissioner
Kathleen L. Casey, SEC Commissioner
Troy A. Paredes, SEC Commissioner
Elisse B. Walter, SEC Commissioner
James L. Kroeker, SEC Chief Accountant
Brian T. Croteau, SEC Deputy Chief Accountant



KPMG LLP
757 Third Avenue
New York, NY 10017

Telephone 212 909 5600
Fax 212 909 5699
Internet www.us.kpmg.com

February 10, 2011

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

PCAOB Rulemaking Docket Matter No. 33
Proposal for the Allocation of the Board's Accounting Support Fee
Among Issuers, Brokers and Dealers, and Other Amendments to the Board's Funding Rules

Dear Mr. Secretary:

We appreciate the opportunity to comment on the Public Company Accounting Oversight Board's (the PCAOB or the Board) Release No. 2010-009, *Proposal for the Allocation of the Board's Accounting Support Fee Among Issuers, Brokers and Dealers, and Other Amendments to the Board's Funding Rules* (the Release). Our comments are focused solely on the proposal amendment to the Board's current Rule 7103.

Under the Board's current Rule 7103(b)(2), "[t]he *issuer* shall submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with the [U.S. Securities and Exchange] Commission" (the Commission) when the issuer is delinquent on their share of the accounting support fee. The Board is proposing an amendment to this rule, under proposed Rule 7104(b)(2), by requiring that the notice be filed by the registered public accounting firm *instead* of the issuer or broker and dealer. However, there is not a clear understanding as to the rationale for the change in this reporting requirement. We believe this requirement should not be amended and that it remain a requirement of the issuer for the following reasons: (i) it is the issuer that is delinquent with its share of the accounting support fee; (ii) it is the issuer that is filing its documents with the Commission; and (iii) a process has already been established with issuers under the existing rule. If the Board determines that this requirement should be amended as proposed, we recommend that the Board explain its rationale for the change in requirements relative to notifying the Board when an issuer, broker and dealer are delinquent on their share of the accounting support fee and an audit opinion or consent has been included in a filing to the Commission so there is a clear understanding by those affected by the change.

* * * * *

We appreciate the Board's careful consideration of our comments. If you have any questions regarding our comments or other information included in this letter, please do not hesitate to contact Sam Ranzilla, (212) 909-5837, sranzilla@kpmg.com, or Scott Frew, (212) 909-5804, sfrew@kpmg.com.

Very truly yours,

KPMG LLP



Office of the Secretary
Public Company Accounting Oversight Board
February 10, 2011
Page 2

cc: PCAOB Members and SEC Commissioners

PCAOB

James R. Doty, Chairman
Lewis H. Ferguson, Member
Daniel L. Goelzer, Member
Jay D. Hanson, Member
Steven B. Harris, Member
George Diacont, Director, Division of
Registration and Inspections

SEC

Mary L. Schapiro, Chairman
Luis A. Aguilar, Commissioner
Kathleen L. Casey, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
James L. Kroeker, Chief Accountant
Brian T. Croteau, Deputy Chief Accountant



February 9, 2011

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street N.W.
Washington, D.C. 20006-2803

RE: PCAOB Rulemaking Docket Matter No. 033

Dear Office of the Secretary:

McGladrey & Pullen, LLP appreciates the opportunity to comment on the PCAOB's *Proposal for Allocation of the Board's Accounting Support Fee among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules*. McGladrey & Pullen is a registered public accounting firm serving middle-market issuers, brokers, and dealers. As a registered public accounting firm, we are most impacted by the proposed amendments to the requirements in existing Rule 7103(b), "Determination of Payment of Accounting Support Fees by Registered Accounting Firm." Our comments, therefore, are limited to the proposed amendments to Rule 7103(b) and related portions of the Release.

Currently, if an issuer has a past-due share of the accounting support fee, the registered public firm is prohibited from signing an unqualified audit opinion with respect to that issuer's financial statements and from signing a consent to the use of prior audit opinions of that issuer. However, if an issuer has a past-due share of the accounting support fee at a time when the issuer must include an auditor's opinion or consent in a report or filing with the SEC, the issuer may rely on a 15-day exception to this prohibition if it timely submits a notice of such to the PCAOB. The Board is proposing an amendment to this exception in Rule 7103(b)(2) by requiring that the notice now be filed by the registered public accounting firm instead of the issuer.

When this exception was originally proposed in Release No. 2003-02, *Amended SEC Filing Form 19b-4*, the PCAOB stated, "This notice will not, however, be a condition to the accounting firm's reliance on this exception or to the validity of the audit opinion or consent." In Footnote 24 of the current Release, the Board reiterates that it is the issuer's circumstances that cause the issuer to need to rely upon this exception. We firmly believe that it is inappropriate to shift the reporting burden from the issuer to the registered public accounting firm, the issuer should continue to be required to file the related notice with the PCAOB, and the Rule should not be amended.

We would be pleased to respond to any questions the Board or its staff may have about these comments. Please direct any questions to either Scott Pohlman (952.921.7734) or Bruce Webb (515.281.9240).

Sincerely,

McGladrey & Pullen, LLP



February 9, 2011

J. Gordon Seymour
Office of the Secretary
PCAOB Headquarters
1666 K Street, N.W.,
Washington, D.C. 20006-2803

Re: Proposed Funding Rule Amendments for Allocating the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers; Docket Matter No. 33

Dear Mr. Seymour;

Thank you for the opportunity for the National Association of Independent Broker Dealers ("NAIBD") to comment on PCAOB Release 2010-009, Docket 033: Proposed Funding Rule Amendments for Allocating the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers. Please convey our comments to the Board.

NAIBD supported the expansion of PCAOB's authority throughout legislative considerations that culminated with the passage of the Dodd-Frank Bill. We recognize that with the expansion of authority comes a need for additional funding. Regarding this, we greatly appreciate the thoughtful consideration the PCAOB has given to establishing terms of funding that will not negatively impact small firms.

We support the PCAOB's proposal to have all fees paid by brokers with at least \$5 million in tentative net capital, and recognize that at this level, thousands of small firms are relieved from any new and/or additional fees.

Thank you again for the opportunity to comment on the Proposed Funding Rule.

Best regards,

A handwritten signature in black ink, appearing to read 'LRoth', written over a horizontal line.

Lisa Roth
Association Past-Chairman
Chair, NAIBD Member Advocacy Committee



Office of the Secretary
 Public Company Accounting Oversight Board
 1666 K Street, N.W.
 Washington, D.C.
 20006-2803

15 February 2011

Re: PCAOB Rulemaking Docket Matter No. 033, *Proposal for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules*

Dear Sir:

We appreciate the opportunity to respond to the Public Company Accounting Oversight Board's (the "Board") *Proposal for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules* (the "proposed Rule" or "proposal").

Proposed Rule 7104(b)(2) retains the exception in existing Rule 7103(b)(2) that a registered public accounting firm may (i) sign an unqualified audit opinion with respect to an issuer's financial statements or (ii) issue a consent to include an audit report issued previously, even though the issuer has outstanding a past-due share of the accounting support fee, under certain circumstances set forth in the Rule. We are supportive of retaining this exception; however, the proposed Rule requires the registered public accounting firm, rather than the issuer, to submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with the U.S. Securities and Exchange Commission (the "Commission"). We believe that the issuer, rather than the registered public accounting firm, should be responsible for submitting this notice to the Board, as is currently required by Rule 7103(b)(2), because the issuer is responsible both for the documents filed with the Commission and for its delinquency with its share of the accounting support fee. There is no discussion in the release of the Board's rationale for proposing this change to the existing process, and therefore its purpose is not clear. If the Board retains this provision when the proposal is finalized, we recommend that the Board explain its rationale for this change so that registered public accounting firms and issuers alike will understand its purpose.

* * * * *

We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the PCAOB staff or the Board may have. Please contact Michael J. Gallagher (973-236-4328), Brian R. Richson (973-236-5615) or Marc A. Panucci (973-236-4885) regarding our submission.

Sincerely

PricewaterhouseCoopers LLP

From: James Noble [mailto:James.Noble@smctermminus.com]
Sent: Thursday, January 27, 2011 11:38 AM
To: Comments
Subject: Comment on Proposed Funding Rules for B/D

Broker/Dealers are divided into two main groups: large firms (with more than 150 registered representatives) and small firms (with less than 150 registered representatives). We, with only 4 registered reps, are one of the smallest of the small firms. We don't even have any customers, customer accounts or inventory investments that are subject to haircuts. We have a difficult time keeping up with all the rules and regulations required for the small firms because many of the rules are not germane to us because of our size. Nonetheless, we have to incorporate all the FINRA and MSRB rules into our own Written Procedures Manual along with all the larger firms.

Along with keeping up with the many regulations and procedures, the costs of maintaining compliance seem to increase every year. Even though we are only have been in existence for three years, each year the regulators (FINRA, MSRB, SIPC, to name a few) seem to be able to create or increase another fee. It's one thing for firms with capitalizations in the multi-millions to be able to pay for the proposed increase in fees and assessments that PCAOB is proposing, but it is a sacrifice for a really small firm our size to have to come up with any additional assessments.

There is a growing feeling among us really small firms that FINRA and the other regulatory agencies and trying to eliminate us in favor of the few mega firms by 'fee-ing' and regulating us out of the market.

In conclusion, if the PCAOB wants to assess the larger firms for the accounting support fee, go for it. But, please, continue to leave us firms with less than \$5 million in net capital out of the equation. Then, we might be able to grow into one of the larger firms and gladly pay our fair share.

James W. Noble, CPA
CFO, Terminus Securities, LLC

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1666 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 207-9100
Facsimile: (202) 862-8430
www.pcaobus.org

BOARD FUNDING)

FINAL RULES FOR ALLOCATION OF)
THE BOARD'S ACCOUNTING)
SUPPORT FEE AMONG ISSUERS,)
BROKERS, AND DEALERS, AND)
OTHER AMENDMENTS TO THE)
BOARD'S FUNDING RULES)

PCAOB Release No. 2011-002
June 14, 2011

PCAOB Rulemaking
Docket Matter No. 033

Summary: After public comment, the Public Company Accounting Oversight Board ("PCAOB" or the "Board") is adopting amendments to its funding rules to provide for the equitable allocation and assessment among brokers and dealers of an appropriate portion of the accounting support fee established under the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The amendments also make certain revisions to the Board's existing rules for the allocation and assessment among issuers of an appropriate portion of the accounting support fee. The funding rules are in Section 7 of the PCAOB Rules and related definitions are in PCAOB Rule 1001. Certain issuers, brokers, dealers, and registered accounting firms are affected by the amendments to the Board's funding rules. The amendments will take effect upon approval by the U.S. Securities and Exchange Commission ("SEC" or "Commission").

Board

Contacts: Robert E. Burns, Associate General Counsel (202/207-9153, burnsr@pcaobus.org); Nina Mojiri-Azad, Assistant General Counsel (202/207-9035, mojiriazadn@pcaobus.org); or Annie Braswell, Manager of Accounting (202/207-9223, braswella@pcaobus.org).



RELEASE

I. Introduction

Section 109 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), as originally enacted, provided that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms^{1/}) would be collected from issuers^{2/} based on each issuer's relative average, monthly equity market capitalization.^{3/} The amount due from issuers was referred to as the Board's "accounting support fee."

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act^{4/} (the "Dodd-Frank Act") granted the Board oversight of the audits of brokers and dealers registered with the Commission.^{5/} To provide funds for the Board's oversight of those audits, the Dodd-Frank Act amended Section 109 of the Sarbanes-Oxley Act to require that the Board allocate a portion of the accounting support fee among brokers and dealers, or classes of brokers and dealers, based on their relative "net capital (before or after any adjustments)."^{6/}

^{1/} Section 102(f) of the Sarbanes-Oxley Act, states that registered public accounting firms shall pay fees sufficient for the Board to recover the costs of processing and reviewing registration applications and annual reports.

^{2/} Section 2(a)(7) of the Sarbanes-Oxley Act and PCAOB rules define "issuer" to mean an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 ("Exchange Act")), the securities of which are registered under Section 12 of the Exchange Act, or that is required to file reports under Section 15(d) of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn. See PCAOB Rule 1001(i)(iii).

^{3/} Section 109(g) of the Sarbanes-Oxley Act.

^{4/} Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

^{5/} For information regarding the audit of brokers' and dealers' financial statements and examination of reports regarding compliance with Commission requirements, see generally Rule 17a-5 under the Exchange Act and related SEC rules and forms.

^{6/} Sections 109(d)(2) and 109(h) of the Sarbanes-Oxley Act, which state, in part, that amounts due from brokers and dealers "shall be in proportion to the net capital of the broker or dealer (before or after any adjustments)."



RELEASE

Accordingly, on December 14, 2010, the Board published for public comment proposed amendments to its funding rules to provide for a portion of the accounting support fee to be allocated among brokers and dealers with average, quarterly tentative net capital of greater than \$5 million.^{7/}

In addition to the proposals related to brokers and dealers, the Board proposed amendments to its funding rules with respect to the allocation of the accounting support fee among issuers. The Board proposed amendments to revise the basis for calculating an issuer's market capitalization to include the market capitalization of all classes of the issuer's voting and non-voting common equity. The Board also proposed to increase the average, monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies. Further, based on eight years' experience administering the funding process, the Board proposed technical amendments to the funding rules.

The Board sought comment on all aspects of the proposed rules. The Board received eight comments in total, consisting of four comments from accounting firms, two from associations of accountants or auditors, one from an organization representing independent broker-dealers, and one from a small broker and dealer. Generally, commenters supported the amendments. Accordingly, the rules are being adopted as proposed. Comments from auditing firms and an organization of auditing firms, however, raised issues with one funding rule related to procedures designed to assure collection of the accounting support fee from issuers, brokers, and dealers. For the reasons discussed below, that rule also is being adopted as proposed.

The appendix to this release presents the amendments as incorporated into the Board's rules.

^{7/} PCAOB Release No. 2010-009, *Board Funding: Proposal for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules* (December 14, 2010); PCAOB Rulemaking Docket Matter No. 033 (the "proposing release").



RELEASE

II. Brokers and Dealers

As amended by the Dodd-Frank Act, Section 109 of the Sarbanes-Oxley Act requires that the rules of the Board provide for the equitable allocation, assessment, and collection by the Board of the accounting support fee among issuers, brokers, and dealers, and allow "for differentiation among classes of issuers, brokers, and dealers, as appropriate."^{8/} This section further provides that "[t]he amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board."^{9/}

Accordingly, the Board is adopting amendments to its funding rules to allocate a portion of the accounting support fee among brokers and dealers,^{10/} to establish classes of brokers and dealers for funding purposes, to describe the methods for allocating the appropriate portion of the accounting support fee to each broker and dealer within each class, and to address the collection of the assessed share of the broker-dealer accounting support fee from brokers and dealers.

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, the PCAOB is to begin the allocation, assessment, and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board's 2011 fiscal year. Accordingly, the amendments to its funding rules for brokers and

^{8/} Section 109(d)(2) of the Sarbanes-Oxley Act. Pursuant to Section 109(e) of the Sarbanes-Oxley Act, the Financial Accounting Standards Board ("FASB") accounting support fee is to be allocated among issuers. Brokers and dealers therefore will not be allocated a portion of the FASB annual accounting support fee.

^{9/} Section 109(h)(3) of the Sarbanes-Oxley Act.

^{10/} The PCAOB is amending its rules to add definitions of "broker" and "dealer" consistent with the definitions that the Dodd-Frank Act added to Section 110 of the Sarbanes-Oxley Act. These definitions incorporate the definition of "broker" in Section 3(a)(4) of the Exchange Act and "dealer" in Section 3(a)(5) of the Exchange Act, but only include those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement certified by a registered public accounting firm. See Sections 110(3) and (4) of the Sarbanes-Oxley Act.



RELEASE

dealers are effective, subject to approval by the SEC, for the allocation, assessment, and collection of the accounting support fee for brokers and dealers in 2011.^{11/}

A. The Broker-Dealer Accounting Support Fee

The Report of the Senate Committee on Banking, Housing, and Urban Affairs that accompanied the legislation that would become the Dodd-Frank Act stated:

The Committee expects that the PCAOB will reasonably estimate the amounts required to fund the portions of its programs devoted to the oversight of audits of brokers and dealers, as contrasted to the oversight of audits of issuers, in deciding the total amounts to be allocated to, assessed, and collected from all brokers and dealers.... Cost accounting for each program is not required.^{12/}

In accordance with this expectation, the Board each year will reasonably estimate amounts required to fund the portions of the Board's programs devoted to the oversight of audits of issuers and the amounts required to fund the portions of its programs devoted to the oversight of the audits of brokers and dealers. At the time the Board establishes a total accounting support fee, it also will allocate the respective portions of the total accounting support fee among issuers (the "issuer accounting support fee") and among brokers and dealers (the "broker-dealer accounting support fee"). In accordance with Section 109(b) of the Sarbanes-Oxley Act, the Board's budget, which includes the total accounting support fee and the portion of the total accounting support fee to be allocated to issuers and the portion to be allocated to brokers and dealers, is subject to the Commission's approval.

B. Classes of Brokers and Dealers

The Board is establishing classes of brokers and dealers for funding purposes to allow for the equitable distribution of the accounting support fee. Establishing classes allows the Board to allocate the broker-dealer accounting support fee to those brokers and dealers whose audits, due to their relative size and complexity, may require more Board time and resources during an inspection than other audits of brokers and dealers with relatively small and less complex operations.

^{11/} The Board expects that the initial allocation, assessment, and collection of the accounting support fee for brokers and dealers will take place during the fall of 2011.

^{12/} S. Rep. No. 176, 111th Cong., 2d Sess. (April 30, 2010) at 154.



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Further, because Section 109 requires that allocations be based on a broker's or dealer's net capital "before or after any adjustments," the Board is basing the classes of brokers and dealers on the average "tentative net capital" reported at the end of the calendar quarters during the previous calendar year. "Tentative net capital" is defined in the Board's rules to have the same meaning that the term has in Rule 15c3-1(c)(15) under the Exchange Act.^{13/} This definition generally provides that the "tentative net capital" of a broker or dealer is its net capital before deducting certain securities haircuts and changes in inventory used in calculating the broker's or dealer's net capital. Because the investment decisions made by a broker or dealer can influence the amount of these deductions and thus influence the net capital calculation, "tentative net capital" may be a more consistent basis for allocation of the broker-dealer accounting support fee. Both net capital and tentative net capital amounts are reported by brokers and dealers on their quarterly FOCUS reports filed on Form X-17A-5.^{14/}

In considering the effect of this measurement criterion at the proposal phase, the Board reviewed the tentative net capital of 4,656 brokers and dealers as of the third and fourth quarters of 2009 and the first and second quarters of 2010.^{15/} Registered brokers and dealers had average, quarterly tentative net capital amounts for the four quarters ranging up to approximately \$15.8 billion. Thirty-three brokers and dealers, however, held approximately 80.1% of the total average, quarterly tentative net capital maintained by all 4,656 brokers and dealers. In addition, only 120 brokers and dealers each had average, quarterly tentative net capital in excess of \$100 million, 452 brokers and dealers each had average, quarterly tentative net capital in excess of \$10 million, and 638 brokers and dealers had average, quarterly tentative net capital in excess of \$5 million. The Board has reviewed the tentative net capital of 4,750 brokers and dealers

^{13/} "Tentative net capital" is the net capital of a broker or dealer before certain adjustments. See Rule 15c3-1(c)(15) under the Exchange Act.

^{14/} See generally, Rule 17a-5 under the Exchange Act. The tentative net capital and net capital amounts may be reported in Part I, II, and IIA of the FOCUS report and are unaudited.

^{15/} The data used by the Board for these purposes represents data for brokers and dealers that (i) are members of Financial Industry Regulatory Authority ("FINRA") and have designated FINRA as their designated examining authority ("DEA"); or (ii) are members of FINRA and have designated another self-regulatory organization as their DEA but file FOCUS information with FINRA on a voluntary basis.



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as of the four calendar quarters of 2010 and noted no significant differences with amounts reviewed during the proposal phase of this project.

Approximately 86.3% of the brokers and dealers included in the statistics reviewed by the staff have average, quarterly tentative net capital of less than \$5 million. At the same time, the total average, quarterly tentative net capital for all brokers and dealers in that group was approximately 1.1% of the total average, quarterly tentative net capital for all brokers and dealers. Conversely, approximately 13.7% of all brokers and dealers have approximately 98.9% of the total average, quarterly tentative net capital.

Based on the above analysis, which illustrates the significant number of brokers and dealers with average, quarterly tentative net capital of less than \$5 million, the Board is establishing two classes of brokers and dealers for purposes of the accounting support fee: (1) those with average, quarterly tentative net capital greater than \$5 million and (2) those with average, quarterly tentative net capital less than or equal to \$5 million or not filing audited financial statements pursuant to a Commission rule or other action of the Commission or its staff (sometimes referred to as a "\$5 million threshold" in this release).^{16/} The average would be based on the tentative net capital as of the end of the calendar quarters of the calendar year immediately prior to the Board's calculation of the broker-dealer accounting support fee.^{17/}

^{16/} Brokers or dealers with larger tentative net capital amounts may be "clearing" or "carrying" brokers and dealers rather than "introducing" brokers and dealers. Because of the nature of their businesses, audits of the compliance reports for clearing or carrying brokers and dealers may require more testing and documentation than audits of introducing brokers and dealers. PCAOB inspections of audits of brokers' and dealers' financial statements and examinations of reports regarding compliance with Commission and regulatory requirements of brokers and dealers with larger amounts of tentative net capital, consequently, may require more Board resources.

^{17/} Brokers and dealers generally file quarterly reports within 17 business days after the end of the calendar quarter. See, for example, Rules 17a-5(a)(2)(ii) and (iii) under the Exchange Act.



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C. Allocation of the Broker-Dealer Accounting Support Fee

Consistent with Section 109 of the Sarbanes-Oxley Act, the PCAOB funding rules being adopted today allocate to brokers and dealers in the class with average, quarterly tentative net capital greater than \$5 million a share of the broker-dealer accounting support fee based on a ratio where the numerator is the average, quarterly tentative net capital of the broker or dealer for the calendar quarters of the immediately prior calendar year and the denominator is the sum of the average, quarterly tentative net capital of all the brokers and dealers in this class.

Under the funding rules being adopted today, brokers and dealers with average, quarterly tentative net capital equal to or less than \$5 million will be allocated a share of the broker-dealer accounting support fee equal to zero.^{18/} The Board chose the \$5 million tentative net capital threshold because it was concerned that, due to the concentration of the industry's aggregate tentative net capital among relatively few brokers and dealers, the allocation of the broker-dealer accounting support fee below the \$5 million threshold could impose a relatively costly administrative burden on many smaller brokers and dealers. At the same time, based on the Board's analysis, allocating a share of the broker-dealer accounting support fee equal to zero to such small entities should have a negligible effect on the share of the broker-dealer accounting support fee allocated to the larger brokers and dealers.

^{18/} Assigning a broker or dealer a share of the accounting support fee equal to zero when its average, quarterly tentative net capital is equal to or less than \$5 million does not affect the Board's oversight of the audits of that broker or dealer. The Dodd-Frank Act amendments to the Sarbanes-Oxley Act state that if the Board establishes a program of inspection for audits of brokers and dealers, it shall consider whether differing inspection schedules are appropriate for auditors of brokers or dealers that do not receive, hold, or handle customer securities, and that the Board may exempt certain auditors from its inspection program and, consequently, from registration with the Board. See Section 104(a)(2) of the Sarbanes-Oxley Act. Any Board decisions in these matters would be made only after additional rulemakings specific to the Board's inspection and registration programs for auditors of brokers and dealers and would be subject to Commission approval. If the Board decides at a later time that auditors of certain groups of brokers or dealers are exempt from the Board's inspection program and, therefore, eligible to withdraw from registration with the PCAOB, no share or portion of any accounting support fee paid by any broker or dealer would be refundable.



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For example, based on the data for the third and fourth quarters of 2009 and the first and second quarters of 2010, assuming a broker-dealer accounting support fee of \$15 million,^{19/} if no average, quarterly tentative net capital threshold was applied, 1,557 brokers and dealers would be allocated a share of the broker-dealer accounting support fee of \$100 or more.^{20/} The aggregate share of the broker-dealer accounting support fee allocated to brokers and dealers with average, quarterly tentative net capital of \$5 million or less, however, would be \$141,700, representing 0.9% of the assumed \$15 million broker-dealer accounting support fee.

Under the \$5 million threshold, assuming a broker-dealer accounting support fee of \$15 million, approximately 638 brokers and dealers would be allocated a share of the broker-dealer accounting support fee. Under this threshold, 919 fewer brokers and dealers are allocated a share of the broker-dealer accounting support fee. In addition, under the \$5 million threshold, the share of the broker-dealer accounting support fee assessed to brokers and dealers with average, quarterly tentative net capital less than \$45 million (but above the \$5 million threshold) would be the same as under the no threshold scenario discussed above.^{21/} The share of the broker-dealer accounting support fee assessed to brokers and dealers with average, quarterly tentative net

^{19/} On November 23, 2010, the Board approved its 2011 budget, which included a total accounting support fee of approximately \$202.3 million. The allocated portion of the total accounting support fee to brokers and dealers, which is referred to as the broker-dealer accounting support fee, was approximately \$14.4 million for 2011. There is no assurance that future broker-dealer accounting support fees will be the same as the 2011 broker-dealer accounting support fee.

^{20/} The allocated share for each of the remaining 3,099 brokers and dealers would be less than \$50 and, therefore, under the Board's rules rounded down to zero. See PCAOB Rule 7103(a).

^{21/} The allocated share of the broker-dealer accounting support fee for 48 out of 441 brokers and dealers with average, quarterly tentative net capital between \$5 million and \$45 million may increase by \$100 because the additional allocated amount would result in the unrounded allocated share being \$50 more than a multiple of \$100 and, therefore, under the Board's rules rounded up to the nearest \$100. See PCAOB Rule 7103(a). For a more detailed discussion of the Board's analysis, see the proposing release.



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capital greater than \$45 million under the \$5 million threshold would increase by less than 2.0% of the assessed share of the fee under the no threshold scenario.

Because the accounting support fee will be divided into an issuer accounting support fee and a broker-dealer accounting support fee, it is possible that affiliated entities may be allocated separate shares of both the issuer and broker-dealer accounting support fees. For example, if an issuer has one or more broker or dealer subsidiaries, the issuer may be allocated a share of the issuer accounting support fee and each broker or dealer subsidiary may be allocated a share of the broker-dealer accounting support fee. The allocations are designed to support oversight programs tailored to the audits of different types of entities. The issuer is responsible for payment of the allocated share of the issuer accounting support fee and each broker-dealer subsidiary is responsible for payment of its allocated share of the broker-dealer accounting support fee.

D. Collection

The Board is adopting amendments to its rules regarding the assessment and collection of the accounting support fee to include appropriate references to brokers and dealers.

Currently, if a share of the accounting support fee allocated to an issuer is past-due^{22/} and the issuer has not filed a petition with the Board seeking correction of its assigned share, then, with certain exceptions, no registered public accounting firm is permitted to sign an unqualified audit opinion with respect to that issuer's financial statements or to sign a consent to the use of prior audit opinions for that issuer. The same concept is being extended to brokers and dealers in that no registered public accounting firm is permitted to sign an audit report or a document, report, notice, or other record concerning procedures or controls for a broker or dealer if its share of the broker-dealer accounting support fee is past-due and no petition for correction has been filed. In addition, for issuers with one or more broker or dealer subsidiaries, if the share

^{22/} Pursuant to PCAOB Rule 7104(a), payment is due 30 days after the notice setting forth the allocated share of the accounting support fee to the issuer is sent. Under the Board's current rules, the "notice" referenced in Rule 7104(a) relates to the document sent by the Board setting forth an entity's share of the accounting support fee under Section 109 of the Sarbanes-Oxley Act and the Board's funding rules. The Board is adopting amendments to replace the term "notice" with "invoice" in its funding rules so as not to cause any confusion with the definition of "audit" and "audit report," which both now contain a reference to "notice."



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of the accounting support fee allocated either to the issuer or any of its broker or dealer subsidiaries is past due and no petition for correction has been filed with respect to that share, no registered public accounting firm may sign an audit report for that issuer.

As explained in the proposing release, to avoid unnecessarily preventing issuers from timely access to the capital markets, the funding rules contain a limited exception to this prohibition on the signing of audit reports and the issuance of consents. The exception was originally adopted because an issuer may have a past-due share of the accounting support fee at a time when, in order to access or preserve its ability to access the capital markets in a timely manner, the issuer needs to submit a report to, or make a filing with, the Commission and the issuer must include an auditor's opinion or consent in that report or filing. If circumstances cause an issuer to rely upon the exception, however, the funding rules have required the issuer to submit an electronic notice to the Board no later than the next business day after the filing is made with the Commission.^{23/} The rule limits the use of the exception to a single 15 business day period beginning on the earlier of the date of the filing with the Commission or the date of the notice to the Board.

The Board is extending this exception so that it will be available when brokers and dealers, including brokers or dealers that are subsidiaries of issuers, have an outstanding past-due share of the accounting support fee. Under the rules being adopted today, therefore, if the conditions of the rule are met, a registered public accounting firm may sign an unqualified audit opinion or provide a consent to the use of a previously issued audit report with respect to the financial statements of not only an issuer but also a broker or dealer even though the issuer, broker, dealer, or a broker or dealer subsidiary of an issuer, has outstanding a past-due share of the accounting support fee and has not filed a petition for correction. For example, if a broker subsidiary of an issuer has an outstanding past-due share of the broker-dealer accounting support fee, and the broker subsidiary needs an audit report in order to submit a report to, or make a filing with, the Commission, then, provided the specific conditions in Rule 7104(b) are met, the subsidiary's registered public accounting firm is permitted to sign an unqualified audit opinion with respect to that broker subsidiary's financial statements or issue a consent to include an audit report issued previously.

^{23/} See PCAOB Release No. 2003-02, Amended SEC Filing Form 19b-4 (June 30, 2003). As discussed elsewhere in this release, the Board is amending this rule to require that the notice be filed by the registered public accounting firm instead of the issuer.



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Under the terms of the rule, however, the exception may be invoked only once with respect to any share of the accounting support fee that a broker or dealer is assessed in a given year.^{24/} Accordingly, using the example above, the exception could not be invoked again with respect to the outstanding broker-dealer accounting support fee balance if the broker's issuer parent later needs an audit report in order to submit a report to, or make a filing with, the Commission. The outstanding broker-dealer accounting support fee balance would have to be paid before the issuer parent's registered public accounting firm signs an unqualified audit opinion or issues a consent to include an audit report issued previously with respect to that issuer's financial statements. After the broker-dealer accounting support fee is paid, however, the issuer parent could invoke the exception with respect to an outstanding, past-due share of the issuer's accounting support fee.

A note added to the funding rules states that for the purposes of the prohibition on signing unqualified audit reports for issuers, brokers, and dealers with past-due shares of the accounting support fee, the term "audit" means an examination of the financial statements, reports, documents, procedures, controls, and notices of any issuer, broker, or dealer by a registered accounting firm for the purpose of expressing an opinion on the financial statements or providing an audit report. "Audit report" in these circumstances means a document, report, notice, or other record prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws and in which the auditor either (i) sets forth an opinion of the firm regarding the financial statement, report, notice, or other document, procedures, or controls, or (ii) asserts that no such opinion can be expressed.^{25/} These are the same definitions found in new Section 110 of the Sarbanes-Oxley Act. These definitions recognize that auditors today not only examine entities' financial statements but, for larger issuers, auditors also examine internal

^{24/} See PCAOB Rule 7104(b), which states "[t]his exception to paragraph (b)(1) of this Rule . . . may not be invoked for more than one such period with respect to any share of the accounting support fee that the issuer, broker, or dealer is assessed under Rule 7103."

^{25/} In connection with other rulemaking projects, the Board may consider amending its rules to apply more broadly the definitions of "audit" and "audit report" in Section 110 of the Sarbanes-Oxley Act. If such rulemaking occurs, the Board may revisit the need for this Note in the funding rules.



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control over financial reporting, and, for brokers and dealers, auditors further issue mandated reports under Rule 17a-5 and other applicable regulations.

In addition, consistent with the provisions in the funding rules applicable to issuers, the revised funding rules provide that if the Board does not receive payment within 30 days of a broker or dealer being notified of its share of the accounting support fee, the payment will be deemed past due and interest will accrue at a rate of 6% per year. If payment is not received by the 90th day after the original notice was sent, the Board may report the nonpayment to the Commission or the broker's or dealer's designated examining authority, which may pursue appropriate disciplinary action in accordance with its rules.^{26/} Section 109(h)(1) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

E. Public Comment Process and Board Responses

In response to the proposed rules, the Board received three comment letters that addressed establishing classes of brokers and dealers and allocating the broker-dealer accounting support fee. Commenters supported these rules and, in particular, the proposal to have portions of the fee paid only by brokers and dealers with at least \$5 million in tentative net capital.^{27/}

Additional commenters raised issues regarding re-designated Rule 7104(b), *Determination of Payment of Accounting Support Fees by Registered Accounting Firm*. This rule is designed to encourage payment of the accounting support by issuers, brokers, and dealers by prohibiting auditors from signing certain audit opinions and consents to the use of prior opinions unless the appropriate fee has been paid to the PCAOB. An exception to this prohibition, however, is available under specific circumstances. If under the circumstances described in Rule 7104(b) a registered public accounting firm signs an unqualified audit opinion or issues a consent to include an audit report issued previously, that firm must submit a notice to the Board that it and the issuer, broker, or dealer are relying on the exception.^{28/} The commenters

^{26/} For issuers, nonpayment of PCAOB accounting support fee would continue to be a violation of Section 13(b)(2)(C) of the Exchange Act.

^{27/} Letters from the National Association of Independent Broker Dealers, Terminus Securities LLC, and the California Society of Certified Public Accountants.

^{28/} See note 23, *supra*.



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questioned whether the rule is necessary, opposed shifting the requirement to submit the notice from the issuer (or broker or dealer)^{29/} to the auditor,^{30/} and one commenter requested that Note 1 to this rule include the word "solely" to indicate that an auditor may determine that the fee has been paid solely by obtaining a representation from management to that effect.^{31/}

The Board adopted the predecessor to new Rule 7104(b) in 2003 as part of the original funding rules. As stated in the adopting release for the funding rules in 2003, the collection measures in the rules are intended to ensure the reliability of the independent funding source the Sarbanes-Oxley Act provides for the Board and to promote fairness to all entities allocated a share of the accounting support fee.^{32/} This rule may be part of the reason collection of the accounting support fee has worked as intended and the Board has experienced a high collection rate of the accounting support fee. Accordingly, subject to Commission approval, the rule will continue to be part of the Board's funding rules.

Some commenters opposed shifting to auditors the requirement to submit a notice to the Board that the exception in Rule 7104(b) has been used and that an auditor opinion or consent has been signed and filed with the Commission despite non-payment of the accounting support fee. These commenters indicated that the issuer, and potentially the broker or dealer, should make this submission because (1) it is the issuer (or broker or dealer) that is delinquent with its share of the fee, (2) it is the issuer (or broker or dealer) that is filing its documents with the Commission, and (3) a process already has been established with issuers under the existing rule.^{33/} One commenter noted statements in the proposing release expressing that it is the issuer's

^{29/} The original PCAOB rule applied only to issuers. The amended rule applies to issuers, brokers, and dealers.

^{30/} See the letters from the Center for Audit Quality; Deloitte & Touche LLP; KPMG LLP; McGladrey & Pullen, LLP; and PricewaterhouseCoopers LLP.

^{31/} See the letter from Deloitte & Touche LLP.

^{32/} See Board Funding: Establishment of Accounting Support Fee, PCAOB Release No. 2003-003 (April 18, 2003).

^{33/} See the letters from the Center for Audit Quality; Deloitte & Touche LLP; KPMG LLP; McGladrey & Pullen, LLP; and PricewaterhouseCoopers LLP.



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circumstances that cause the use of the exception and that submission of the notice is not a condition for reliance on the exception and does not affect the validity of the auditor's opinion or consent. The commenter indicated that given those statements, it is not appropriate to shift the burden for the notice to the auditor.^{34/}

Shifting the responsibility to the auditor to make the submission, however, better aligns the rule with the Board's general oversight authority over registered public accounting firms. Furthermore, over the past eight years, the Board has received only a few notices under this rule. A cursory review of SEC filings by issuers with outstanding accounting support fee balances, however, provides anecdotal evidence that more notices should have been filed. Such omissions to file might be due to issuers being relatively unfamiliar with PCAOB rules or unaware of the potential consequences of not complying with a PCAOB rule. Auditors should be more familiar with the Board's rules. Also, placing the obligation on auditors to file such notices may make application of the rule more readily subject to the Board's review. Accordingly, the rule is being adopted as proposed.

Finally, one commenter asked that the word "solely" be added to Note 1 to proposed Rule 7104(b) in order to make clear that to satisfy the obligation to determine that the fee has been paid by the issuer, broker, or dealer, the auditor only has to receive a management representation to that effect.^{35/} While the Board has said that it is sufficient if an auditor determines an issuer's payment of the accounting support fee by obtaining a management representation of payment,^{36/} auditors also may determine such payments through other means. For example, an auditor also may determine an issuer's payment of the accounting support fee by checking the "List of Issuers with No Outstanding Past-Due Share of the Accounting Support Fee" that is posted on the Board's website.^{37/} Adding the word "solely" to the Note could result in some firms

^{34/} See the letter from McGladrey & Pullen, LLP.

^{35/} See the letter from Deloitte & Touche LLP.

^{36/} See Question 26 of the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, dated April 22, 2011. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

^{37/} The list is located at http://pcaobus.org/About/Ops/Documents/Support%20Fee/Issuers_Paid.pdf.



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mistakenly believing that the Board prefers management representations over other equivalent means of determining such payments. The rule, therefore, is being adopted as proposed.

III. Issuers

The Board also is adopting amendments to its existing rules for the allocation, assessment, and collection of the issuer accounting support fee. The amendments to the issuer funding rules are effective, subject to approval by the Commission, for the allocation, assessment, and collection of the 2012 accounting support fee for issuers.^{38/}

A. Definitions of Market Capitalization and Common Equity

The Board's rules historically have defined the terms "issuer market capitalization" and "market capitalization of an issuer" to be the aggregate market value of all classes of an issuer's common stock that trade in the United States. Determining an issuer's market capitalization based on its outstanding common stock, however, has led to interpretive issues, such as whether an entity's "common stock" includes limited partnership units or interests, securities convertible into common stock, rights or options to purchase common stock, and other categories of securities.

To reduce issues regarding the meaning of "common stock" in the Board's rules, the Board is amending the definition of "issuer market capitalization" and "market capitalization of an issuer" to replace the reference to "common stock" with a reference to "voting and non-voting common equity." As amended, references in the Board's rules to an issuer's "market capitalization" are to the issuer's aggregate market value of all classes of voting and non-voting common equity traded in the United States.^{39/}

The definition of "common equity" being adopted by the Board tracks the definition in Rule 12b-2 under the Exchange Act. As applied by the Board for funding purposes, the amount of common equity considered in deriving an issuer's market capitalization is based on any class of common stock or equivalent interest, any beneficial interest in a trust or a limited partnership interest, and any other security that the Commission, by rule, deems to treat as common equity.

^{38/} The Board's allocation, assessment, and collection of the accounting support fee for issuers typically takes place during the first half of the Board's fiscal year.

^{39/} See PCAOB Rule 1001(i)(i)(1).



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B. Classes of Issuers

The Board also is adopting amendments to the descriptions of the existing classes of issuers. The funding rules adopted by the Board in 2003 identified four classes of issuers: (1) equity issuers whose average, monthly market capitalization during the preceding calendar year is greater than \$25 million, (2) investment company issuers (and entities that have elected to be regulated as business development companies) whose average, monthly market capitalization during the preceding calendar year is greater than \$250 million, (3) issuers that, as of the date the accounting support fee is calculated (i) do not have to file financial statements pursuant to Commission rule or other action of the staff of the Commission, (ii) are employee stock purchase, savings, and similar plans, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2 ("SLB No. 2"), and (4) all other issuers.

The Board is amending the description of the classes of issuers in two significant ways. First, the Board is raising the average, monthly market capitalization threshold for the first two classes of issuers. Second, the Board is changing the description of issuers that are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of SLB No. 2.

1. Change in Average, Monthly Market Capitalization Threshold

The Board is adopting amendments that raise the average, monthly market capitalization threshold during the preceding calendar year for the first class of issuers from \$25 million to \$75 million. Equity issuers with a market capitalization between \$25 million and \$75 million, therefore, are moving from the first class to the fourth class and will be allocated a share of the accounting support fee equal to zero. The Board notes that the aggregate issuer accounting support fee collected from equity issuers with average, monthly market capitalizations between \$25 million and \$75 million during the past seven years has been a relatively small part (less than 0.4%) of the Board's total accounting support fee from equity issuers.^{40/} At the same time, approximately 1,100

^{40/} The Board's use and calculation of \$75 million in market capitalization for funding purposes should not be confused with the criteria to determine whether an issuer is deemed an "accelerated filer," as defined by Rule 12b-2 under the Exchange Act. Under that rule, an issuer is an accelerated filer if, among other things, it has an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates (i.e., public float) of \$75 million or more as of the end of the entity's second quarter. See Release No. 33-8128 (September 5, 2002).



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equity issuers, representing approximately 22.6% of all equity issuers assessed a fee in 2010, have average, monthly market capitalization within that range.^{41/} In addition, not allocating a share of the issuer accounting support fee to these issuers appears to have a negligible effect on the amounts allocated to other issuers.

The Board similarly is raising the average, monthly market capitalization threshold for the second class of issuers consisting of investment company issuers (and business development companies) currently subject to allocation of the support fee from \$250 million to \$500 million.^{42/} Investment companies (including business development companies) with average, monthly market capitalizations between \$250 million and \$500 million, therefore, are moving from the second class to the fourth class and will be allocated a share of the accounting support fee equal to zero. The Board notes that the

^{41/} The aggregate FASB accounting support fee collected on behalf of FASB from equity issuers with average, monthly market capitalizations between \$25 million and \$75 million for the 2010 accounting support fee was a relatively small part (less than 0.4%) of the FASB accounting support fee from equity issuers despite the fact that approximately 1,100 equity issuers, representing approximately 22.6% of all equity issuers assessed a fee, have average, monthly market capitalization within that range.

^{42/} Under the Board's original funding rules, market capitalization for an investment company issuer whose shares are not traded on a national exchange or quoted on NASDAQ was the investment company's net asset value. As noted in the proposing release, since the Board's adoption of its funding rules in 2003, NASDAQ Stock Market LLC has become a national securities exchange under Commission rules. In light of this change, the Board proposed to revise PCAOB Rule 1001(i)(i)(2) by replacing the reference to NASDAQ with a reference to the "OTC Bulletin Board." After further consideration, however, the Board does not believe the proposed reference in the rule to the "OTC Bulletin Board" is necessary and believes it is preferable for its rules not to refer to any particular market that is currently in operation. Accordingly, PCAOB Rule 1001(i)(i)(2) is being amended today to replace the phrase "quoted on NASDAQ" with the phrase "whose share price is not otherwise publicly available." This is consistent with the current requirement contained in Rule 7101(a)(2), which references the public availability of the share price in describing investment company issuers eligible to be assessed a share of the issuer accounting support fee. Therefore, starting in 2012, the market capitalization for an issuer that is an investment company whose shares are not traded on a national exchange or whose share price is not otherwise publically available, will be the investment company's net asset value.



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aggregate fees collected from investment company issuers (including business development companies) with average, monthly market capitalizations between \$250 million and \$500 million during the past seven years have been a relatively small part (approximately 5.1%) of the Board's total accounting support fee from investment companies.^{43/} At the same time, approximately 1,450 investment companies, representing approximately 33.4% of all investment companies assessed a share of the issuer accounting support fee in 2010, have average, monthly market capitalization within that range.^{44/} In addition, as discussed below, not allocating a share of the issuer accounting support fee to these investment companies appears to have a negligible effect on the amounts allocated to other investment companies.

Raising the threshold for the first class of issuers from \$25 million in average, monthly market capitalization to \$75 million and raising the threshold for the second class of issuers from \$250 million in average, monthly market capitalization to \$500 million should have a negligible effect on the amounts allocated to issuers under Section 109 of the Sarbanes-Oxley Act.^{45/}

^{43/} Approximately 7.9% of the 2010 accounting support fee was allocated to investment companies. Under the Board's funding rules, when allocating the issuer accounting support fee to investment companies, 10% of the investment company issuer's actual average monthly market capitalization or net asset value is used in the calculation. Accordingly, the amount of the issuer accounting support fee allocated to investment companies over the past seven years has represented a relatively small portion (average of approximately 6.2%) of the total issuer accounting support fee assessed.

^{44/} The aggregate fees collected on behalf of FASB from investment company issuers (including business development companies) with average, monthly market capitalizations between \$250 million and \$500 million for the 2010 accounting support fee was a relatively small part (approximately 5.3%) of the FASB accounting support fee from investment companies despite the fact that approximately 1,450 investment companies, representing approximately 33.4% of all investment companies assessed a share of the FASB accounting support fee in 2010, have average, monthly market capitalization within that range.

^{45/} The changes to the thresholds for the first and second classes of issuers are also applicable to the allocation of the FASB accounting support fee, which pursuant to Section 109(e) of the Sarbanes-Oxley Act is allocated among issuers only.



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Generally, equity issuers with average, monthly market capitalization of approximately \$600 million or greater are likely to see an increase in their allocated share of the issuer accounting support fee.^{46/} Each entity's allocated share of the fee increases, however, by approximately 1% or less. For investment company issuers, on average, the allocated share of the accounting support fee increases for entities with average, monthly market capitalization of approximately \$4 billion or greater, with the entity's allocated share of the fee increasing by approximately 2% or less.^{47/} Accordingly, the amendments to the average, monthly market capitalization for class one and two issuers should not result in a significant increase in any issuer's assessed share of the accounting support fee.^{48/} The Board has reviewed the impact of increasing the threshold for equity company issuers and investment company issuers using the information from the allocation, assessment, and collection of the 2011 accounting support fee for issuers and noted no significant differences with amounts reviewed during the proposal phase of this project.

2. Modified Reporting Requirements of SLB No. 2

The Board also is amending the description of the class of issuers that are not assessed a share of the accounting support fee because they are in bankruptcy. As noted above, under the Board's funding rules adopted in 2003, issuers that are under the jurisdiction of a bankruptcy court and "satisfy the modified reporting requirements of

^{46/} The allocated share of the issuer accounting support fee for 465 out of 1,190 equity issuers with average, monthly market capitalization between \$75 million and \$600 million may increase by \$100 because the additional allocated amount could result in the unrounded allocated share being \$50 more than a multiple of \$100 and, therefore, under the Board's rules, rounded up to the nearest \$100. See PCAOB Rule 7103(a).

^{47/} The allocated share of the issuer accounting support fee for 327 out of 2,367 investment companies with average, monthly market capitalization between \$500 million and \$4 billion may increase by \$100 because the additional allocated amount could result in the unrounded allocated share being \$50 more than a multiple of \$100 and, therefore, under the Board's rules rounded up to the nearest \$100. See PCAOB Rule 7103(a).

^{48/} For a detailed discussion of the Board's analysis, see the proposing release.



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Commission Staff Legal Bulletin No. 2" are in the third class and are assigned a share of the accounting support fee equal to zero.^{49/}

SLB No. 2 states that an issuer under the jurisdiction of a bankruptcy court may request that the Commission's Division of Corporation Finance ("Division") provide a "no-action" letter indicating that the Division will not recommend enforcement action if the issuer files with the Commission modified reports in lieu of the reports required under the Exchange Act. SLB No. 2 describes the information and assertions that should be in a request for a "no-action" letter, including information related to the issuer's financial condition, prior compliance with Exchange Act filing requirements, the timing of the announcement by the issuer of its bankruptcy filing, the issuer's ability to continue to file Exchange Act reports, and a description of the current market for and trading in the issuer's securities.^{50/}

Although acceptance of modified reports is at the discretion of the Commission staff, there is no requirement in SLB No. 2 or elsewhere that an issuer in bankruptcy ask the Division for a "no-action" letter prior to filing modified reports. Such "no-action" requests are voluntary. An issuer in bankruptcy may choose to file modified reports without providing the Division with the information and assertions in SLB No. 2.^{51/} Because the Board's funding rules, however, are based on whether an issuer has "satisf[ie]d the modified reporting requirements" of SLB No. 2, when the issuer has not requested or not received a "no-action" letter from the Division, the PCAOB staff has been placed in the position of having to evaluate available public information to determine whether the conditions in SLB No. 2 are satisfied. To address such situations, PCAOB staff generally has requested that issuers provide an analysis

^{49/} SEC Staff Legal Bulletin No. 2 (CF) (April 15, 1997), available at <http://sec.gov/interps/legal/slbcf2.txt>, reflects the views of the Commission's Division of Corporation Finance that companies under the jurisdiction of a bankruptcy court are not relieved of their reporting obligations under the securities laws but, upon the satisfaction of certain conditions, may file reports that "differ in form or content" from the reports required under the Exchange Act.

^{50/} Id.

^{51/} The Commission may deem such a filing to be deficient and not to satisfy the issuer's obligations under the Exchange Act and Commission rules and forms.



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demonstrating its compliance with the conditions set forth in SLB No. 2 and/or an opinion of counsel that the issuer meets the conditions set forth in SLB No. 2.^{52/}

The Board is amending its rules to require that in order to be assigned a share of the accounting support fee equal to zero, an issuer that is subject to the jurisdiction of a bankruptcy court and asserts that it falls within the third class of issuers provide an opinion of counsel that the issuer satisfied the modified reporting requirements of Commission Staff Legal Bulletin No. 2 as of the date that the issuer accounting support fee is calculated. This amendment is consistent with the staff's past practices as noted above. The impact of this amendment is believed to be negligible on the amounts allocated and assessed to issuers under Section 109 of the Sarbanes-Oxley Act.^{53/}

C. Public Comment Process and Board Responses

One commenter supported the Board's proposals to amend the basis for calculating the issuer's market capitalization to include the market capitalization of all classes of an issuer's voting and non-voting common equity and to increase the average monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies.^{54/} The Board did not receive any comments on the proposed description of the class of issuers that are not assessed a share of the accounting support fee because they are in bankruptcy.

As noted above, additional commenters raised issues regarding re-designated Rule 7104(b), *Determination of Payment of Accounting Support Fees by Registered Accounting Firm*. This rule is designed to encourage payment of the accounting support fee by issuers, brokers, and dealers by prohibiting auditors from signing certain audit opinions and consents to the use of prior opinions unless the appropriate fee has been paid to the PCAOB. An exception to this prohibition, however, is available under specific circumstances and conditions, including the submission of a notice to the Board

^{52/} See Question 15 of the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, dated April 22, 2011. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

^{53/} For the 2008-2010 accounting support fees, 26 equity issuers that were allocated a share of the accounting support fee had filed for bankruptcy.

^{54/} See the letter from the California Society of Certified Public Accountants.



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that the auditor and the issuer, broker or dealer are relying on the exception.^{55/} The commenters questioned whether the rule is necessary, opposed shifting the requirement to submit the notice from the issuer (or broker or dealer)^{56/} to the auditor,^{57/} and one commenter requested that Note 1 to this rule include the word "solely" to indicate that an auditor may determine that the fee has been paid solely by obtaining a representation from management to that effect.^{58/} For the reasons discussed above in part II.E. of this release, the rule is being adopted as proposed.

IV. Other amendments to the Board's Funding Rules

The Board also is adopting certain technical changes to its funding rules. The most significant of these changes are listed below.

- Rule 7100 – The Board is making certain changes to Rule 7100 to reflect that the Board establishes a total accounting support fee each year as part of its budget process.^{59/} In addition, the amendment to Rule 7100 reflects the Board's obligation under Section 109 of the Sarbanes-Oxley Act to equitably

^{55/} See note 23, *supra*.

^{56/} The original PCAOB rule applied only to issuers. The amended rule applies to issuers, brokers, and dealers.

^{57/} See the letters from the Center for Audit Quality; Deloitte & Touche LLP; KPMG LLP; McGladrey & Pullen, LLP; and PricewaterhouseCoopers LLP.

^{58/} See the letter from Deloitte & Touche LLP.

^{59/} The PCAOB Budget is approved by the Board in the preceding calendar year and must be approved by the Commission. PCAOB Rule 7101(a) refers to the date the issuer accounting supporting fee is calculated. This date is referred to as the "calculation date." As discussed in Question 4 of the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, the issuer calculation date represents the date as of which the allocation of the issuer accounting support fee is determined for equity issuers and investment company issuers. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>. See also Rule 7102(a), as amended, which contains a similar reference to the date the broker-dealer accounting support fee is calculated. Under the amendments to the funding rules, this date is referred to as the "broker-dealer calculation date."



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allocate the total accounting support fee between issuers, as a group, and brokers and dealers, as a group.

- Notes to Rule 7101 – The Board is adopting technical changes to the notes to Rules 7101(a)(1) and (2) to clarify how an entity's monthly market capitalization is calculated and that such calculation includes market capitalization information for all classes of the issuer's voting and non-voting common equity, consistent with the amendments to the definition of "issuer market capitalization" discussed above.
- Rule 7103(c) – The Board is extending the time frame within which any issuer, broker, or dealer may petition the Board for correction of the class in which it has been placed or its allocated share of the accounting support fee. Under the amended rules, an issuer, broker, or dealer would have 60 days, rather than 30 days, after an invoice is sent to submit a petition for correction. In addition, the Board is codifying its existing practice of considering petitions received after the deadline when there is good cause to do so.^{60/}
- Rule 7104(b) – The Board is adopting amendments to replace the word "Confirmation" with "Determination" in the caption for Rule 7104(b) and to delete the reference in Note 1 to the rule to obtaining a confirmation from the Board that no past due share of the accounting support fee is outstanding. This amendment clarifies that registered public accounting firms are not required to confirm with the Board whether an issuer broker, or dealer has any outstanding past due share of the accounting support fee prior to signing an unqualified audit opinion, consenting to including an audit report issued previously, or signing a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws. Confirmation with the Board is one of a number of procedures that a registered public accounting firm may use in determining whether an issuer, broker, or dealer has any outstanding past-due share of the accounting support fee.^{61/}

^{60/} See Question 6 in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

^{61/} See Questions 22-26 in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.



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The Board did not receive any comments on these technical amendments,^{62/} and they are being adopted as proposed.

V. Effective Date

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, the PCAOB is required to begin the allocation, assessment, and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board's 2011 fiscal year. Accordingly, the amendments to the Board's funding rules are effective, subject to approval by the SEC, for the allocation, assessment, and collection of the 2011 broker-dealer accounting support fee for brokers and dealers and its 2012 issuer accounting support fee for issuers.

On the 14th day of June, in the year 2011, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD

/s/ J. Gordon Seymour

J. Gordon Seymour
Secretary
June 14, 2011

Appendix – Amendments to Board Rules (PCAOB Rules 1001, 7100 through 7106)

^{62/} As noted above, commenters raised issues with respect to other aspects of Rule 7104(b), including the procedures an auditor may use to determine whether an issuer, broker, or dealer has an outstanding past-due share of the accounting support fee. See parts II.E. and III.C. of this release.



Appendix – Amendments to Board Rules

The relevant portions of Sections 1 and 7 of the Board's rules are amended as set out below. Language deleted by these amendments is struck through. Language that is added is underlined.

RULES OF THE BOARD

Section 1. GENERAL PROVISIONS

Rule 1001. Definitions of Terms Employed in Rules.

* * *

(a)(i) ~~Accounting Support Fee~~[Reserved]

~~_____The term "Accounting Support Fee" means the fee described in Rule 7100 Sarbanes-Oxley Act of 2002, as amended.~~

(a)(iii) Act

The term "Act" means the Sarbanes-Oxley Act of 2002, as amended.

* * *

(b)(iii) Broker

_____The term "broker" means a broker (as defined in Section 3(a)(4) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(b)(iv) Broker-Dealer Accounting Support Fee

_____The term "broker-dealer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among brokers and dealers pursuant to the rules of the Board.



* * *

(c)(iii) Common Equity

The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

* * *

(d)(iii) Dealer

The term "dealer" means a dealer (as defined in Section 3(a)(5) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

* * *

(i)(i) Issuer Market Capitalization

The terms "issuer market capitalization" and "market capitalization of an issuer" mean –

(1) Except as provided in paragraph (i)(i)(2) of this rule, the aggregate market value of all classes of an issuer's voting and non-voting common ~~common stock~~equity that trade in the United States; or

(2) With respect to an issuer: (i) that is registered under Section 8 of the Investment Company Act or has elected to be regulated as a business development company pursuant to Section 54 of the Investment Company Act, and (ii) whose securities are not traded on a national securities exchange or whose quoted-on-Nasdaq share price is not otherwise publicly available, the issuer's net asset value.



(i)(v) Issuer Accounting Support Fee

The term "issuer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among issuers pursuant to the rules of the Board.

* * *

(i)(vi) Notice Invoice

The term "notice invoice" means the document sent by the Board to an issuer, broker, or dealer, pursuant to Rule 7103~~2~~, setting forth such issuer's, broker's, or dealer's share of the accounting support fee under Section 109 of the Act and Rules 7101, ~~and 7102,~~ and 7103.

* * *

(s)(v) Self-Regulatory Organization

The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of Sections 19(b), 19(c), and 23(b) of the Exchange Act) the Municipal Securities Rulemaking Board established by Section 15B of the Exchange Act.

* * *

(t)(ii) Tentative Net Capital

The term "tentative net capital" has the same meaning as such term is defined under Rule 15c3-1(c)(15) under the Exchange Act.

(t)(iii) Total Accounting Support Fee

The term "total accounting support fee" means the fee described in Rule 7100.

* * *



SECTION 7. FUNDING

* * *

Rule 7100. Accounting Support Fees.

The Board shall ~~calculate~~ establish a ~~total~~ total accounting support fee each year in accordance with the Act. The total accounting support fee shall be equitably allocated between issuers (the "issuer accounting support fee") and brokers and dealers. (the "broker-dealer accounting support fee"). The accounting support fee shall equal the budget of the Board, as approved by the Commission, less the sum of all registration fees and annual fees received during the preceding calendar year from public accounting firms, pursuant to Section 102(f) of the Act and the Rules of the Board. The accounting support fees shall then be equitably allocated among issuers, in accordance with Rule 7101(b), and among brokers and dealers, in accordance with Rule 7102(b).

Rule 7101. Allocation of Issuer Accounting Support Fee.

(a) Classes of Issuers

For purposes of allocating the issuer accounting support fee, those entities that are issuers as of the date the issuer accounting support fee is calculated ~~under Rule 7100~~ shall be divided into four classes:

(1) Equity Issuers

All issuers whose average, monthly issuer market capitalization is greater than \$75 million during the ~~preceding~~ preceding calendar year preceding the date the issuer accounting support fee is calculated ~~is greater than \$25 million~~, other than those described in paragraphs (a)(2) and (a)(3) of this Rule, and whose share price on a monthly, or more frequent, basis is publicly available.

Note: The Average, monthly issuer market capitalization will be based on closing stock share prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month measured during which trading in the common equity occurred.



(2) Investment Company Issuers

All issuers (i) who, as of the date the accounting support fee is calculated ~~under Rule 7100~~, are registered under Section 8 of the Investment Company Act or have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act, other than those described in paragraph (a)(3), (ii) whose average, monthly issuer market capitalization is greater than \$500 million during the preceding calendar year preceding the date the issuer accounting support fee is calculated ~~is greater than \$250 million~~, and (iii) whose share price (or net asset value) on a monthly, or more frequent, basis is publicly ~~available~~.

Note: ~~Average~~The, monthly issuer market capitalization will be based on closing ~~stock share~~ prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month ~~measured during which trading in the common equity occurred~~.

(3) Issuers Permitted Not to File Audited Financial Statements and Bankrupt Issuers that File Modified Reports

All issuers that, as of the date the issuer accounting support fee is calculated ~~under Rule 7100~~, (i) have a basis, under the federal securities laws, a Commission rule, or pursuant to other action of the Commission or its staff, not to file audited financial statements with the Commission, (ii) are employee stock purchase, savings, and similar plans, interests in which constitute securities registered under the Securities Act, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy have provided an opinion of counsel that the issuer satisfies the modified reporting requirements of Commission Staff Legal Bulletin No. 2.

Note: ~~As of April 16, 2003,~~ issuers within paragraph (a)(3)(i) of this Rule include (A) asset-backed issuers, (B) unit investment trusts, as defined in Section 4(2) of the Investment Company Act, that have not filed or updated a registration statement that became effective during the preceding calendar year preceding the date the issuer accounting support fee is calculated, and (C) Small Business Investment Companies registered on Form N-5 under the Investment Company Act, that have not filed or updated a registration statement that became effective during the calendar year preceding the date the issuer accounting support fee is calculated ~~preceding year~~.



(4) All Other Public Company Issuers

All issuers other than those described in paragraphs (a)(1), (a)(2), or (a)(3) of this Rule.

(b) Allocation of issuer Accounting Support Fee Among Issuers

The issuer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

(1) Equity and Investment Company Issuers

Each issuer described in paragraph (a)(1) and (a)(2) of this Rule shall be allocated a share of the issuer accounting support fee in an amount equal to the issuer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, monthly market capitalization of the issuer during the ~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated, except that for issuers described in paragraph (a)(2) of this Rule, the numerator is one-tenth of the average, monthly issuer market capitalization of the issuer; and

(ii) the denominator of which is the sum of the average, monthly market capitalizations of the issuers described in paragraph (a)(1) of this Rule and one-tenth of the average, monthly market capitalizations of the issuers described in paragraph (a)(2) of this Rule.

(2) All Other Classes

Each issuer described in paragraphs (a)(3) and (a)(4) of this Rule shall be allocated a share of the issuer accounting support fee equal to \$0.



(c) Adjustments

After the issuer accounting support fee is calculated ~~under Rule 7100~~ and allocated under this Rule, any adjustment to the share allocated to an issuer shall not affect the share allocated to any other issuer.

Rule 7102. Allocation of Broker-Dealer Accounting Support Fee

(a) Classes of Brokers and Dealers

For purposes of allocating the broker-dealer accounting support fee, those entities that are brokers or dealers as of the date the broker-dealer accounting support fee is calculated shall be divided into two classes:

(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million

All brokers and dealers whose average, quarterly tentative net capital is greater than \$5 million during the calendar year preceding the date the broker-dealer accounting support fee is calculated, other than those described in paragraphs (a)(2) of this Rule.

Note: Average, quarterly tentative net capital will be based on the tentative net capital reported by the broker or dealer in the calendar quarterly reports filed pursuant to Commission rules during the calendar year preceding the date the broker-dealer accounting support fee is calculated.

(2) Brokers and Dealers Permitted Not to File Audited Financial Statements and Brokers and Dealers Not Described in Paragraph (a)(1) of This Rule

All brokers and dealers that, as of the date the broker-dealer accounting support fee is calculated, (i) have a basis, under the federal securities laws, a Commission rule, or pursuant to other action of the Commission or its staff, not to file audited financial statements or (ii) are not described in paragraph (a)(1) of this Rule.

(b) Allocation of Broker-Dealer Accounting Support Fee

The broker-dealer accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:



(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million

Each broker and dealer described in paragraph (a)(1) of this Rule shall be allocated a share of the broker-dealer accounting support fee in an amount equal to the broker-dealer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, quarterly tentative net capital of the broker or dealer during the calendar year preceding the date the broker-dealer accounting support fee is calculated; and

(ii) the denominator of which is the sum of the average, quarterly tentative net capital of the brokers and dealers described in paragraph (a)(1) of this Rule.

(2) All Other Brokers and Dealers

Each broker and dealer described in paragraph (a)(2) of this Rule shall be allocated a share of the broker-dealer accounting support fee equal to \$0.

(c) Adjustments

After the broker-dealer accounting support fee is calculated and allocated under this Rule, any adjustment to the share allocated to a broker or dealer shall not affect the share allocated to any other broker or dealer.

Rule 71032. Assessment of Accounting Support Fees.

(a) Amount of Assessment

Each issuer and each broker and dealer is required to pay its share of the accounting support fee, as allocated under Rules 7101 and 7102, rounded to the nearest hundred \$100.

Note: If the allocated an issuer's share of the accounting support fee to an issuer, broker, or dealer is less than \$50, that issuer the assessed share of the accounting support fee will not be assessed zero. If the issuer's allocated share of the accounting support fee is exactly \$50 or \$50 more than a the closest multiple of \$100, then the assessed share will be rounded up to the nearest \$100.



(b) Notice of Assessment

The Board will use its best efforts to send an notice-invoice to each issuer, broker, and dealer, either electronically or by first-class mail, at the address shown in ~~on~~ such issuer's the most recent periodic report filed with the Commission by the issuer, or with the designated self-regulatory organization by the broker or dealer, at the address submitted to contained in the Commission's EDGAR system or the broker's or dealer's designated self-regulatory organization, or at such other address as the issuer, broker, or dealer provides to the Board. The Board's failure to send an issuer, broker, or dealer an notice-invoice, or the issuer's failure to receive an notice-invoice sent by the Board, shall not constitute a waiver of the Board's right to assess the issuer, broker, or dealer such issuer for its share of the accounting support fee or of the issuer's, broker's, or dealer's responsibility to pay its share of the accounting support fee.

(c) Petition for Correction

Any issuer, broker, or dealer who disagrees with the class in which it has been placed, or with the calculation by which its share of the accounting support fee was determined, may petition the Board for a correction of the share of the accounting support fee it was allocated. Any such petition shall include an explanation of the nature of the claimed mistake in classification or calculation in writing and must be filed with the Board, on or before the 630th day after the notice-invoice is sent, or within such longer period as the Board allows for good cause shown. After a review of such a petition, the Board will determine whether the allocation is consistent with Section 109 of the Act and the Board's rules thereunder and provide the issuer a written explanation of its decision. The provisions of Rule 71043 shall be suspended while such a petition is pending before the Board.

Rule 71043. Collection of Accounting Support Fees.

(a) Accounting Support Fee Payment Due Date

Unless the Board directs otherwise, payment shall be due on the 30th day after the notice-invoice is sent. Beginning on the 31st day, payment shall be deemed past due and interest shall accrue at a rate of 6 percent per annum.



(b) Confirmation-Determination of Payment of Accounting Support Fees by Registered Accounting Firm

(1) Except as provided in paragraph (b)(2) of this Rule, no registered public accounting firm shall:

(i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements, or

(ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or

(iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws

unless the registered public accounting firm has ascertained that the issuer (including any broker or dealer subsidiary of the issuer), broker, or dealer has outstanding no past-due share of the issuer accounting support fee or broker-dealer accounting support fee, whichever is applicable, or has a petition pursuant to Rule 71032(c) pending.

(2) A registered public accounting firm may:

(i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements, or

(ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or

(iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer required under the securities laws

even though the issuer (including any broker or dealer subsidiary of the issuer), broker, or dealer has outstanding a past-due share of the accounting support fee and has not filed a petition under Rule 71032(c), if the issuer, broker, or dealer needs the audit report or consent in order to submit a report to, or make a filing with, the Commission or, in the case of an issuer only, to issue securities. The issuer-registered public accounting firm shall submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with



the Commission. This exception to paragraph (b)(1) of this Rule shall not continue longer than 15 business days after the earlier of the date of the notice's submission or the filing of the report with the Commission, and may not be invoked for more than one such period with respect to any share of the accounting support fee that the issuer, broker, or dealer is assessed under Rule 7103~~2~~.

Note 1: A registered public accounting firm may ascertain that an issuer, broker, or dealer has no outstanding past-due share of the accounting support fee by obtaining a representation from the issuer, broker, or dealer ~~or a confirmation from the Board that no past due share of the accounting support fee is outstanding.~~

Note 2: A notice pursuant to paragraph (b)(2) of this Rule must be submitted electronically by email to rule7104~~3~~stay@pcaobus.org.

Note 3: For purposes of Rule 7104, the term "audit" means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report. For purposes of Rule 7104, the term "audit report" means a document, report, notice, or other record (1) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or (ii) asserts no such opinion can be expressed.

(c) ~~Reports to the Commission of Non-payment of an Accounting Support Fee~~

(1) If an issuer has not paid its share of the issuer accounting support fee by the 60th day after the ~~notice-invoice~~ was sent, and the issuer does not have a petition pursuant to Rule 7102~~3~~(c) pending, the Board may send a second ~~notice invoice~~ to such issuer by certified mail. If the Board has sent such a second ~~notice invoice~~ and has not been paid by the 90th day after the original ~~notice-invoice~~ was sent, the Board may report the issuer's nonpayment to the Commission.

Note: Section 13(b)(2) of the Exchange Act provides, in part, that: "Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title



shall – * * * (C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable accounting support fee or fees, determined in accordance with Section 109 of the Sarbanes-Oxley Act of 2002."

(2) If a broker or dealer has not paid its share of the broker-dealer accounting support fee by the 60th day after the invoice was sent, and the broker or dealer does not have a petition pursuant to Rule 7103(c) pending, the Board may send a second invoice to such broker or dealer by certified mail. If the Board has sent such a second invoice and has not been paid by the 90th day after the original invoice was sent, the Board may report the broker's or dealer's nonpayment to the Commission and/or the broker's or dealer's designated self-regulatory organization.

Note: Section 109(h)(1) of the Act provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

(d) — Excess Fees

~~If in any Board fiscal year, the Board receives fees in excess of the budget for that fiscal year, the Board shall hold those excess fees in escrow. Such escrowed excess fees shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's accounting support fee in that next fiscal year.~~

Rule 71054. Service as Designated Collection Agent.

If the Board is designated to serve as collection agent for an accounting support fee of a standard-setting body designated by the Commission pursuant to Section 19(b) of the Securities Act, the assessment and collection of the accounting support fee shall be governed by Rules 7103 and 2 and 7104~~3~~ as if the accounting support fee of the standard-setting body were the issuer accounting support fee of the Board.

Rule 7106. (d) — Excess FeesFunds.

If in any Board fiscal year, the Board receives ~~fees~~ funds in excess of the budget of the Board for that fiscal year, as approved by the Commission, the Board shall hold those excess ~~fees~~ funds in escrow. Such escrowed excess ~~fees~~ funds shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's total accounting support fee in that next fiscal year.