

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72087; File No. PCAOB-2013-03)

May 2, 2014

Public Company Accounting Oversight Board; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rules, Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications, as Modified by Amendment No. 1

I. Introduction

On December 23, 2013, 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)¹ of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and Section 19(b)² of the Securities Exchange Act of 1934 (the "Exchange Act"), proposed amendments to conform the Board's rules and forms to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and make certain updates and clarifications (collectively, the "Proposed Rules"). The Proposed Rules were published for comment in the Federal Register on February 3, 2014.³ At the time the notice was issued, the Commission designated a longer period to act on the Proposed Rules, until May 5, 2014.⁴ The Commission received one comment letter in response to the notice.⁵ On March 13, 2014, the PCAOB filed

¹ 15 U.S.C. 7217(b).

² 15 U.S.C. 78s(b).

³ See Release No. 34-71237 (January 6, 2014), 79 FR 6271 (February 3, 2014).

⁴ Ibid.

⁵ See letter to the Commission from Suzanne H. Shatto, dated March 6, 2014 ("Shatto Letter").

Amendment No. 1 to the Proposed Rules (“Amendment No. 1”).⁶ This order approves the Proposed Rules, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rules

The Proposed Rules include specific references to audits and auditors of brokers and dealers in the Board’s rules and are necessary to ensure that the PCAOB can satisfy its explicit oversight authority granted under the Dodd-Frank Act with respect to audits and auditors of brokers and dealer that are registered with the Commission. The Proposed Rules also conform the Board’s rules to the Dodd-Frank amendments that: (1) clarified the definition of “person associated with a public accounting firm,”⁷ (2) permitted the Board to share certain information with foreign auditor oversight authorities,⁸ and (3) clarified that the Board’s sanctioning authority is not limited to persons who are supervisory personnel at the time a failure to supervise sanction is imposed.⁹

Beyond these conforming amendments, the Proposed Rules include three additional categories of amendments that tailor certain of the Board’s rules to the audits of brokers and dealers, call for relevant broker and dealer audit client information on the Board’s forms, and amend a number of rules in light of the Board’s experience administering and enforcing these rules.

⁶ In Amendment No. 1, the PCAOB added amendments to Rule 3526, Communication with Audit Committees Concerning Independence. These amendments were discussed in the Proposed Rules, but the amendments to Rule 3526 were inadvertently omitted from the Proposed Rules. The Amendment also proposes a non-substantive modification to a cross-reference in Item 3.2.e.1 of Form 4.

⁷ See Section 2(a)(9)(C) of the Sarbanes-Oxley Act.

⁸ See Section 105(b)(5)(C) of the Sarbanes-Oxley Act.

⁹ See Section 105(c)(6)(A) of the Sarbanes-Oxley Act.

First, the PCAOB is tailoring the Board's professional practice standards to the audits of brokers and dealers. As amended, Rule 3521 (Contingent Fees), Rule 3522 (Tax Transactions) and Rule 3526 (Communication with Audit Committees Concerning Independence) apply to the audits of brokers and dealers to the same extent that they previously applied to the audits of issuers.

Second, the Board is amending its registration, withdrawal, and reporting forms (Forms 1, 1-WD, 2, 3, and 4), and the general instructions to these forms, to call for relevant broker and dealer audit client information. This information includes, among other things, information identifying each audit report issued by registered firms for broker and dealer audit clients during their annual reporting periods.

Finally, the Board is amending a number of rule provisions and form items in light of administrative experience and to make a number of updates to address events that have occurred since the last time the rules were updated. These amendments, for example, address circumstances where an issuer audit client encounters a change in its principal auditor and the issuer does not comply with the Commission's four business day reporting requirement concerning the change in auditors pursuant to Item 4.01 of Form 8-K.

In addition, Amendment No. 1 includes rule text for proposed amendments to Rule 3526 that was inadvertently omitted from the PCAOB's original rule filing and updates a cross-reference in Form 4 that would have become outdated by this Order.

The amendments to the PCAOB's rules, SEC Practice Section membership requirements, and Ethics Code will take effect on June 1, 2014. The amendments to Forms 1, 1-WD, 3, and 4 will take effect July 1, 2014. The amendments to Form 2 will take effect April 1, 2015.

III. Comment Letters

As noted above, the Commission received one comment letter concerning the Proposed Amendments, which expressed support for the Proposed Amendments.¹⁰

IV. The PCAOB's Emerging Growth Company Request

Section 103(a)(3)(C) of the Sarbanes-Oxley Act provides that any additional rules adopted by the PCAOB subsequent to April 5, 2012 do not apply to the audits of emerging growth companies ("EGCs"), unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.¹¹ Having considered those factors, and as explained further below, the Commission finds that applying the Proposed Rules to audits of EGCs is necessary or appropriate in the public interest.

The PCAOB has proposed application of its Proposed Rules to audits of all issuers, as applicable, including EGCs; and the PCAOB requested that the Commission make the determination required by Section 103(a)(3)(C).¹² To assist the Commission in making its determination, the PCAOB prepared and submitted to the Commission its own EGC analysis.

¹⁰ See Shatto Letter.

¹¹ Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as amended by Section 104 of the Jumpstart Our Business Startups Act (the "JOBS Act"). The term "emerging growth company" is defined in Section 3(a)(80) of the Exchange Act.

¹² To the extent that these proposed rules apply solely in connection with the obligations of registered brokers and dealers or the auditors of registered brokers and dealers pursuant to 17 CFR 240.17a-5, no separate determination is necessary under 15 U.S.C. § 7213(a)(3)(C).

The PCAOB's EGC analysis was included in the Commission's public notice soliciting comment on the Proposed Rules. No comments were received on the analysis.

Based on the analysis submitted, we believe the information in the record is sufficient for the Commission to make the requested EGC determination in relation to the Proposed Rules. The PCAOB's EGC analysis discussed its approach to developing the Proposed Rules, as well as the characteristics of EGCs and economic considerations. For the Proposed Rules that are not simply conforming amendments, the PCAOB stated that it has no reason to think the economic consequences for EGCs would differ significantly from those for issuers who are not EGCs, and that it estimated that the cost-related implications of these amendments would not be significant. Finally, the Commission takes note of the PCAOB's statements that the Proposed Rules that were made in light of the PCAOB's administrative experience generally are expected to reduce existing compliance burdens, facilitate more efficient use of PCAOB resources, and maintain or improve meaningfulness of information required to be reported by registered firms to the PCAOB.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/pcaob.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number PCAOB-2013-03 on the subject line.

Paper comments:

- Send paper comments in triplicate to Kevin M. O’Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. PCAOB-2013-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet website (<http://www.sec.gov/rules/pcaob.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. PCAOB-2013-03 and should be submitted on or before [insert 21 days from publication in the Federal Register].

VI. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules, as modified by Amendment No. 1, and the information submitted therewith by the PCAOB, including the PCAOB’s EGC analysis. In connection with the PCAOB’s filing and the Commission’s review,

A. The Commission finds that the Proposed Rules, as modified by Amendment No. 1, are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules, as modified by Amendment No. 1, to EGC audits as applicable is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

Additionally, the Commission finds good cause to approve the filing, as modified by Amendment No. 1 to the Proposed Rules, prior to the thirtieth day after the date of the publication of notice of the filing thereof in the Federal Register. The content of Amendment No. 1, which does not raise any novel issues, makes one technical amendment to the proposed rule to correct an inadvertent omission and one technical amendment to update a cross-reference in a Form that would become outdated if the proposed rules in the original rule filing are approved by the Commission. Accelerated approval would allow the PCAOB to update its rules immediately, thus providing users with greater clarity and certainty. Accordingly, the Commission finds that good cause exists to approve the filing, as modified by Amendment No. 1, on an accelerated basis.

IT IS THEREFORE ORDERED, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB-2013-03), as modified by amendment No. 1, be and hereby are approved on an accelerated basis.

By the Commission.

Kevin M. O'Neill
Deputy Secretary