

Statistics, and the Occupational Safety and Health Administration); Environmental Protection Agency; Department of Transportation; Office of Advocacy of the Small Business Administration; Internal Revenue Service; Department of Health and Human Services (including the Centers for Medicare and Medicaid Services); Department of Agriculture; Department of the Interior; the General Services Administration; and two other participants to be selected by the Director of OMB (who are the Department of Commerce and additional representatives from the Small Business Administration).

The Small Business Paperwork Relief Task Force solicited public comments on the Draft Report from May 9, 2003 to June 4, 2003. All comments received by OMB were considered and resulted in modifications to the final report. A summary of the public comments with responses of the Task Force is attached in Appendix 8 of the Final Report.

**Donald R. Arbuckle,**

*Administrator, Office of Information and Regulatory Affairs.*

**Mark Forman,**

*Administrator, Office of E-Government and Information Technology.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48075; File No. PCAOB-2003-02]

### Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule on Funding

June 23, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act" or "Act"), notice is hereby given that on April 16, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rules as 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 Rule

On April 16, 2003, the Board adopted five proposed rules relating to public company funding of the Board's operations (PCAOB Rules 7100 through 7104), plus certain definitions that

would appear in PCAOB Rule 1001, to implement section 109 of the Act. Section 109 provides that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms) are to be collected from public companies (*i.e.*, "issuers," as defined in the Sarbanes-Oxley Act). The amount due from such companies is referred to in the Sarbanes-Oxley Act as the Board's "accounting support fee." The five proposed rules provide for equitable allocation, assessment and collection of the Board's accounting support fee.

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

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, its proposed rules on funding and discussed comments it received on them. 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 Rule

###### (a) Purpose

The Act established the Board as a nonprofit corporation, subject to and with all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, to oversee the audits of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.

Section 109 of the Act provides that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms) are to be collected from public companies (*i.e.*, "issuers," as defined in the Act). The amount due from such companies is referred to in the Act as the Board's "accounting support fee." The Board has adopted five proposed rules relating to public company funding of the Board's operations (PCAOB Rules 7100 through 7104), plus certain definitions that would appear in Rule 1001, to implement section 109 of the Act.

The Board's proposed rules provide for the accounting support fee to be allocated to, and payable by, two classes of issuers: (1) Publicly-traded

companies with average, monthly U.S. equity market capitalizations during the preceding year, based on all classes of common stock, of greater than \$25 million,<sup>1</sup> and (2) investment companies with average, monthly U.S. equity market capitalizations (or net asset values) of greater than \$250 million.<sup>2</sup> In recognition of the structure of investment companies and the relatively less-complex nature of investment company audits (as compared to operating company audits), investment companies would be assessed at a lower rate. All other issuers, including (1) those that are not required to file audited financial statements with the Commission, (2) employee stock purchase, savings and similar plans, and (3) bankrupt issuers that file modified reports, would be allocated shares of zero.<sup>3</sup>

(i) *Computation of Accounting Support Fee and Allocation to Issuers.* Once each year, the Board will compute the accounting support fee.<sup>4</sup> The accounting support fee will be equal to the Board's budget for that year, as approved by the Commission, less the amount of registration and annual fees received during the prior year from public accounting firms.<sup>5</sup>

In establishing rules on the allocation of the accounting support fee, the Board was guided by two overarching principles that emanate from section 109 of the Act: that, generally, the accounting support fee must be allocated in a manner that reflects the proportionate sizes of issuers, and that, within that framework, the accounting support fee must be allocated in an

<sup>1</sup> The definition of "issuer market capitalization" in Rule 1001(i)(i) defines that term to include only the aggregate market value of securities traded in the United States, whether those securities are issued by entities based in the United States or elsewhere. The definition excludes the market value of securities traded outside the United States.

<sup>2</sup> This class would include both registered investment companies and issuers that have elected to be regulated as business development companies pursuant to section 54 of the Investment Company Act of 1940 ("Investment Company Act"). In the case of an investment company with multiple series, the average, monthly U.S. equity market capitalization, or net asset value, of each series would be measured against the \$250 million threshold separately.

<sup>3</sup> In addition, issuers with average, monthly U.S. equity market capitalizations during the preceding year of less than \$25 million (or, in the case of investment companies, of less than \$250 million), issuers whose only outstanding public securities are debt securities would be allocated shares of zero, and issuers whose share price (or net asset value) on a monthly, or more frequent, basis is not publicly available.

<sup>4</sup> Rule 7100. The Board anticipates that the accounting support fee will normally be computed during the first 30 days of each calendar year.

<sup>5</sup> *Id.* The term "accounting support fee" is defined in Rule 1001(a)(i) by reference to Rule 7100.