

File No. PCAOB-2003-02
Amendment No. 1
Consists of 10 Pages

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 Amendment

(a) Pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 (the "Act"), the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") is filing for the approval of the Securities and Exchange Commission (the "Commission") an amendment ("Amendment No. 1") to the Board's proposed funding rules. The Board filed the proposed funding rules with the Commission on April 17, 2003. The proposed funding rules are currently pending before the Commission for the Commission's approval.

Amendment No. 1 modifies the Board's proposed Rule 7103. Proposed Rule 7103, as amended by Amendment No. 1, is set out in Exhibit 1.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Board

(a) The Board approved Amendment No. 1, and authorized it for filing with the Commission, at a Board meeting on July 30, 2003. No other action by the Board is necessary for the filing of proposed Amendment No. 1.

(b) Questions regarding this filing may be directed to Gordon Seymour, Acting General Counsel (202-207-9034; seymourg@pcaobus.org).

3. Statement of the Purpose of, and the Statutory Basis for, Amendment No. 1

(a) Purpose

As originally proposed, Rule 7103(b) of the Board's funding rules would prohibit a registered public accounting firm from signing an unqualified audit opinion with respect to an issuer's financial statements, or from consenting to include an audit opinion issued

previously to an issuer, if the issuer has an outstanding past-due share of the accounting support fee and has not petitioned for a correction of the fee. The purpose of Amendment No. 1 is to add a degree of flexibility to take account of situations in which 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 for which the issuer needs such an opinion or consent. To avoid unnecessarily preventing those issuers from having timely access to the capital markets, Amendment No. 1 creates an exception to Rule 7103(b) as originally proposed.

If circumstances cause an issuer to rely upon the exception, Amendment No. 1 requires the issuer to submit notice to the Board no later than the next business day after the filing is made with the Commission. (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.) A note to the rule as amended provides that the notice must be submitted by e-mail to a Board electronic mailbox that would be established solely to receive such notices. The electronic mailbox would be open to receive notices at any hour of the day. The amended rule does not require that the notice conform to any particular format or comply with any particular signature requirement.

Amendment No. 1 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. A period of 15 business days is appropriate because it mirrors a relevant period used in certain Commission rules. Specifically, rule 430A

under the Securities Act of 1933 ("Securities Act"), 17 C.F.R. § 230.430A, allows an issuer 15 business days after the effective date of a registration statement (or after the effectiveness of a post-effective amendment to a registration statement) in which to submit certain required information omitted from the prospectus originally filed as part of the registration statement, and the issuer may couple that filing with an abbreviated registration statement pursuant to rule 462(b) under the Securities Act, 17 C.F.R. § 230.462(b).

Finally, Amendment No. 1 provides that it 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 7102. Accordingly, while a registered public accounting firm may rely on this exception once for each share of the accounting support fee an issuer has been assessed, it may not rely on this exception for more than one period, either within the same year or in a subsequent year, with respect to a share of the accounting support fee for which it has already invoked this exception.

The exception provided by Amendment No. 1 does not in any way modify the issuer's obligation to pay its assessed share of the accounting support fee as required by Section 13(b)(2)(C) of the Securities Exchange Act of 1934 ("Exchange Act").

(b) Statutory Basis

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

4. Board's Statement on Burden on Competition

Amendment No. 1 does not impose any undue burden on competition.

5. Board's Statement on Comments on the Proposed Rules Received from the Public

Not applicable.

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 Exchange Act.

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

Pursuant to Section 19(b)(2) of the Exchange Act, the Board requests accelerated effectiveness for Amendment No. 1. Good cause exists for accelerated effectiveness.

With respect to the funding rules as originally proposed, the comment period required by Section 19(b)(1) of the Exchange Act has closed, and the Commission can now approve those rules immediately without needing to rely on the accelerated effectiveness provision of Section 19(b)(2). The Board respectfully requests that the Commission approve the funding rules as soon as possible, since any delay in approving the funding rules delays the Board's ability to collect the accounting support fee, and the accounting support fee is the principal means established by the Act to fund the Board's operations.

In order to avoid unnecessarily impeding issuers' access to the capital markets, the funding rules that the Commission approves should include Amendment No. 1. Amendment No. 1, however, could not be included in any rules approved in the immediate future unless the Commission grants it accelerated effectiveness. Because of the importance of both approving the funding rules in the immediate future and including Amendment No. 1 with those rules, good cause exists for granting accelerated effectiveness to Amendment No. 1.

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

Amendment No. 1 is not based on the rules of another board or of the Commission.

9. Exhibit

Exhibit 1 – Two copies of the text of proposed Rule 7103, as amended.

10. Signature

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: /S/
William J. McDonough, Chairman

Date: July 30, 2003

Exhibit 1 – Text of Proposed Rule 7103 As Amended by Amendment No. 1 (2 copies)
(Additions underlined, deletion bracketed)

Rule 7103. Collection of Accounting Support Fee.

(a) Accounting Support Fee Payment Due Date

Unless the Board directs otherwise, payment shall be due on the 30th day after the notice 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 of Payment of Accounting Support Fee by Registered Accounting Firm

(1) Except as provided in paragraph (b)(2) of this Rule, [N]no registered public accounting firm shall sign an unqualified audit opinion with respect to an issuer's financial statements, or issue a consent to include an audit opinion issued previously, unless the registered public accounting firm has ascertained that the issuer has outstanding no past-due share of the accounting support fee or has a petition pursuant to Rule 7102(c) pending.

(2) A registered public accounting firm may sign an unqualified audit opinion with respect to an issuer's financial statements, or issue a consent to include an audit opinion issued previously, even though the issuer has outstanding a past-due share of the accounting support fee and has not filed a petition under Rule 7102(c), if the issuer needs the report or consent in order to submit a report to, or make a filing with, the Commission or to issue securities. The 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 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 7102.

Note₁: A registered public accounting firm may ascertain that an issuer has no outstanding past-due share of the accounting support fee by obtaining a representation from the issuer 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 e-mail to rule7103stay@pcaobus.org.

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

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

(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.

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