
BRIEFING PAPER

RULES ON INVESTIGATIONS AND ADJUDICATIONS

RULE ON WITHDRAWAL FROM REGISTRATION

SEPTEMBER 29, 2003 PUBLIC MEETING OF THE BOARD

At its public meeting on September 29, 2003, the Public Company Accounting Oversight Board (“Board”) will consider adopting two separate sets of rules: rules on investigations and adjudications, and a rule on the process by which a registered public accounting firm may seek to withdraw from registration. Any rules that the Board adopts at the meeting will not take effect unless approved by the Securities and Exchange Commission (“Commission”) pursuant to Section 107(b) of the Sarbanes-Oxley Act (“Act”).

Rules on Investigations and Adjudications

Section 105 of the Act grants the Board investigative and disciplinary authority over registered public accounting firms and persons associated with such firms, and directs the Board to establish, by rule, fair procedures for investigation and discipline. On July 28, 2003, the Board proposed, and sought comment on, rules on investigations and adjudications. The Board will consider whether to adopt the proposed rules, with modifications in response to certain of the comments.

The rules on investigations and adjudications consist of 64 rules (PCAOB Rules 5000 through 5501) divided into five parts: 1) Inquiries and Investigations, 2) Disciplinary Proceedings, 3) Disciplinary Sanctions, 4) Rules of Board Procedure, and 5) Hearings on Disapproval of Registration Applications. Under the rules, the Board may conduct investigations concerning any act, practice, or omission, by a registered firm or associated person, that may violate any provision of the Act, the rules of the Board, certain provisions of the securities laws, or professional standards.

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The rules, like the Act, require registered firms and their associated persons to provide any documents, testimony, or information sought by the Board in an investigation. As further authorized by the Act, the rules permit the Board to request information from other persons, including clients of registered firms, and to seek issuance of a Commission subpoena for such information if necessary.

The rules provide for the Board to authorize disciplinary proceedings and to appoint hearing officers to conduct fair hearings. The rules on hearing procedures would apply both to disciplinary hearings and to hearings on the disapproval of registration applications.

If a disciplinary hearing results in a finding that a violation occurred, the rules provide for sanctions designed to deter a possible recurrence and to enhance the quality of future audits. The sanctions may be as severe as revoking a firm's registration or barring a person from participating in audits of public companies. Lesser sanctions include monetary penalties and requirements for remedial measures, such as training, new quality control procedures, or the appointment of an independent monitor.

Rule on Withdrawal from Registration

On May 6, 2003, the Board adopted rules relating to a registration system for public accounting firms. The Commission approved those rules on July 16, 2003. On July 28, 2003, the Board proposed, and sought comment on, a rule that would supply procedures by which a firm, once registered, may seek to withdraw from registration. The Board will consider whether to adopt the proposed rule, with modifications in response to certain of the comments, as PCAOB Rule 2107.

Under the rule, a registered firm may seek to withdraw its registration by filing a request with the Board on Form 1-WD. A firm that files a Form 1-WD may not, unless it first withdraws its Form 1-WD filing, engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report.

Withdrawal is not automatic upon request. The rule delays a firm's withdrawal if certain disciplinary proceedings are pending and, in other circumstances, allows the Board to delay withdrawal for up to 18 months. If withdrawal is delayed, the rule nevertheless eases the firm's reporting and annual fee obligations during the delay. Moreover, the rule gives the Board discretion to waive any regular inspection of the firm that would otherwise commence, in the regular inspection cycle, during the delay.



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The PCAOB is a private-sector, non-profit corporation, created by the Sarbanes-Oxley Act of 2002, to oversee the auditors of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, fair, and independent audit reports.

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