

responsibilities to oversee the PCAOB, the Commission has reviewed the budget proposed by the PCAOB for 2003. During the course of that review, among other things, we reviewed and relied upon representations and supporting documentation from the PCAOB. The Commission also has reviewed the aggregate accounting support fee for 2003, which will fund the PCAOB's expenditures. The Commission did not identify any proposed disbursements in the budget that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2003 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2003. After its review, the Commission determined that the PCAOB's 2003 budget and annual accounting support fee are consistent with section 109 of the Act. Accordingly,

*It is ordered*, pursuant to section 109 of the Act, that the PCAOB budget and annual accounting support fee for calendar year 2003 are approved.

By the Commission.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48278; File No. PCAOB-2003-02]

### Public Company Accounting Oversight Board; Order Approving Proposed Rules on Funding and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rules on Funding

August 1, 2003.

#### I. Introduction

On April 17, 2003, the Public Company Accounting Oversight Board ("Board" or "PCAOB") filed with the Securities and Exchange Commission ("Commission") proposed rules PCAOB-2003-02 pursuant to sections 107 and 109 of the Sarbanes-Oxley Act of 2002 ("Act"). Notice of the proposed rules was published in the **Federal Register** on June 27, 2003.<sup>1</sup> The Commission received five comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rules.

On July 30, 2003, the PCAOB adopted Amendment No. 1 to its proposed rules and submitted that amendment to the Commission.<sup>2</sup> We find there is good cause to approve this amendment prior to the thirtieth day after publication in the **Federal Register** and, for the reasons discussed below, we are approving the amendment.

#### II. Description

In accordance with the Act,<sup>3</sup> the PCAOB has adopted proposed rules<sup>4</sup> that would establish a mechanism to fund the operations of the PCAOB with an annual accounting support fee to be collected from issuers.<sup>5</sup> Under sections 107 and 109 of the Act, such rules are subject to the approval of the Commission. In addition, section 109(h) of the Act amends Section 13(b)(2) of the Securities Exchange Act of 1934 ("Exchange Act") to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

The following is a brief summary of certain key provisions contained in the proposed funding rules.

Proposed PCAOB Rule 7100 provides, among other things, that the annual accounting support fee shall equal the approved budget of the Board, less the sum of all registration fees and annual fees collected during the preceding year from registered public accounting firms.

Proposed PCAOB Rule 7101 provides for the accounting support fee to be allocated to four classes of issuers, two of which are: (1) Publicly-traded companies with average, monthly U.S. equity market capitalizations<sup>6</sup> during the preceding year, based on all classes of common stock, of greater than \$25 million, and (2) investment companies with average, monthly U.S. equity market capitalizations (or net asset

values) of greater than \$250 million.<sup>7</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 than operating companies. Other classes of issuers would be allocated shares of zero.<sup>8</sup>

Proposed PCAOB Rule 7102 governs the assessment of the Board's accounting support fee. Shares of the accounting support fee would be rounded to the nearest \$100.

Proposed PCAOB Rule 7103 governs the collection of the accounting support fee. The fee would be due 30 days after notice is sent. Interest would accrue at 6 percent per annum commencing on the 31st day after the notice is sent. The proposed rule also provides that no registered public accounting firm may sign an unqualified opinion<sup>9</sup> with respect to an issuer's financial statements, or issue a consent to include an audit opinion issued previously, unless the auditor has ascertained that the issuer has no past due fees payable to the Board.<sup>10</sup> In addition, the Commission notes that failure to pay the accounting support fee would be a violation of section 13(b)(2)(C) of the Exchange Act.

Proposed PCAOB Rule 7104 provides that if the accounting standard setting body recognized by the Commission under Section 108(b)(1)(B) of the Act<sup>11</sup>

<sup>7</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 of funds, 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>8</sup> For example, an issuer would be allocated a share of zero if: its average, monthly U.S. equity market capitalization during the preceding year is less than \$25 million (or, in the case of investment companies, of less than \$250 million), its only outstanding public securities are debt securities, or its share price (or net asset value) on a monthly, or more frequent, basis is not publicly available. Other issuers that would be allocated shares of zero include: (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.

<sup>9</sup> "An unqualified opinion states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles." AICPA, Statements on Auditing Standards ("SAS") No. 58, Codification of Statements on Auditing Standards ("AU") 508.10.

<sup>10</sup> See Accelerated Approval of Amendment No. 1, *infra*.

<sup>11</sup> The Commission has designated the Financial Accounting Standards Board ("FASB") as an

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<sup>1</sup> Securities Exchange Act Release No. 48075 (June 23, 2003); 68 FR 38406 (June 27, 2003).

<sup>2</sup> Amendment No. 1 was delivered to the Commission's Office of the Secretary on July 30, 2003.

<sup>3</sup> See, e.g., Section 109(d) of the Act.

<sup>4</sup> PCAOB Rules 7100 through 7104.

<sup>5</sup> The term "issuer" is defined in section 2(a)(7) of the Act to mean "an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78(c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (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."

<sup>6</sup> Rule 1001(i)(i) defines "issuer market capitalization" 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.