

**SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61649; File No. PCAOB-2009-01)**

March 4, 2010

**Public Company Accounting Oversight Board; Order Approving Proposed
Amendment to Board Rules Relating to Inspections**

I. Introduction

On July 2, 2009, the Public Company Accounting Oversight Board (the “Board” or the “PCAOB”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule amendment (PCAOB-2009-01) pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the “Act”) relating to the Board’s rules governing inspections of registered public accounting firms. Notice of the proposed rule amendment was published in the Federal Register on November 25, 2009.¹ The Commission did not receive any comment letters relating to the proposed rule amendment. For the reasons discussed below, the Commission is granting approval of the proposed rule amendment.

II. Description

The PCAOB’s proposed rule amendment would add paragraph (g) to existing PCAOB Rule 4003, Frequency of Inspections, to give the Board the ability to postpone, for up to three years, the current 2009 deadline for the first inspection of 49 non-U.S. firms that are located in 24 jurisdictions in which the Board has not conducted an inspection prior to 2009. As discussed further below, under the proposed rule amendment, the Board would conduct these inspections in each of the years from 2009 through 2012 according to a sequencing based on the U.S. market capitalization of the aforementioned 49 firms’ issuer audit clients. The proposed rule amendment does not

¹ See SEC Release No. 34-61032 (November 19, 2009); 74 FR 61722 (November 25, 2009).

affect inspection frequency requirements concerning any other first inspections or concerning any second, or later, inspections of a firm. Further, the proposed amendment itself does not limit the PCAOB's authority to conduct inspections at any time and does not affect registered firms' obligations under the Act.

Pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), the Commission published the proposed rule amendment for public comment on November 25, 2009.

III. Discussion of Comments

The Commission did not receive any comment letters relating to the proposed rule amendment.

IV. Discussion

Section 104 of the Act requires the PCAOB to conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the PCAOB, the rules of the Commission, and professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers. Under current PCAOB rules, the PCAOB must conduct an inspection annually of each firm that issued audit reports for more than 100 issuers in the previous calendar year; and must conduct an inspection once every three years of each firm that, during any of the three prior calendar years, issued an audit report for at least one but not more than 100 issuers, or that played a substantial role in the preparation or furnishing of an audit report for at least one issuer.² The Act authorizes the PCAOB, by rule and with SEC approval, to adjust these

² See PCAOB Rule 4003.

frequency requirements if the Board finds that different inspection schedules are consistent with the purpose of the Act, the public interest, and the protection of investors.³

As described by the PCAOB, there were 49 non-U.S. registered firms that, by virtue of when they first issued audit reports after registering with the PCAOB, the Board was required to inspect for the first time by the end of 2009, and that were located in 24 jurisdictions where the Board had not conducted any inspections to date.⁴ The Board indicated that these inspections were not conducted because of issues that relate primarily to the coordination of inspections with local authorities and the resolution of potential conflicts of law.⁵

In summarizing its rationale for the necessity of the proposed rule amendment, the Board noted its belief that most of the aforementioned 24 jurisdictions have or soon will have a local auditor oversight authority with which the Board would seek to work toward cooperative arrangements before conducting inspections, and noted its concerns about proceeding as if such cooperative arrangements and other necessary steps could be completed for all 24 jurisdictions in time to conduct the required inspections by the end of 2009.⁶ To address these concerns, the Board adopted and submitted to the Commission for approval the proposed rule amendment, new paragraph (g) to Rule 4003, to allow it to defer these inspections for up to three years.

³ See Section 104(b)(2) of the Act [15 U.S.C. 7214(b)].

⁴ See PCAOB Release No. 2009-003 (June 25, 2009).

⁵ Ibid.

⁶ Ibid.

In the Commission's publication of the proposed rules for comment, the notice indicated the following:

In determining the schedule for completion of the inspections subject to new paragraph (g), the Board will implement its proposal to sequence these 49 inspections such that certain minimum thresholds will be satisfied in each of the years from 2009 to 2012. The minimum thresholds relate to U.S. market capitalization of firms' issuer audit clients. The Board will begin by ranking the 49 firms according to the total U.S. market capitalization of a firm's foreign private issuer audit clients. Working from the top of the list (highest U.S. market capitalization total) down, the 49 firms will be distributed over 2009 to 2012 such that, at a minimum, the following criteria are satisfied:

- by the end of 2009, the Board will inspect firms whose combined issuer audit clients' U.S. market capitalization constitutes at least 35 percent of the aggregate U.S. market capitalization of the audit clients of all 49 firms;
- by the end of 2010, the Board will inspect firms whose combined issuer audit clients' U.S. market capitalization constitutes at least 90 percent of that aggregate;
- by the end of 2011, the Board will inspect firms whose combined issuer audit clients' U.S. market capitalization constitutes at least 99.9 percent of that aggregate; and
- the Board will inspect the remaining firms in 2012.

In addition to meeting those market capitalization thresholds, the Board also will satisfy certain criteria concerning the number of those 49 firms that will be inspected in each year. Specifically, the Board will conduct at least four of the 49 inspections in 2009, at least 11 more in 2010, and at least 14 more in 2011. (footnotes omitted)

On February 3, 2010, the PCAOB released new and updated information about the status of its inspections of registered non-U.S. accounting firms, including reporting on the PCAOB's progress in meeting the above target thresholds.⁷ Specifically, the PCAOB reported that, as of December 31, 2009, the PCAOB had inspected five firms that would meet the proposed Rule 4003(g) criteria for deferral. However, the PCAOB

⁷ See http://pcaobus.org/News/Releases/Pages/02032010_Progress_IntlInspections.aspx. The PCAOB also noted that it intends to update its progress report semiannually to reflect information current as of June 30 and December 31.

inspected only two of the four firms that the PCAOB had scheduled for inspection in 2009 based on their clients' U.S. market capitalization. As a result, the PCAOB did not meet the target threshold for U.S. market capitalization for 2009. The PCAOB was unable to conduct the inspections of the remaining two firms it intended to inspect in 2009 because, on the basis of asserted restrictions under non-U.S. law, access to information necessary to conduct the inspections was denied.

The PCAOB also reported that discussions are continuing with the relevant authorities in the affected jurisdictions in an effort to resolve their objections to PCAOB inspections. We agree that the PCAOB should continue to work toward cooperative arrangements with the appropriate local auditor oversight authorities where it is reasonably likely that appropriate cooperative arrangements can be obtained.⁸ We also recognize that formalization and finalization of such arrangements take time. However, as the Board has acknowledged, inspection is the cornerstone of the Board's regulatory oversight of audit firms.⁹ Public companies and investors rely on the integrity of the auditing work performed by firms registered with the PCAOB, and the salutary effects of briefly delaying inspection of certain of these firms decrease as the period of delay increases or there no longer appears to be a reasonable possibility of reaching appropriate cooperative arrangements.

Accordingly, we encourage the PCAOB to continue to work with deliberate speed with its foreign counterparts to finalize these cooperative arrangements. We continue to

⁸ Cf., PCAOB Release 2009-003 (June 25, 2009) (expressing the view that "There is long-term value in accepting a limited delay in inspections to continue working toward cooperative arrangements where it appears reasonably possible to reach them.").

⁹ See, PCAOB Release 2009-003 (June 25, 2009) (stating that "[I]nspection is the Board's primary tool of oversight.").

expect the PCAOB to satisfy its announced inspection schedule for 2010-2012.¹⁰ We also direct the PCAOB to work closely with Commission staff in the PCAOB's ongoing discussions with relevant authorities and efforts to meet its non-US audit firm inspection schedule.¹¹

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed amendment of the Board's rules governing inspections of registered public accounting firms are consistent with the requirements of the Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors.

IT IS THEREFORE ORDERED, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed rule amendment (File No. PCAOB 2009-01) be and hereby is approved.

By the Commission.

Elizabeth M. Murphy
Secretary

¹⁰ As part of its semiannual disclosures, the PCAOB also discloses a list of those registered firms where inspections have not been completed by the PCAOB, even though more than four years have passed since the end of the calendar year in which the firm first issued an auditor report while registered with the PCAOB.

¹¹ Separately, in the Commission's order approving the PCAOB's budget and annual accounting support fee for calendar year 2010, the Commission directed the PCAOB to include in its quarterly reports to the Commission information about the timing of the PCAOB's international inspection program and updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries. See SEC Release No. 34-61212 (December 22, 2009); 74 FR 68875 (December 29, 2009).