

SECURITIES AND EXCHANGE COMMISSION

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RIN 3235-AI

Proposed Amendments to the Rules of Practice and Related Provisions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing for public comment amendments to its Rules of Practice and related provisions in light of the Sarbanes-Oxley Act of 2002. The Sarbanes-Oxley Act, among other things, authorizes the Commission to review disciplinary actions of the Public Company Accounting Oversight Board ("Board") and to create "Fair Funds" in Commission administrative proceedings. The Commission is also proposing for public comment amendments to other provisions of the Rules of Practice ("Rules") as a result of its experience with those rules and to correct certain citations. The proposed amendments are intended to enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings, and to make practice under the rules easier and more efficient.

DATES: Comments must be submitted on or before January 5, 2004.

ADDRESSES: To help us process and review your comments efficiently, comments should be sent by hard copy or e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Alternatively, comments may be submitted electronically to the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-25-03. This file number should be included on the subject line if e-mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (<http://www.sec.gov>).¹

¹ The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions.

FOR FURTHER INFORMATION CONTACT:

Diane V. White, Office of the General Counsel, (202) 942-0950, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0208.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend its Rules of Practice and related provisions. The amendments are being proposed in accordance with the provisions of the Sarbanes-Oxley Act of 2002² and as a result of the Commission's experience with its existing rules. Additional amendments correct typographical errors and change certain citations to conform to the amended rules.³

I. Discussion

A. Proposed Amendments as a Result of the Sarbanes-Oxley Act

Section 107(c) of the Sarbanes-Oxley Act⁴ authorizes the Commission to review disciplinary actions imposed by the Board and actions that result in the disapproval of registration of a public accounting firm.⁵ Sections 105(d) and 107(c) of the Sarbanes-Oxley Act require the Board to give the Commission notice if it disapproves the registration of a public accounting firm or if it disciplines a registered public accounting firm or a person associated with a registered public accounting firm.

In creating its framework for Commission review of Board actions, section 107(c) of the Sarbanes-Oxley Act specifies that sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934,⁶ which govern Commission review of self-regulatory organization disciplinary proceedings, shall govern Commission review of final disciplinary sanctions imposed by the Board "as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1) * * *." The effect of this statutory provision is to make Board actions subject to Commission review under those Exchange Act provisions on the same basis as actions by existing

Interested persons submitting comments should submit only information that they wish to make publicly available.

² 15 U.S.C. 7201 *et seq.*

³ Any necessary delegations will be adopted when the rules become final.

⁴ 15 U.S.C. 7217(c).

⁵ Under section 102(c) of the Sarbanes-Oxley Act, 15 U.S.C. 7212(c), the Board's written notice of disapproval of a complete application for registration as a registered public accounting firm is treated as a "disciplinary sanction" for purposes of sections 105(d) and 107(c) of that act, 15 U.S.C. 7215(d), 7217(c).

⁶ 15 U.S.C. 78s(d)(2), 78s(e)(1).

self-regulatory organizations, and to make relevant rules under those provisions applicable to that review. Thus, the administrative structure currently used by the Commission in reviewing self-regulatory disciplinary organization proceedings, including relevant provisions of the Rules, is applicable to persons seeking review of Board actions.

The Commission nonetheless has determined to propose amendments to certain of its rules in order to enhance the transparency and facilitate parties' understanding of the applicability of the review process to Board proceedings. Certain of those changes to its Rules will include specific references to Commission review of Board actions and, for example, identify the process by which the Board will provide notice to the Commission of its actions. The Commission asks for comment as to whether adjustments to the existing rules, in addition to those the Commission proposes, are warranted in order to permit the Commission more effectively to exercise its statutory review authority with respect to Board proceedings.

1. Disapproval of Registration

Proposed Rule 19d-4(a) would add definitions. Proposed Rule 19d-4(b) would require the Board to file with the Commission and serve on the public accounting firm a notice of disapproval of registration within 30 days of the Board's action.⁷ The notice would include the firm's name and last known address (as reflected in the Board's records) the basis for the Board's disapproval, a copy of the Board's written notice of disapproval, and such other information as the Board deems relevant.

2. Review of Disciplinary Sanctions

Proposed Rule 19d-4(c) would require the Board to file and serve a notice of any disciplinary sanction, other than a disapproval of registration, within 30 days of the Board's action.⁸ The notice would provide the name and last address (as reflected in the Board's records) of the associated person or registered public accounting firm

⁷ The thirty-day period for filing is consistent with the thirty days provided in section 19(d)(2) of the Exchange Act for the filing of an application for review by a person aggrieved by certain actions taken by a self-regulatory organization. The Commission requests comment as to whether this period is appropriate in the context of review of actions by the Board, or whether a longer or shorter period would be preferable.

⁸ Comment is requested as to whether the thirty-day period is appropriate in this context, or whether a longer or shorter period would be preferable.