

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201 and 202

[RELEASE NO. 34-62575]

Amendments to the Informal and Other Procedures, Rules of Organization and Program Management, and Rules of Practice; Interim Commission Review of Public Company Accounting Oversight Board Inspection Reports and Regulation P

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is amending its Informal and Other Procedures to add a rule to facilitate interim Commission review of Public Company Accounting Oversight Board (“PCAOB”) inspection reports under Section 104(h) of the Sarbanes-Oxley Act of 2002 (the “Act”), and its Rules of Organization and Program Management and Rules of Practice to delegate authority to the Chief Accountant related to these reviews. The Commission is also establishing a subpart in its Informal and Other Procedures – Regulation P – to include procedural rules relating to the PCAOB.

EFFECTIVE DATE: September 7, 2010.

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SUPPLEMENTARY INFORMATION: The Commission is amending: (1) its Informal and Other Procedures¹ to establish a new subpart (“Regulation P”),² to establish

¹ 17 CFR 202 et seq.

a set of procedures to facilitate requests by registered public accounting firms for interim Commission review of PCAOB inspection reports (§ 202.140), and to redesignate existing Rule 12 (§ 202.11) as Rule 190 (§ 202.190); (2) its Rules of Organization and Program Management³ to provide delegations of authority to the Chief Accountant related to these reviews (§ 200.30-11); and (3) its Rules of Practice⁴ to reflect the new delegations of authority (§ 201.430 and § 201.431).

I. DISCUSSION OF RULE AMENDMENTS

A. Introduction

The Act established the PCAOB to oversee the audit of 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. The PCAOB operates under the comprehensive oversight and enforcement authority of the Commission.⁵

Consistent with that oversight, Section 104(h) of the Act provides for the opportunity of a registered public accounting firm to request interim Commission review with respect to PCAOB inspection reports. The Commission is adopting new rules to implement the Act's provisions relating to these interim review requests.

² 17 CFR 202 subpart 100.

³ 17 CFR 200 et seq.

⁴ 17 CFR 201 et seq.

⁵ The Act vests the Commission with oversight duties and responsibilities, including the duties to appoint the members of the PCAOB, approve PCAOB rules and professional standards for them to take effect, act as an appellate authority for PCAOB enforcement actions, and approve the PCAOB's budget and annual accounting support fee. The Commission also, among other things, may amend existing PCAOB rules, assign additional tasks to the PCAOB as appropriate, oversee the PCAOB's exercise of certain assigned powers and duties, and limit the PCAOB's activities and remove PCAOB members. See, e.g., Title I of the Act [15 U.S.C. 7211-7219].

B. Background

Section 104 of the Act requires the PCAOB to conduct a continuing program of inspections of each registered public accounting firm.⁶ That section of the Act directs the PCAOB to publish a written report of its findings for each inspection.⁷

As required by the Act, PCAOB rules provide that a registered public accounting firm may review and respond to a draft inspection report.⁸ However, when the PCAOB first publishes its report, no portions of the inspection report that deal with criticisms of, or potential defects in, the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the PCAOB, not later than 12 months after the date of the inspection report.⁹

Section 104 of the Act also provides that a registered public accounting firm may seek interim review by the Commission, pursuant to such rules as the Commission may promulgate, if the firm either:

- (1) Has responded to the substance of particular items in the PCAOB's draft inspection report and disagrees with the assessments contained in any final report prepared by the PCAOB following that response, or
- (2) Disagrees with the PCAOB's determination that quality control criticisms or defects identified in the inspection report have not been addressed to the satisfaction of the PCAOB within 12 months of the date of the inspection report.¹⁰

⁶ See Section 104(a) of the Act.

⁷ See Section 104(g) of the Act.

⁸ See Section 104(f) of the Act and PCAOB Rule 4007.

⁹ See Section 104(g)(2) of the Act.

¹⁰ See Section 104(h)(1) of the Act.

The Act further provides that a firm may request any such review within 30 days of the event that gives rise to the review.¹¹ We believe implicit in the language of 104(h)(1) is that the firm may seek review both with respect to items to which the firm responded to the PCAOB in connection with a draft inspection report and disagrees with the assessments relating to those items contained in any final report, as well as any assessments contained in any final inspection report that was not contained in the draft inspection report provided to the firm with which the firm disagrees (e.g., items on which the firm did not have an opportunity to comment in connection with the draft report). New Rule 140, which we are adopting today, clarifies that these are separate reviewable matters.

To implement Section 104 of the Act as to the PCAOB's basic inspection program, the Commission approved a set of rules proposed by the PCAOB.¹² These rules provide that the PCAOB will make a draft inspection report available for review by the firm that is the subject of the report, and the firm may submit a written response to the draft report, which will become part of the inspection report.¹³ A separate PCAOB rule implements the Act's 12-month delay of publication of any portions of an inspection report that deal with criticisms of, or defects in, the inspected firm's quality control systems.¹⁴ During that 12-month period, the firm that is the subject of the report may submit evidence or otherwise demonstrate to the PCAOB that it has improved its quality

¹¹ See Section 104(h)(3) of the Act.

¹² See PCAOB Rules 4000-4010, PCAOB Release No. 2003-19 (October 7, 2003). The rules were approved by the Commission in Release No. 34-49787 (June 1, 2004).

¹³ See PCAOB Rule 4007. See also Section 104(f) of the Act.

¹⁴ See PCAOB Rule 4009.

control systems and remedied the defects in question. If the PCAOB determines that the firm has addressed the quality control defects and criticisms in the final report satisfactorily, the portion of the report that dealt with those defects and criticisms will not be made public.¹⁵

On the other hand, if the inspected firm has failed to address those defects and criticisms to the satisfaction of the PCAOB within the 12-month period mandated by Sections 104(g) and (h) of the Act, the PCAOB will take one of the following actions:

- (1) If the inspected firm failed to make any submission to the PCAOB concerning the firm's efforts to address the quality control defects or criticisms, the PCAOB will make those portions of the report public upon expiration of the 12-month period;
- (2) If the firm made a submission to the PCAOB concerning the firm's efforts to address the quality control defects or criticisms, but did not seek timely interim Commission review of an adverse PCAOB determination concerning those defects or criticisms, the PCAOB will make public those portions of the report that deal with criticisms of or potential defects in quality control systems that the firm has not addressed to the satisfaction of the Board upon expiration of a 30-day period during which the firm may seek Commission review; or
- (3) If the inspected firm made a timely request for interim Commission review, the PCAOB will make public those portions of the report that deal with criticisms of or potential defects in quality control systems that the firm has not addressed to the satisfaction of the Board 30 days after the firm formally

¹⁵ See Section 104(g)(2) of the Act.

requested interim Commission review, unless the Commission, by rule or order, directs otherwise.¹⁶

C. Rule Amendments

We are adopting new Rule 140 to provide procedures for firms to follow in requesting interim Commission review with respect to a PCAOB inspection report, including examples of the types of information that would facilitate the Commission's review. Consistent with the time periods in the Act, the rule specifies that a request for interim Commission review must be submitted to the Commission's Office of the Secretary, with a copy to the PCAOB, within 30 days following either the date the firm is provided a copy of the final inspection report (with respect to a review sought pursuant to Section 104(h)(1)(A) of the Act), or the date the firm receives notice of the PCAOB's adverse determination with respect to remediation of quality control defects or criticisms (with respect to a review sought pursuant to Section 104(h)(1)(B) of the Act).¹⁷

The review request should be marked "Request for Interim Commission Review with Respect to PCAOB Inspection Report." Firms seeking interim Commission review should submit, along with the review request, information that, to the extent possible, is focused on the specific matters for which review is requested, and that clearly and succinctly addresses the issues raised by the PCAOB. Generally, we expect that this information would include, but may not necessarily be limited to:

- The particular inspection report that is the subject of the request,
- The specific assessments or determinations that are the subject of the request,

¹⁶ See PCAOB Rule 4009(d).

¹⁷ Time periods for purposes of Rule 140 shall be computed as provided in Rule 160 of the Commission's Rules of Practice. 17 CFR 201.160.

- The alleged errors or deficiencies in the assessments or determinations and the reasons they are believed to be in error or deficient,
- If the action relates to an adverse determination by the PCAOB with respect to remediation of quality control defects or criticisms, any actions the firm took to address criticisms or defects identified in the inspection report,¹⁸ and
- Any supporting documentation relevant to the review including, but not limited to, any documents previously submitted to the PCAOB that the firm wishes the Commission to consider.

The rule directs the firm to provide a copy of its review request to the PCAOB simultaneously with its submission to the Commission. This is consistent with directions throughout the new rule for the firm and the PCAOB to provide copies of the information they submit to the Commission to the other party simultaneous with their submission to the Commission to provide an opportunity for both parties to be informed of each other's respective positions.

With respect to interim reviews contemplated by Section 104(h)(1)(A) of the Act, PCAOB Rule 4008 is silent regarding whether a final inspection report would be made public before an inspected firm has an opportunity to review the final inspection report and determine whether to request interim Commission review. In order to prevent the release of any final report before the inspected firm has an opportunity to seek Commission review, the new rule provides that the PCAOB shall not make a final

¹⁸ A request with respect to Section 104(h)(1)(B) is limited to situations where the firm disagrees with a Board determination that criticisms or defects identified in a previously issued inspection report have not been satisfactorily addressed. It is not an additional opportunity to seek review with respect to the original criticisms or defects themselves. If a firm disagrees with an original criticism or defect and wishes to request Commission review, the firm should initiate that request in accordance with Section 104(h)(1)(A) within 30 days of when the firm is originally provided a copy of the final inspection report.

inspection report publicly available until the firm that is the subject of the report has had 30 calendar days in which to seek interim Commission review, unless the firm consents in writing to earlier publication of the report. As noted above, this is consistent with the provision in PCAOB Rule 4009 that delays publication of unresolved quality control defects or criticisms for 30 calendar days in certain circumstances. New Rule 140 also provides for a similar delay of publication with respect to the possibility of a review request pursuant to Section 104(h)(1)(B) of the Act.

We do not believe that matters potentially subject to interim Commission review should be subject to publication, absent consent by the firm, before the firm's time to seek that review has expired, and we see no sufficient reason to vary this result based on whether review would be pursuant to Section 104(h)(1)(A) of the Act or Section 104(h)(1)(B) of the Act.¹⁹ We understand this procedure may require the PCAOB to adjust its processes to account for the 30-day period for a firm to request review before initial publication of the final inspection report. However, given the standard of review articulated below with respect to the Commission's processing of such reviews, as well as the fact that the Commission may decline to grant review requests, we do not believe providing for an initial stay of the publication of a final inspection report will result in needless delays or routine appeals simply to delay publication.

New Rule 140 also provides that a timely review request by a firm will operate as an automatic stay of publication of the portions of the final inspection report that are the

¹⁹ In particular, we believe this approach is consistent with Section 104(h) that an opportunity for interim Commission review is meant to precede publication. Further, we believe this approach is consistent with Section 104(g) of the Act, which provides that the final inspection report will be made available to the public "subject to" the Section 104(h) review process, which itself is a logical extension of the statutory requirement for the PCAOB to provide for a procedure for review before publication in accordance with Section 104(f) of the Act.

subject of the firm's review request (with respect to requests pursuant to Section 104(h)(1)(A) of the Act) or the portions of the inspection report that deal with criticism of or potential defects in the quality control systems of the firm that are the subject of the firm's review request (with respect to requests pursuant to Section 104(h)(1)(B) of the Act) unless the Commission determines otherwise, in its own discretion.

At the end of the 30 day review request period, the PCAOB shall make publicly available any portions of the final inspection report that are not the subject of the firm's review request (with respect to Section 104(h)(1)(A) of the Act) or criticisms of or potential defects in the quality control systems of the firm that are not the subject of the firm's review request (with respect to Section 104(h)(1)(B) of the Act), unless the Commission otherwise determines that such a result would not be necessary or appropriate. This helps to ensure timely publication of the portions of the report that are not subject to review. Further, if the firm fails to make a timely review request, the PCAOB shall make publicly available the final inspection report (with respect to Section 104(h)(1)(A) of the Act) or the portions of the inspection report that deal with criticism of or potential defects in the quality control systems of the firm (with respect to Section 104(h)(1)(B) of the Act).

If a timely request for interim review with respect to an inspection report is made, the Commission will notify the firm and the PCAOB within 30 calendar days of the receipt of the request as to whether the Commission in its discretion will grant the request for interim review. We believe this provides an appropriate period of time to evaluate the initial review request while balancing the interest in timely publication of inspection determinations. In considering whether to grant a review request, among the factors that

the Commission may consider are whether the review request makes a reasonable showing that review is appropriate or otherwise presents a concern. We do not intend to routinely grant review requests absent some indication of concern.

If the Commission does not grant the review request, the stay of publication is terminated upon notification to the firm and the PCAOB. If the Commission notifies the firm and the PCAOB that the request for interim review has been granted, the stay of publication shall continue unless the Commission determines otherwise in its own discretion, or unless the firm consents in writing to the PCAOB, with a copy to the Commission to earlier publication.

Rule 140 provides that where the Commission has notified the firm and the PCAOB that it is granting the request for an interim review, the PCAOB may submit responsive information or documents with the Commission, with a copy to the firm, within 15 calendar days of receipt of such notice. We believe this period of time should be reasonable given that the PCAOB drafted the final inspection report and considered the evidence for its decision.

The Commission also may request additional information, and provide a period of up to seven calendar days to respond to such request, from the firm in question, the PCAOB, and any associated person of the firm. The Commission may grant the firm or the PCAOB a period of up to seven calendar days to respond to any information obtained. This period of time is selected to balance the interest for an opportunity to respond with the expediency needed to complete the review and, if applicable, have the underlying findings or determinations published. Likewise, if the firm or the PCAOB fails to respond timely to a request from the Commission, such failure may make it impossible

for the Commission to complete its review and therefore could result in a determination adverse to the non-responsive party.²⁰

The information provided by the firm, together with any additional information provided by the PCAOB or associated persons, provides a basis for Commission consideration of the review. Rule 140 provides that, based on this information, the Commission shall consider whether the PCAOB's assessments or determinations are arbitrary and capricious, or otherwise not consistent with the purposes of the Act.

Congress did not prescribe a standard of review for PCAOB inspection reports in the Act. Therefore, in establishing this standard of review, the Commission is informed by the approach that the courts have generally taken in reviewing agency action in the absence of a statutorily prescribed standard of review.²¹ Further, an arbitrary and capricious standard of review creates an incentive for the firm to fully address and pursue areas of concern in the inspection report with the PCAOB, under its rules, prior to requesting review by the Commission.

At the end of its review, the Commission shall inform the firm seeking review and the PCAOB in writing that the Commission:

- (1) Does not object to all or part of the PCAOB's assessments or determination and the stay of publication is terminated; or
- (2) Remands to the PCAOB with instructions that the stay of publication is permanent or that the PCAOB take such other actions as the Commission deems

²⁰ Such failure on the part of the firm would include the failure of an "associated person" of a firm to respond.

²¹ See Alaska Department of Environmental Conservation v. Environmental Protection Agency, 540 U.S. 461, 496 (2004); see also 5 U.S.C. 706(2)(A) (Administrative Procedure Act). Also, we note that this is the standard that the courts have utilized in reviewing Commission actions. See, e.g., Natural Resources Defense Council, Inc., et al. v. SEC, et al., 606 F.2d 1031, 1049 (D.C. Cir. 1979); Bradford Nat'l Clearing Corp. et al. v. SEC, 590 F.2d 1085, 1093 (D.C. Cir. 1978).

necessary or appropriate with respect to publication, including, but not limited to, revising the final inspection report or determinations before publication.

To further encourage expediency in the review process, the rule provides that the review is to be completed and written notice provided to the firm and the PCAOB no more than 75 calendar days after notification to the firm and the PCAOB that the Commission is granting the request for an interim review, unless the Commission extends the period of review for good cause. The default 75 day period allows for the maximum 15 day period in the rule for the PCAOB to respond, an opportunity for the Commission to determine if additional information is needed, the ability, if appropriate, to have at least one request for additional information and an opportunity for the other party to respond (up to seven days under the rule each), and an opportunity for the Commission to review and complete the request.

Consistent with the purpose of providing an opportunity for review before public disclosure of all or a portion of an inspection report by the PCAOB, Rule 140 provides that, unless otherwise determined by the Commission, the decision to grant or deny a review request and the results of the Commission's review shall be non-public, and the information or documents submitted, created, or obtained by the Commission or its staff in the course of the review shall be deemed non-public.²² Further Section 104(h)(2) provides that any decision of the Commission with respect to interim review under Section 104(h) is not subject to judicial review.²³ Finally, again consistent with the

²² See also Section 105(b)(5) of the Act. Rule 140 also provides that nothing shall be construed to impair or limit the ability of any party to request confidential treatment under the Freedom of Information Act [15 U.S.C. 7215(b)(5)], or any other applicable law. Applicants may wish to consider whether seeking confidential treatment would be appropriate.

²³ 15 USC 7214(h)(2).

limited purposes of review under Section 104(h), any action taken by the Commission relates solely to the publication of the relevant inspection report and does not imply that the firm is exonerated or that no action may ultimately result from the inspection or from an investigation by the Commission, the PCAOB, or any other party.

D. Regulation P

The Commission is establishing a separate subpart in the Commission's Informal and Other Procedures – Regulation P – to include procedural rules relating to the PCAOB in one central location. The intention is to designate Rules in Regulation P according to the Section of the Act to which they primarily relate. As such, the procedural rule regarding interim inspection report reviews, which relates primarily to Section 104 of the Act, is being designated as Rule 140. In addition, the Commission is redesignating its existing procedural rule relating to the PCAOB budget process from Rule 11 to Rule 190 given the process relates primarily to Section 109 of the Act.

E. Delegation of Authority

In connection with adopting Rule 140, the Commission also is adopting Rule 30-11 of our Rules of Organization and Program Management to delegate authority to the Commission's Chief Accountant to process interim reviews subject to Rule 140. Among other matters, the Chief Accountant is delegated authority to grant or deny requests for interim review, to extend the time periods for the PCAOB or the firm to respond under the rule, to request additional information in conjunction with the review, to make a determination with respect to the review, and to notify the PCAOB and the firm of the results of the review. This delegation of authority is intended to conserve Commission resources by permitting the Chief Accountant to fulfill the Commission's review

requirements in a timely manner. Nevertheless, the staff may submit matters to the Commission for consideration, as it deems appropriate.²⁴ Further, we expect that the Commission staff will process interim Commission reviews with respect to inspection reports as efficiently and expeditiously as possible to avoid any unnecessary delay in making the inspection report available to the public, as required by the Act.

II. ADMINISTRATIVE PROCEDURE ACT, REGULATORY FLEXIBILITY ACT, AND PAPERWORK REDUCTION ACT

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act (“APA”),²⁵ that this revision relates solely to agency organization, procedure, or practice. It is, therefore, not subject to the provisions of the APA requiring notice and opportunity for public comment.²⁶ The Regulatory Flexibility Act,²⁷ therefore, does not apply. Similarly, because these rules relate to “agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,” analysis of major status under the Small Business Regulatory Enforcement Fairness Act is not required.²⁸ The rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.²⁹

²⁴ The Commission may also review any action taken by delegated authority. See Section 4A(b) of the Exchange Act. The Commission is revising its Rules of Practice to reflect this new delegation of authority to the Chief Accountant. Consistent with Section 104(h)(2), the Commission is also revising its Rules of Practice to provide that actions taken by delegated authority with respect to Rule 140 are not subject to judicial review.

²⁵ 5 U.S.C. 553(b)(3)(A).

²⁶ In addition, we intend to apply these procedures to pending applications, without further delay.

²⁷ 5 U.S.C. 601 et seq.

²⁸ 5 U.S.C. 804(3)(C).

²⁹ 44 U.S.C. 3501 et seq.

The Commission intends, after the Commission's initial experience under the new procedures, to issue a notice of comment in the future so the Commission can consider any such comments, along with the Commission's initial experience, in order to determine whether changes in pursuit of enhancements or efficiencies would be warranted.

III. CONSIDERATION OF THE COSTS AND BENEFITS OF THE RULE AMENDMENTS

We are sensitive to the costs and benefits imposed by our rules and amendments, and we have identified certain costs and benefits of these rules.

The potential benefits of the rule amendments include clarification and increased transparency of the Commission's review and oversight procedures with respect to the PCAOB³⁰ and the interim review procedures set forth in Rule 140, and the benefits of process: notice, opportunity to be heard, efficiency, and fairness. Rule 140 establishes a set of procedures for registered public accounting firms to follow in requesting interim Commission review with respect to a PCAOB inspection report, as required by the Act. The rule benefits inspected firms by informing them of the procedures to follow in initiating the review process and obtaining Commission review with respect to inspection findings and determinations with which they disagree. Commission review with respect to the PCAOB's inspection reports would allow the Commission to protect the public interest in the quality of PCAOB reports. It could provide a further incentive for the PCAOB to exercise diligence in its inspection and remedial determination process, including encouraging the PCAOB to make determinations on the basis of reasoned

³⁰ In addition, organizing Commission procedural rules relating to the PCAOB in one subpart also will make locating such rules easier.

support and sound analysis. The review procedure also benefits inspected firms by protecting against publication of inspection findings that the Commission ultimately may remand to the PCAOB for reconsideration.

There also are potential costs of the rule. Firms involved in Commission review proceedings may incur additional costs beyond those already incurred in complying with PCAOB procedures for seeking review of the inspection report's findings at the PCAOB level. However, a request for interim review of a PCAOB inspection report by the Commission is optional. Thus, a registered public accounting firm would incur these costs only if it expected the benefits from the review process to justify the costs.

The PCAOB also may incur additional costs as a result of the rule amendments, for example by adjusting its inspection process in anticipation of review requests and providing information to the Commission, especially at the Commission's request. The imposition of additional costs, beyond those already incurred by the PCAOB, could lead to higher accounting support fees assessed against issuers to cover the PCAOB's recoverable budget expenditure. To the extent the PCAOB has been publishing inspection reports before it has been feasible for firms to request interim review of findings, the public may experience a delay in publication from existing practice. However, to the extent those reports have included findings that would be remanded under Rule 140, providing an opportunity for those findings to be corrected may increase public confidence in the findings, including that the findings would not be further subject to change upon publication.

IV. CONSIDERATION OF IMPACT ON THE ECONOMY, BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION AND CAPITAL FORMATION

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact on competition of any rule we adopt. The rule amendments are intended to provide additional guidance with respect to the Commission's oversight responsibilities under Sections 104 and 107 of the Sarbanes-Oxley Act. The rule amendments provide procedures for requesting Commission review with respect to inspection reports issued by the PCAOB.

Section 3(f) of the Securities Exchange Act of 1934³¹ requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or in the public interest, to consider, in addition to the protection of investors, whether the action will promote competition and capital formation. We are not aware of any effect the rule amendments will have on competition, and capital formation. They are designed to enhance the transparency of the Commission's and the PCAOB's administrative practices, by facilitating the public's understanding of the Commission's oversight responsibilities with respect to PCAOB, and by promoting public confidence in the PCAOB's auditor oversight functions. The amendments may increase the efficiency of the PCAOB inspection process. Rule 140, which sets forth the administrative procedures relating to the Commission's review with respect to PCAOB inspection reports, applies to all registered public accounting firms that seek administrative review by the Commission. Therefore, the Commission does not expect the rules to have an anti-competitive effect.

V. STATUTORY BASIS AND TEXT OF RULES

The Commission is amending its Informal and Other Procedures under the authority set forth in Sections 3, 101(c)(5), 104, and 107 of the Act; and Sections 4A and

³¹ 15 U.S.C. 78c(f).

23 of the Exchange Act. The amendments to the Commission's Rules of Organization and Program Management and Rules of Practice are adopted pursuant to the authorities set forth therein.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 201

Administrative practice and procedure.

17 CFR Part 202

Administrative practice and procedure, Securities.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200 – ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The general authority citation for part 200 is revised to read as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7201 et seq., unless otherwise noted.

* * * * *

2. Add § 200.30-11 to read as follows:

§ 200.30-11 Delegation of authority to the Chief Accountant.

Pursuant to the provisions of Pub. L. 101-181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the

Commission orders otherwise, the following functions to the Chief Accountant of the Commission, to be performed by him or her or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) In connection with Commission review of inspection reports of the Public Company Accounting Oversight Board (“PCAOB”) under 15 U.S.C. 7214(h) and § 202.140:

(1) To grant or deny review requests and notify the firm and the PCAOB as to whether the Commission will grant the review request under § 202.140(d);

(2) To extend the time periods set forth in § 202.140(e) within which the PCAOB, registered public accounting firm or an associated person may submit responsive information and documents in connection with a request for Commission review.

(3) To request additional information pursuant to § 202.140(e) relating to the PCAOB’s assessments or determination under review from the PCAOB, the registered public accounting firm, or any associated person of the firm during the course of an interim review of an inspection report, and to grant the PCAOB, the firm or any associated person a period of up to seven calendar days to respond to any information obtained.

(4) To consider requests for review of inspection reports and, based on such review, to not object to all or part of the assessments or determination of the PCAOB and terminate the stay of publication, or to remand to the PCAOB with instructions that the stay of publication is permanent or that the PCAOB take such other actions as he or she deems necessary or appropriate with respect to publication, including, but not limited to,

revising the final inspection report or determinations before publication, and to provide the written notice communicating the same to the PCAOB and the registered public accounting firm, consistent with § 202.140.

(5) To determine that a timely review request by a firm will not operate as a stay of publication of those portions of the final inspection report or determinations described in § 202.140(b) that are the subject of the firm's review request pursuant to § 202.140(c)(5), as well as to determine that publication of the remainder of the final inspection report or criticisms or defects in the quality control systems would not be necessary or appropriate pursuant to § 202.140(c)(5).

(6) To, in the event the Commission does grant a review request pursuant to § 202.140, determine that the stay of publication shall not continue pursuant to § 202.140(d).

(7) To, in the event that the review pursuant to § 202.140(e) has not been completed and a written notice has not been sent 75 calendar days after notification to the firm and the PCAOB that it is granting the request for an interim review, grant an extension of time under the authority set forth in § 202.140(e).

(b) Notwithstanding anything in the foregoing, in any case in which the Chief Accountant believes it appropriate, he or she may submit the matter to the Commission.

PART 201 -- RULES OF PRACTICE

3. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 77s, 77sss, 78w, 78x, 79t, 80a-37 and 80b-11; 5 U.S.C. 504(c)(1).

* * * * *

4. Section 201.430 is amended by adding the following language to the end of Section 201.430(c): “Pursuant to 15 U.S.C. 7214(h)(2), any decision by the Commission pursuant to 200.30-11 shall not be reviewable under 15 U.S.C. 78y and shall not be deemed ‘final agency action’ for purposes of 5 U.S.C. 704.”

PART 202 – INFORMAL AND OTHER PROCEDURES

5. The general authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 77s, 77t, 78d-1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a-37, 80a-41, 80b-9, 80b-11, and 7201 et seq., unless otherwise noted.

* * * * *

6. Add subpart 202.100, redesignate §202.11 as §202.190, and add §202.140 to read as follows:

Subpart 202.100 – Public Company Accounting Oversight Board (Regulation P)

Sec.

202.140 Interim Commission Review of PCAOB inspection reports.

202.190 Public Company Accounting Oversight Board budget approval process.

§ 202.140 Interim Commission review of PCAOB inspection reports.

(a) Definitions.

(1) Board or PCAOB means the Public Company Accounting Oversight

Board.

(2) Registered public accounting firm or Firm shall have the meaning set forth in 15 U.S.C. 7201(a)(12).

(3) Associated person means a person associated with the registered public accounting firm as defined in 15 U.S.C. 7201(a)(9).

(b) Reviewable matters. A registered public accounting firm may request interim Commission review of an assessment or determination by the PCAOB contained in an inspection report prepared under 15 U.S.C. 7214 and relating to that firm, if the firm:

(1) Has provided the PCAOB with a response, pursuant to the rules of the PCAOB, to the substance of particular items in a draft inspection report and disagrees with the assessments relating to those items contained in any final inspection report prepared by the PCAOB following such response;

(2) Disagrees with an assessment contained in any final inspection report that was not contained in the draft inspection report provided to the firm under 15 U.S.C. 7214(f) or the rules of the PCAOB; or

(3) Disagrees with the determination of the PCAOB that criticisms or defects in the quality control systems of the firm that were identified in an inspection report, but not disclosed to the public, have not been addressed to the satisfaction of the PCAOB within 12 months after the date of that inspection report.

(c) Procedures for requesting interim Commission review.

(1) A request for interim Commission review with respect to matters described in paragraph (b) of this section must be submitted to the Commission's Office of the Secretary within 30 calendar days of the following:

(i) The date the firm is provided a copy of the final inspection report described in paragraph (b)(1) or (b)(2) of this section; or

(ii) The date the firm receives notice of the PCAOB's determination described in paragraph (b)(3) of this section.

(2) The PCAOB shall not make publicly available the final inspection report or criticisms or defects in the quality control systems of the firm subject to a determination described in paragraph (b) of this section, as applicable, during the 30-day period during which the firm may request interim Commission review, unless the firm consents in writing to earlier publication of the report.

(3) A request for interim Commission review ("request" or "submission") must be marked "Request for Interim Commission Review With Respect to PCAOB Inspection Report." The request must focus on the specific matters for which relief is requested and succinctly address the issues raised by the PCAOB. The request, to the extent possible, should include, for example:

(i) A copy of the particular inspection report that is the subject of the request;

(ii) The specific assessments or determinations that are the subject of the request;

(iii) The alleged errors or deficiencies in the PCAOB's assessments or determination and the reasons for the firm's position;

(iv) If the matter is being reviewed under paragraph (b)(3) of this section, any actions taken by the registered public accounting firm to address criticisms or defects identified in the inspection report; and

(v) Any supporting documentation relevant to the review.

(4) The firm must provide a copy of its review request to the PCAOB simultaneously with its submission to the Commission.

(5) A timely review request by a firm will operate as a stay of publication of those portions of the final inspection report or criticisms or defects in the quality control systems of the firm subject to a determination described in paragraph (b) of this section, as applicable, that are the subject of the firm's review request, unless the Commission otherwise determines in its own discretion. Upon expiration of the 30-day period during which the firm may request interim Commission review, the PCAOB shall make publicly available the remainder of the final inspection report or criticisms or defects in the quality control systems of the firm that were identified in an inspection report, as applicable, that are not the subject of the firm's review request, unless the Commission otherwise determines that such a result would not be necessary or appropriate.

(6) If the firm fails to make a timely review request, pursuant to Section 104(g)(2) of the Act, the PCAOB shall make publicly available the final inspection report or criticisms or defects in the quality control systems of the firm that were identified in an inspection report, as applicable.

(d) Procedures for granting or denying the review request. Within 30 calendar days of a timely review request, the Commission will notify the firm and the PCAOB as to whether the Commission will exercise its discretion to grant the request for an interim review. If the Commission does not grant the review request, the stay of publication is terminated upon notification to the firm and the PCAOB. If the Commission does grant the review request, the stay of publication shall continue unless the Commission determines otherwise in its own discretion, or unless the firm consents in writing to the PCAOB, with a copy to the Commission, to earlier publication.

(e) Procedures where a review request has been granted.

(1) Where the Commission has notified the firm and the PCAOB that it is granting the request for an interim review, the PCAOB may submit responsive information and documents with the Commission within 15 calendar days of receipt of such notice. The PCAOB must provide a copy of such information and documents simultaneously to the firm.

(2) During the course of the interim review, the Commission may request additional information relating to the PCAOB's assessments or determination under review, and provide a period of up to seven calendar days to respond to such request, from the PCAOB, the firm, and any associated person of the firm. The Commission may grant the firm or the PCAOB a period of up to seven calendar days to respond to any information obtained pursuant to this paragraph. The firm or the PCAOB, as applicable, shall provide simultaneously to the other party all information provided as a result of a request for additional information or responses thereto. The firm with which any associated person from whom information is requested shall provide simultaneously to the PCAOB all information provided as a result of a request for additional information or responses thereto. If the firm (including any associated person) or the PCAOB fails to respond timely to a request from the Commission, such failure may serve as the basis for the Commission to conclude its review and make a determination adverse to the non-responsive party.

(3) The Commission, based on the information submitted by the firm, the PCAOB and any associated persons, shall consider whether the PCAOB's assessments or determination are arbitrary and capricious, or otherwise not consistent with the purposes of the Act.

(4) At the conclusion of its review, the Commission shall inform the firm and the PCAOB in writing that the Commission:

(i) Does not object to all or part of the assessments or determination of the PCAOB and the stay of publication is terminated; or

(ii) Remands to the PCAOB with instructions that the stay of publication is permanent or that the PCAOB take such other actions as the Commission deems necessary or appropriate with respect to publication, including, but not limited to, revising the final inspection report or determinations before publication.

(5) The review pursuant to this section shall be completed and a written notice pursuant to this section shall be sent no more than 75 calendar days after notification to the firm and the PCAOB that the Commission is granting the request for an interim review, unless the Commission extends the period for good cause.

(f) Treatment of review.

(1) Time periods in this section shall be computed as provided in the Commission's Rules of Practice, 17 C.F.R. §201.160.

(2) Unless otherwise determined by the Commission, the decision to grant or deny a review request and the conclusions of the Commission's review shall be non-public, and the information or documents submitted, created, or obtained by the Commission or its staff in the course of the review shall be deemed non-public. Nothing in this rule shall be construed to impair or limit the ability of any party to request confidential treatment under the Freedom of Information Act, 15 U.S.C. 7215(b)(5), or any other applicable law.

(3) Pursuant to 15 U.S.C. 7214(h)(2), any decision of the Commission as a result of an interim review with respect to a PCAOB inspection report, including whether a request for review is granted or denied, shall not be reviewable under 15 U.S.C. 78y and shall not be deemed to be “final agency action” for purposes of 5 U.S.C. 704.

(4) Any action taken by the Commission relates solely to the publication of the relevant inspection report and does not affect the ability of the Commission or PCAOB to take appropriate action.

(g) Designation of address; Representation.

(1) When a registered public accounting firm first submits a request for interim Commission review, or an associated person first submits information related to a request, the firm or associated person shall submit to the Commission, and keep current, an address at which any notice or other written communication furnished to the firm or associated person may be sent, a contact name and telephone number where the firm or associated person may be reached during business hours and, if represented, the representative’s name, business address, and telephone number.

(2) If the firm, PCAOB, or associated person will be represented by a representative, the initial submission of that person shall be accompanied by the notice of appearance required by § 201.102(d). The other provisions of § 201.102 with respect to representation before the Commission shall apply.

By the Commission.

Elizabeth M. Murphy
Secretary

Dated: July 26, 2010