

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-65162; File No. PCAOB-2011-02)**

August 18, 2011

**Public Company Accounting Oversight Board; Order Approving Proposed 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**

**I. Introduction**

On June 21, 2011, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 107(b)<sup>1</sup> of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and Section 19(b)(1)<sup>2</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"), a proposed rule change (PCAOB-2011-02) relating to the funding of the Board's operations (PCAOB Rules 7100 through 7106) and proposed amendments to certain definitions that would appear in PCAOB Rule 1001. The proposed rule change was published for comment in the Federal Register on July 12, 2011.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

**II. Discussion**

Section 109<sup>4</sup> of the Sarbanes-Oxley Act, as originally enacted, provided that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting

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<sup>1</sup> 15 U.S.C. 7217(b).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> Release No. 34-64816 (Jul. 6, 2011) [76 FR 40950 (Jul. 12, 2011)].

<sup>4</sup> 15 U.S.C. 7219.

firms<sup>5</sup>) would be collected from issuers<sup>6</sup> based on each issuer's relative average, monthly equity market capitalization.<sup>7</sup> 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 (the "Dodd-Frank Act")<sup>8</sup> amended the Sarbanes-Oxley Act to grant the Board explicit oversight authority with respect to audits of brokers and dealers registered with the Commission.<sup>9</sup> 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)."<sup>10</sup>

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

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<sup>5</sup> Section 102(f) of the Sarbanes-Oxley Act (15 U.S.C. 7212(f)) states that the PCAOB shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to cover the costs of processing and reviewing registration applications and annual reports.

<sup>6</sup> Section 2(a)(7) of the Sarbanes-Oxley Act (15 U.S.C. 7201(a)(7)) and PCAOB rules define "issuer" to mean an issuer (as defined in Section 3 of the Exchange Act (15 U.S.C. 78c)), the securities of which are registered under Section 12 of the Exchange Act (15 U.S.C. 78l), or that is required to file reports under Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn. See PCAOB Rule 1001(i)(iii).

<sup>7</sup> Section 109(g) of the Sarbanes-Oxley Act.

<sup>8</sup> Pub. L. No. 111-203, 124 Stat. 1376 (Jul. 21, 2010).

<sup>9</sup> 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 (17 CFR 240.17a-5) and related SEC rules and forms.

<sup>10</sup> 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)."

differentiation among classes of issuers, brokers, and dealers, as appropriate.”<sup>11</sup> 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.”<sup>12</sup>

Accordingly, the Board has filed a proposed rule change to its funding rules to allocate a portion of the accounting support fee among brokers and dealers,<sup>13</sup> 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 rule change includes amendments to the Board’s funding rules with respect to the allocation, assessment, and collection of the accounting support fee among issuers. Among other things, the proposed rule change:

- Revises 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;

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<sup>11</sup> 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.

<sup>12</sup> Section 109(h)(3) of the Sarbanes-Oxley Act.

<sup>13</sup> 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.

- Increases the average, monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies; and
- Includes technical amendments to the Board's funding rules.

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley 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 Board has indicated that the amendments to its funding rules are effective for the allocation, assessment, and collection of the 2011 broker-dealer accounting support fee for brokers and dealers and the 2012 issuer accounting support fee for issuers.

### **III. Conclusion**

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and is necessary or appropriate in the public interest or for the protection of investors.

IT IS THEREFORE ORDERED, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. PCAOB-2011-02) be and hereby is approved.

For the Commission, by the Office of the Chief Accountant, pursuant to delegated authority.<sup>14</sup>

Elizabeth M. Murphy  
Secretary

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<sup>14</sup> 17 CFR 200.30-11(b)(2).