

determined. Specifically, all notices will include the amount of the accounting support fee, the date on which the accounting support fee was calculated, the class in which the issuer was placed, the issuer's average, monthly U.S. equity market capitalization for the preceding year, and the sum of the average, monthly U.S. equity market capitalizations of all issuers in the Equity Issuer and Investment Company Issuer classes during the preceding year.¹⁵ Issuers that disagree with the class in which they have been placed, or with the calculation by which their allocations were determined, may petition the Board for a correction, in writing.¹⁶

If an issuer has not paid its share of the accounting support fee by the 60th day after a notice was sent, and the issuer does not have a petition pursuant to Rule 7102(c) pending, the Board may send a second notice by certified mail.¹⁷ If the Board has sent a second notice and payment has still not been made by the 90th day after the original notice was sent, the Board may report the issuer's non-payment to the Commission.¹⁸ An issuer's failure to pay its share of the accounting support fee is a violation of section 13(b)(2) of the Securities Exchange Act of 1934 ("Exchange Act") and could, like any other Exchange Act violation, result in administrative, civil, or criminal sanctions.¹⁹

In addition, the Board's proposed rules require that no registered public accounting firm may sign an unqualified audit opinion (or issue a consent) with respect to an issuer's financial statements if that issuer has outstanding any past-due share of the accounting support fee and the issuer has not filed a petition for a correction to its share of the accounting support fee.²⁰ The Board's proposed rules would permit a qualified, adverse or disclaimed opinion irrespective of whether the issuer's share had been paid.²¹ The collection

measures in the Board's proposed rules are intended to ensure the reliability of the independent funding source the Act provides for the Board and to promote fairness to all issuers allocated a share of the accounting support fee. The Board intends the requirement that auditors confirm payment of an issuer's share of the accounting support fee before issuing an unqualified audit opinion to serve as a reliable and cost-effective means of maintaining integrity in the assessment and collection process. A note to proposed Rule 7103(b) explains that a registered public accounting firm may confirm an issuer's payment of the accounting support fee by obtaining a management representation of payment. In addition, the Board plans to build systems that would enable auditors quickly and easily to ascertain whether their issuer audit clients have outstanding any past-due shares of the accounting support fee.

(iii) *Collection of Fees for Standard-Setting Body.* Under the Act, the standard-setting body designated by the Commission to establish accounting principles is also authorized to collect an accounting support fee from public companies to cover its annual budget.²² The Board's proposed rules recognize that, as contemplated in the Act, the standard-setting body could designate an agent to assess and collect its fees and the Board could be that agent.²³ If that occurs, the Board's assessment and collection of the standard-setting body's fees will be governed by the same rules as apply to the Board's fees.

Consistent with section 109(e) of the Act, the Board would not be responsible for calculating the standard-setting body's accounting support fee or for allocating its accounting support fee among issuers. While section 109 of the Act governs both the Board's and the standard-setting body's accounting support fee, the standard-setting body is not required to use the Board's allocation formula. If the standard-setting body designates the Board as its collection agent, however, the Board's proposed rules would effectively require the standard-setting body to agree to the same assessment and collection process (for example, rounding issuers' shares to the nearest hundred, and reporting issuers' non-payment to the Commission) as applies to the Board's accounting support fee. The Board

envisions that, if it is designated to serve as the standard-setting body's collection agent, issuers would receive one notice and make one payment. The notice would clearly distinguish between the amount that goes to the Board and the amount that goes to the accounting standard-setter, and it would provide issuers with separate calculations of how the amount of each assessment was reached.

(b) Statutory Basis

The statutory basis for the Board's proposed rules on funding is Title I of the Sarbanes-Oxley Act.

B. Board's Statement on Burden on Competition

The Board has stated that the proposed rules on funding do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of Title I of the Sarbanes-Oxley Act.

C. Board's Statement on Comments on the Proposed Rule Change Received From the Public

The proposed rules on funding were published for public comment in PCAOB Release No. 2003-002 (March 14, 2003). A copy of PCAOB Release No. 2003-002 and copies of the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at <http://www.pcaobus.org>. The Board received eight written comments, from the following firms and individuals:

- a. Alcon, Inc.
- b. Boeing Company
- c. Deloitte & Touche
- d. Ernst & Young LLP
- e. Henjes, Conner, Williams & Grimsley
- f. Investment Company Institute
- g. KPMG
- h. Paul B.W. Miller, PhD, CPA, University of Colorado at Colorado Springs/Paul R. Bahnson, PhD, CPA, Boise State University

The Board both clarified and modified certain aspects of the proposed rules in response to the comments received. For instance, one commenter requested that the Board clarify how average monthly market capitalization would be determined. The proposed rules and release now explain that average monthly market capitalization will be based on closing prices on the last day of each month measured and, in general, on the number of shares outstanding reported in the issuer's periodic filings with the Commission.

Some commenters also requested that the Board broaden the classes of issuers described as "Equity Issuers" and "Investment Company Issuers," in

¹⁵ As discussed above, the allocation formula will use only 10 percent of the average, monthly market capitalization (or net asset value) of investment companies. Both the market capitalization (or net asset value) and the percentage thereof used in the formula will be disclosed as part of the notice.

¹⁶ Rule 7102(c). After the date on which the accounting support fee is calculated under Rule 7100 and allocated under Rule 7101, any change or recalculation of the share allocated to an issuer will not affect the share allocated to any other issuer. Rule 7101(c).

¹⁷ Rule 7103(c).

¹⁸ Rule 7103(c).

¹⁹ See sections 21C(a), 21(d), and 32(a) of the Exchange Act.

²⁰ Rule 7103(b).

²¹ Rule 7103(b) does not prevent, in any way, a registered accounting firm from publicly disclosing departures from GAAP, or any other reservations

about financial statements, that would be disclosed in a qualified opinion, an adverse opinion, or a disclaimer of an opinion. See *AICPA Codification of Statements on Auditing Standards*, AU §§ 508.20, 508.58-59, 508.61-62 (AICPA 2002).

²² See section 109(e) of the Act.

²³ Rule 7104.