



PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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BOARD FUNDING)
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PROPOSAL FOR ESTABLISHMENT OF)
ACCOUNTING SUPPORT FEE)
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PCAOB Release No. 2003-002
March 14, 2003

PCAOB Rulemaking
Docket
Matter No. 002

Summary: The Public Company Accounting Oversight Board (“Board” or “PCAOB”) has proposed rules to establish the accounting support fee required under the Sarbanes-Oxley Act of 2002 (“Act”) to fund the Board’s activities. The proposed funding system consists of five rules (PCAOB Rules 7100 through 7104), plus certain definitions that would appear in Rule 1001. The Board invites public comment on the proposed rules and will consider all comments received, modify its proposal as it deems appropriate, and submit final rules to the Securities and Exchange Commission (“Commission”) for approval pursuant to Section 107 of the Act. The Board’s proposed funding system rules will not take effect unless and until approved by the Commission.

Public
Comment: Interested persons may submit written comments to the Board. Such comments should be sent to Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments may also be submitted by e-mail to comments@pcaobus.org or through the Board’s website at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 002 and should be received by the Board no later than 5:00 PM (EST) on April 4, 2003.

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Board

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The Board has proposed, and is seeking comment on, rules relating to public company funding of the Board's operations. Section 109 of the Act provides that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms) are to be collected from public companies (i.e., "issuers," as defined in the Act). The amount due from such companies is referred to in the Act as the Board's "accounting support fee."

Under the proposed rules, the accounting support fee would be allocated to, and payable by, two classes of issuers: (1) publicly-traded companies with average, monthly U.S. equity market capitalizations during the preceding year, based on all classes of common stock, of greater than \$25 million,¹ and (2) investment companies with average, monthly U.S. equity market capitalizations (or net asset values) of greater than \$250 million.² In recognition of the structure of investment companies and the relatively less-complex nature of investment company audits (as compared to operating company audits), investment companies would be assessed at a lower rate. All other issuers, including (1) those that are not required to file audited financial statements with the

^{1/} The definition of "issuer market capitalization" in Rule 1001(i)(i) defines that term to include only the aggregate market value of securities traded in the United States, whether those securities are issued by entities based in the United States or elsewhere. The definition excludes the market value of securities traded outside the United States.

^{2/} This class would include both registered investment companies and issuers that have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act of 1940 ("Investment Company Act"). In the case of an investment company with multiple series, the average, monthly U.S. equity market capitalization, or net asset value, of all series in the investment company would be aggregated to determine whether the \$250 million threshold has been exceeded.

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Commission, (2) employee stock purchase, savings and similar plans, and (3) bankrupt issuers that file modified reports, would be allocated shares of zero.³

The proposed funding system consists of five rules (PCAOB Rules 7100 through 7104), plus certain definitions that would appear in Rule 1001. Appendices 1 and 2 to this release contain, respectively, the text of these rules and a section-by-section analysis of the rules. Section A of this release provides an overview of the operation of the proposed funding system. Section B of this release requests comments and describes how they may be submitted to the Board.

A. Operation of the Proposed Public Company Funding Rules

1. Computation of Accounting Support Fee and Allocation to Issuers

Once each year, the Board will compute the accounting support fee.⁴ The accounting support fee will be equal to the Board's budget for that year, as approved by the Commission, less the amount of registration and annual fees received during the prior year from public accounting firms.⁵

In allocating the accounting support fee, the Board will be guided by two overarching principles that emanate from Section 109 of the Act: that, generally, the accounting support fee must be allocated in a manner that reflects the proportionate sizes of issuers, and that, within that framework, the accounting support fee must be allocated in an equitable manner. These two principles are related in that, at least as a general matter, size of issuer may serve as an indication of the complexity of an audit,

^{3/} In addition, issuers with average, monthly U.S. equity market capitalizations during the preceding year of less than \$25 million (or, in the case of investment companies, of less than \$250 million), and issuers whose only outstanding public securities are debt securities would be allocated shares of zero.

^{4/} Rule 7100. The Board anticipates that the accounting support fee will normally be computed during the first 30 days of each calendar year.

^{5/} Id. The term "accounting support fee" is defined in Rule 1001(a)(i) by reference to Rule 7100.

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which could be an equitable measure on which to base allocation of the accounting support fee. These proposed rules reflect the Board's preliminary thinking on how best to implement both principles.

With respect to the measurability of issuers' proportionate sizes, the Board faces certain limitations. First, although Section 109 provides a formula based on equity market capitalization by which to measure the proportionate sizes of issuers, market data may not be reliable or even available with respect to issuers that are not traded on an exchange or quoted on Nasdaq, or with respect to issuers whose securities are otherwise illiquid. In addition, issuers whose only publicly-traded securities are debt securities do not have equity market capitalizations.

Second, to the extent that there are issuers, as that term is defined in Section 2(a)(7) of the Act, that are not required to file audited financial statements, it may not be equitable to allocate any share of the accounting support fee to them. Further, while most investment companies file annual audited financial statements, the assets of many of those companies consist of investments in issuers who will have themselves been allocated shares of the accounting support fee.

In order to allocate the accounting support fee among issuers in a manner that takes into account the overarching principles and the inherent limitations of available data, the Board proposes that all issuers be divided into four classes:

- (1) All issuers whose average, monthly U.S. equity market capitalization during the preceding calendar year, based on all classes of common stock, is greater than \$25 million.⁶ (Equity Issuers class)

^{6/} Rule 7101(a). The Commission uses a similar threshold – public float of less than \$25 million – as one of the criteria for determining whether a company qualifies as a small business issuer. See 17 CFR § 228.10.

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- (2) Registered investment companies and issuers that have elected to be regulated as business development companies whose average, monthly market capitalization (or net asset value), during the preceding calendar year, is greater than \$250 million.⁷ (Investment Company Issuers class)

As discussed below, the allocation formula scales market capitalization (or, for investment companies whose securities are not traded on an exchange or quoted on Nasdaq, net asset value) of investment companies down by 90%, such that a \$250 million investment company would be allocated a share equal to that of a \$25 million operating company.

^{7/} Rule 7101(a)(2). The legislative history of the Act supports the Board's proposal to establish a separate class for investment company issuers and to allocate shares of the accounting support fee to members of that class at a reduced rate. See Floor Statement of Sen. Enzi, 148 Cong. Rec. S7356 (July 25, 2002):

I also believe that the Conferees expect that the Board and the standard setting body will deem investment companies registered under Section 8 of the Investment Company Act of 1940 to be a class of issuers for purposes of establishing the fees pursuant to this section, and that investment companies as a class will pay a fee rate that is consistent with the reduced risk they pose to investors when compared to an individual company. Audits of investment companies are substantially less complex than audits of corporate entities. The failure to treat investment companies as a separate class of issuers would result in investment companies paying a disproportionate level of fees.

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- (3) All issuers that, as of the date the accounting support fee is calculated under Rule 7100, (i) have a basis, under a Commission rule or pursuant to other action of the Commission or its staff, not to file audited financial statements, (ii) are employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2.⁸ (Issuers Permitted Not to File Audited Financial Statements and Bankrupt Issuers that File Modified Reports class)
- (4) All other issuers (i.e., issuers that do not fall in classes (1), (2), or (3)).⁹ (All Other Issuers class)

A company's status as an issuer (or as an investment company, business development company, issuer excused from filing audited financial statements, or bankrupt issuer) will be determined as of the date on which the amount of the annual accounting support fee is set. Companies that are not issuers on that date will not be required to pay any fee during that year.

The accounting support fee will be allocated among the issuers in the four classes in the following manner:

- (1) Each company in the Equity Issuer and Investment Company Issuer classes will be allocated an amount equal to the accounting support fee, multiplied by a fraction. The numerator of the fraction will be the issuer's average,

^{8/} Rule 7101(a)(3). Paragraph (i) of this class currently includes include (A) asset-backed issuers, (B) unit investment trusts, as defined in Section 4(2) of the Investment Company Act, that have not filed or updated a registration statement that became effective during the preceding year, and (C) Small Business Investment Companies registered on Form N-5 under the Investment Company Act, that have not filed or updated a registration statement that became effective during the preceding year.

^{9/} Rule 7101(a)(4).

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monthly market capitalization during the preceding calendar year. The denominator will be the sum of the average, monthly market capitalizations of all Equity and Investment Company Issuers.

For purposes of this allocation, however, the market capitalization of an investment company issuer will be ten percent of the investment company's market capitalization or net asset value.¹⁰

- (2) All issuers in the other two classes – issuers permitted not to file and all other issuers – will be allocated a share of zero.¹¹

Based on equity market capitalizations of U.S. issuers listed in the Wilshire 5000 Index as of December 31, 2002 and other sources,¹² and assuming a total of 7,000 Equity Issuers and Investment Company Issuers, the allocation set forth in the proposed rule would result in Equity Issuers covering approximately 95% percent of the accounting support fee and Investment Company Issuers covering approximately 5% of the accounting support fee. Using these assumptions, the Board's preliminary modeling indicates that, for every \$10 million of accounting support fee, the largest issuer would be allocated \$260,000, the 1,500th largest issuer would be allocated \$500, and the 3,000th largest issuer would be allocated \$100.

Issuers will be required to pay their allocated shares of the accounting support fee, rounded to the nearest hundred. Accordingly, issuers whose shares of the accounting support fee are less than \$50 will have their shares rounded to zero and will not be assessed a fee.

^{10/} Rule 7101(b)(1).

^{11/} Rule 7101(b)(2).

^{12/} The sample results discussed here are based on a snapshot of market capitalization on December 31, 2002. Actual average, monthly U.S. equity market capitalization for the year ending December 31, 2002, may be different from these results.

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2. Notice of Allocation and Collection

Section 109 of the Act requires the Board to promulgate rules on assessment and collection of the accounting support fee. Accordingly, the proposed rules provide that, after the annual allocation of the accounting support fee is determined, the Board will send a notice to each issuer to which a share of the fee has been allocated.¹³ These notices will be sent either electronically or by first-class mail. Payment will be due on the 30th day after transmittal, after which interest will accrue at a rate of 6% per annum.¹⁴

The Board intends that notices will contain sufficient information to permit issuers to review the calculations by which their allocations were determined. Specifically, all notices will include the amount of the accounting support fee, the date on which the accounting support fee was calculated, the class in which the issuer was placed, the issuer's average, monthly U.S. equity market capitalization for the preceding year, and the sum of the average, monthly U.S. equity market capitalizations of all issuers in the Equity Issuer and Investment Company Issuer classes during the preceding year.¹⁵ Issuers that disagree with the class in which they have been placed, or with the

^{13/} Rule 7102. The Board will use its best efforts to send a notice to each issuer. Mailings will be to the address shown on such issuer's most recent periodic report filed with the Commission or submitted to the Commission's EDGAR system, unless the issuer provides another address to the Board. The Board's failure to send an issuer a notice, or the issuer's failure to receive a notice sent by the Board, will not excuse an issuer from its obligation to pay its share of the accounting support fee.

^{14/} Rule 7103(a).

^{15/} As discussed above, the allocation formula will use only 10 percent of the average, monthly market capitalization (or net asset value) of investment companies. Both the market capitalization (or net asset value) and the percentage thereof used in the formula will be disclosed as part of the notice.

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calculation by which their allocations were determined, should inform the Board's Secretary, in writing, of the basis for their disagreements.¹⁶

If an issuer has not paid its share of the accounting support fee by the 60th day after a notice was sent, the Board may send a second notice by certified mail.¹⁷ If the Board has sent a second notice and payment has still not been made by the 90th day after the original notice was sent, the Board may report the issuer's non-payment to the Commission.¹⁸ An issuer's failure to pay its share of the accounting support fee is a violation of Section 13(b)(2) of the Securities Exchange Act of 1934 ("Exchange Act") and could, like any other Exchange Act violation, result in administrative, civil, or criminal sanctions.¹⁹

In addition, the Board proposes to require that no registered public accounting firm may sign an unqualified audit opinion (or issue a consent) with respect to an issuer's financial statements if that issuer has outstanding any past-due share of the accounting support fee.²⁰ The proposed rules would permit a qualified, adverse or disclaimed opinion irrespective of whether the issuer's share had been paid. The collection measures in the Board's proposed rules are intended to ensure the reliability of the independent funding source the Act provides for the Board and to promote fairness to all issuers allocated a share of the accounting support fee. The Board intends the requirement that auditors confirm payment of an issuer's share of the accounting support fee before issuing an unqualified audit opinion to serve as a reliable and cost-effective means of maintaining integrity in the assessment and collection

^{16/} After the date on which the accounting support fee is calculated under Rule 7100 and allocated under Rule 7101, any change or recalculation of the share allocated to an issuer will not affect the share allocated to any other issuer.

^{17/} Rule 7103(b).

^{18/} Rule 7103(c).

^{19/} See Sections 21C(a), 21(d), and 32(a) of the Exchange Act.

^{20/} Rule 7103(b).

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process. The Board plans to build systems that enable auditors quickly and easily to ascertain whether their issuer audit clients have outstanding any past-due shares of the accounting support fee.

3. Collection of Fees for Standard-Setting Body

Under the Act, the standard-setting body designated by the Commission to establish accounting principles is also authorized to collect an accounting support fee from public companies to cover its annual budget.²¹ The Board's proposed rules recognize that, as contemplated in the Act, the standard-setting body could designate an agent to assess and collect its fees and the Board could be that agent.²² If that occurs, the Board's assessment and collection of the standard-setting body's fees will be governed by the same rules as apply to the Board's fees.

Consistent with Section 109(e) of the Act, the Board would not be responsible for calculating the standard-setting body's accounting support fee or for allocating its accounting support fee among issuers. While Section 109 of the Act governs both the Board's and the standard-setting body's accounting support fee, the standard-setting body is not required to use the Board's allocation formula. If the standard-setting body designates the Board as its collection agent, however, the Board's proposed rules would effectively require the standard-setting body to agree to the same assessment and collection process (for example, rounding issuers' shares to the nearest hundred, and reporting issuers' non-payment to the Commission) as applies to the Board's accounting support fee. The Board envisions that, if it is designated to serve as the standard-setting body's collection agent, issuers would receive one notice and make one payment. The notice would clearly distinguish between the amount that goes to the Board and the amount that goes to the accounting standard-setter, and it would provide issuers with separate calculations of how the amount of each assessment was reached.

^{21/} See Section 109(e) of the Act.

^{22/} Rule 7104.

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B. Request For Public Comment

Interested persons are encouraged to submit their views to the Board. The Board seeks comment on any aspect of these proposed rules. In particular, however, the Board seeks comment on the following questions:

- Is the proposed size of the Equity Issuer class – all publicly-traded companies with average, monthly U.S. equity market capitalizations that exceed \$25 million – appropriate?
- Is the proposed size of the Investment Company Issuer class – all investment companies with average, monthly market capitalizations or net asset values of \$250 million or greater – appropriate?
- Is allocating shares to investment companies based on 10-percent of their average, monthly market capitalization (or net asset value) appropriate?

Written comments should be sent to Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments may also be submitted by e-mail to comments@pcaobus.org or through the Board's website at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 002 in the subject or reference line and should be received by the Board no later than 5:00 PM (EST) on April 4, 2003.

The Board will carefully consider all comments received. Following the close of the comment period, the Board will determine whether to amend its proposals, will adopt final public company funding rules, and will submit those rules to the Commission for approval. Pursuant to Section 107 of the Act, Board rules do not take effect until approved by the Commission.

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On the 13th day of March, in the year 2003, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ISSUED BY THE BOARD.

/s/ Ronald S. Boster

Ronald S. Boster
Acting Secretary

March 13, 2003

APPENDICES:

1. Proposed Rules Relating to Funding
2. Section-by-Section Analysis of Proposed Rules Relating to Funding

Appendix 1 – Proposed Rules Relating to Funding

PROPOSED RULES RELATING TO FUNDING

RULES OF THE BOARD

SECTION 1. GENERAL PROVISIONS

1001. Definitions of Terms Employed in Rules.

When used in the Rules, unless the context otherwise requires:

(a)(i) Accounting Support Fee

The term “accounting support fee” means the fee described in Rule 7100.

(i)(i) Issuer Market Capitalization

The terms “issuer market capitalization” and “market capitalization of an issuer” mean –

- (1) Except as provided in paragraph (i)(i)(2) of this rule, the aggregate market value of all classes of an issuer’s common stock that trade in the United States; or
- (2) With respect to an issuer: (i) that is registered under Section 8 of the Investment Company Act or has elected to be regulated as a business development company pursuant to Section 54 of the Investment Company Act, and (ii) whose securities are not traded on a national securities exchange or quoted on Nasdaq, the issuer’s net asset value.

(i)(ii) Investment Company Act

The term “Investment Company Act” means the Investment Company Act of 1940, as amended.

(n)(i) Notice

The term “notice” means the document sent by the Board to an issuer, pursuant to Rule 7102, setting forth such issuer’s share of the accounting support fee under Section 109 of the Act and Rules 7101 and 7102.

(s)(i) Securities Act

The term “Securities Act” means the Securities Act of 1933, as amended.

SECTION 7. FUNDING

RULE 7000.

[reserved]

RULE 7100. Accounting Support Fee.

The Board shall calculate an accounting support fee each year. The accounting support fee shall equal the budget of the Board, as approved by the Commission, less the sum of all registration fees and annual fees received during the preceding calendar year from public accounting firms, pursuant to Section 102(f) of the Act and the Rules of the Board.

RULE 7101. Allocation of Accounting Support Fee.

(a) Classes of Issuers

For purposes of allocating the accounting support fee, those entities that are issuers as of the date the accounting support fee is calculated under Rule 7100 shall be divided into four classes:

(1) Equity Issuers

All issuers whose average, monthly issuer market capitalization during the preceding calendar year is greater than \$25 million, other than those described in paragraphs (a)(2) and (a)(3) of this Rule.

(2) Investment Company Issuers

All issuers whose average, monthly issuer market capitalization during the preceding calendar year is greater than \$250 million and that, as of the date the accounting support fee is calculated under Rule 7100, are registered under Section 8 of the Investment Company Act or have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act, other than those described in paragraph (a)(3).

(3) Issuers Permitted Not to File Audited Financial Statements and Bankrupt Issuers that File Modified Reports

All issuers that, as of the date the accounting support fee is calculated under Rule 7100, (i) have a basis, under a Commission rule or pursuant to other action of the Commission or its staff, not to file audited financial statements, (ii) are employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2.

Note: As of March 13, 2003, issuers within paragraph (a)(3)(i) of this Rule include (A) asset-backed issuers, (B) unit investment trusts, as defined in Section 4(2) of the Investment Company Act, that have not filed or updated a registration statement that became effective during the preceding year, and (C) Small Business Investment Companies registered on Form N-5 under the Investment Company Act, that have not filed or updated a registration statement that became effective during the preceding year.

(4) All Other Public Company Issuers

All issuers other than those described in paragraphs (a)(1), (a)(2) or (a)(3) of this Rule.

(b) Allocation of Accounting Support Fee Among Issuers

The accounting support fee shall be allocated among the classes in paragraph (a) of this Rule as follows:

(1) Equity and Investment Company Issuers

Each issuer described in paragraph (a)(1) and (a)(2) of this Rule shall be allocated a share of the accounting support fee in an amount equal to the accounting support fee multiplied by a fraction –

- (i) the numerator of which is the average, monthly market capitalization of the issuer during the preceding calendar year, except that for issuers described in paragraph (a)(2) of this Rule, the numerator is one-tenth of the average, monthly market capitalization of the issuer; and
- (ii) the denominator of which is the sum of the average, monthly market capitalizations of the issuers described in paragraph (a)(1) of this Rule and one-tenth of the average, monthly market capitalizations of the issuers described in paragraph (a)(2) of this Rule.

(2) All Other Classes

Each issuer described in paragraphs (a)(3) and (a)(4) of this Rule shall be allocated a share of the accounting support fee equal to \$0.

(c) Adjustments

After the accounting support fee is calculated under Rule 7100 and allocated under this Rule, any adjustment to the share allocated to an issuer shall not affect the share allocated to any other issuer.

RULE 7102. Assessment of Accounting Support Fee.

(a) Amount of Assessment

Each issuer is required to pay its share of the accounting support fee, as allocated under Rule 7101, rounded to the nearest hundred.

Note: If an issuer's share of the accounting support fee is less than \$50, that issuer will not be assessed. If the issuer's share of the accounting support fee is exactly \$50 more than a multiple of \$100, then the share will be rounded up to the nearest \$100.

(b) Notice of Assessment

The Board will use its best efforts to send a notice to each issuer, either electronically or by first-class mail, at the address shown on such issuer's most recent periodic report filed with the Commission, at the address submitted to the Commission's EDGAR system, or at such other address as the issuer provides to the Board. The Board's failure to send an issuer a notice, or the issuer's failure to receive a notice sent by the Board, shall not constitute a waiver of the Board's right to assess such issuer for its share of the accounting support fee or of the issuer's responsibility to pay its share of the accounting support fee.

RULE 7103. Collection of Accounting Support Fee.

(a) Accounting Support Fee Payment Due Date

Unless the Board directs otherwise, payment shall be due on the 30th day after the notice is sent. Beginning on the 31st day, payment shall be deemed past due and interest shall accrue at a rate of 6 percent per annum.

(b) Confirmation of Payment of Accounting Support Fee by Registered Accounting Firm

No registered public accounting firm shall sign an unqualified audit opinion with respect to an issuer's financial statements, or issue a consent to include an audit opinion issued previously, unless the auditor has ascertained that the issuer has outstanding no past-due share of the accounting support fee.

(c) Report to the Commission of Non-payment of an Accounting Support Fee

If an issuer has not paid its share of the accounting support fee by the 60th day after the notice was sent, the Board may send a second notice to such issuer by certified mail. If the Board has sent such a second notice and has not been paid by the 90th day after the original notice was sent, the Board may report the issuer's non-payment to the Commission.

Note: Section 13(b)(2) of the Exchange Act provides, in part, that: "Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall – * * * (C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable accounting support fee or fees, determined in accordance with Section 109 of the Sarbanes-Oxley Act of 2002."

(d) Excess Fees

If in any Board fiscal year, the Board receives fees in excess of the budget for that fiscal year, the Board shall hold those excess fees in escrow. Such escrowed excess fees shall be released to the Board at the beginning of the next fiscal year and shall reduce the Board's accounting support fee in that next fiscal year.

RULE 7104. Service as Designated Collection Agent

If the Board is designated to serve as collection agent for an accounting support fee of a standard-setting body designated by the Commission pursuant to Section 19(b) of the Securities Act, the assessment and collection of the accounting support fee shall be governed by Rules 7102 and 7103 as if the accounting support fee of the standard-setting body were the accounting support fee of the Board.

Appendix 2 – Section-by-Section Analysis of Proposed Rules Relating to Funding

The proposed funding system consists of five rules (PCAOB Rules 7100 through 7104), plus certain definitions that would appear in Rule 1001. Each of the proposed rules is discussed below.

Rule 1001 – Definitions of Terms Employed in Rules

Rule 1001 contains definitions of terms used in the Board's rules.¹

Accounting Support Fee

Rule 1001(a)(i) defines “accounting support fee” as the fee described in Rule 7100 of the Board’s rules. As in the Act, the Board’s rules use this term to refer to the total amount that issuers are to be assessed to fund the Board’s activities, based on the Board’s budget, each year.

Issuer Market Capitalization

Rule 1001(i)(i) defines the term “issuer market capitalization” (and “market capitalization of an issuer”). Paragraph (1) of the definition provides that, for most issuers, the terms mean the aggregate market value of all classes of an issuer’s common stock that trade in the United States. Paragraph (2) of the definition provides that, for an investment company issuer whose securities are not traded on a national securities exchange or quoted on Nasdaq, the terms mean the issuer’s net asset value.

^{1/} Certain definitions in the Board's rules that are self-explanatory are not discussed below.

Notice

Rule 1001(n)(i) defines the term “notice” to mean the document sent by the Board to an issuer setting forth the issuer’s share of the accounting support fee.

Rule 7100 – Accounting Support Fee

Rule 7100 provides that the Board shall calculate an accounting support fee each year. Consistent with Section 109(c)(1) of the Act, Rule 7100 further provides that the accounting support fee shall equal the budget of the Board, as approved by the Commission, less the sum of all registration fees and annual fees received during the preceding year from registered public accounting firms.

Rule 7101 – Allocation of Accounting Support Fee

Rule 7101 governs the allocation of the Board’s accounting support fee. Consistent with Section 109(d)(2) and (g) of the Act, Rule 7101 differentiates between four classes of issuers for purposes of allocating the Board’s accounting support fee. Specifically, Rule 7101(a) divides issuers into four classes:

- (1) All issuers whose average, monthly market capitalization during the preceding calendar year is greater than \$25 million (other than those described in the second and third classes below);
- (2) All issuers whose average, monthly market capitalization during the preceding calendar year is greater than \$250 million and that, as of the date the accounting support fee is calculated under Rule 7100, are registered under Section 8 of the Investment Company Act or have elected to be regulated as business development companies pursuant to Section 54 of the Investment Company Act (other than those described in the third class below);

- (3) All issuers that as of the date the accounting support fee is calculated under Rule 7100, (i) have a basis, under a Commission rule or pursuant to other action of the Commission or its staff, not to file audited financial statements with the Commission, (ii) are employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2; and
- (4) All issuers that do not fall into one of the three classes above.

The first class is meant to capture most public operating companies with market capitalizations greater than \$25 million.

The second class of issuers consists of investment companies and business development companies with market capitalizations (or net asset value for those investment companies whose securities are not traded on a national securities exchange or quoted on Nasdaq) of greater than \$250 million. The audits of investment company issuers are typically not as complex as those of operating companies. In addition, these companies are basically vehicles for holding the shares of other companies. Particularly in the case of registered investment companies, those other companies may themselves have already been assessed an accounting support fee. Accordingly, the Board has determined to treat investment companies as a separate class.

The third class consists of issuers that, in general, have a basis not to file audited financial statements with the Commission or to file modified financial statements. A

note to this paragraph of the rule explains that the first of the three groups within this class – i.e., those issuers that have a basis not to file audited financial statements -- currently would include:

- (1) asset-backed issuers;
- (2) unit investment trusts, as defined in Section 4(2) of the Investment Company Act, that have not filed or updated a registration statement that became effective during the preceding year;
- (3) Small Business Investment Companies registered on Form N-5 under the Investment Company Act, that have not filed or updated a registration statement that became effective during the preceding year;

This note is only meant to illustrate the scope of the first of the three groups within this class, not to limit it. Accordingly, if another group of issuers is permitted, now or in the future, by action of the Commission or its staff, not to file audited financial statements, that group of issuers would fall within the class, notwithstanding not being listed in the note. Conversely, if the Commission or its staff changed the treatment of one of the groups of issuers listed in the note so as no longer to permit that category of issuers not to file audited financial statements, that category of issuer would no longer fall within the class.

The fourth class of issuers is defined as all issuers not falling within one of the first three classes. The Board anticipates that this class will mainly consist of public companies with average, monthly equity market capitalizations of \$25 million or less during the preceding calendar year, including issuers that have only debt outstanding,

and investment companies with average, monthly market capitalizations of \$250 million or less during the preceding calendar year. Any other issuer that does not fall in one of the other three classes would come within this group, however.

Rule 7101(b) describes what share of the Board's accounting support fee is to be allocated to each of the four classes. Specifically, paragraph (b)(1) of the rule provides that each company in the first two classes will be allocated an amount equal to the accounting support fee, multiplied by a fraction. The numerator of the fraction will be the issuer's average, monthly U.S. market capitalization during the preceding calendar year. The denominator will be the sum of the average, monthly U.S. market capitalizations of all issuers in the first and second classes. For purposes of this allocation, however, the market capitalization of an investment company issuer will be ten percent of the investment company's average, monthly U.S. equity market capitalization (or, for investment companies that are not traded on a national securities exchange or quoted on Nasdaq, net asset value). This reduction is meant to reflect that investment company audits are relatively less complex than audits of publicly-traded companies.

Paragraph (2) of the rule provides that all issuers in the third and fourth classes will be allocated a share of zero.

Rule 7101(c) provides that after the accounting support fee is calculated and allocated, any adjustment to the share allocated to an issuer shall not affect the share

allocated to any other issuer. This paragraph of the rule is meant to address situations in which an issuer's share is recalculated at some point after the accounting support fee has been calculated and allocated. In these situations, an adjustment to an issuer's share will not result in reallocation of other issuers' shares.

Rule 7102 – Assessment of Accounting Support Fee

Rule 7102 governs the assessment of the Board's accounting support fee. The rule provides that each issuer is required to pay its share of the accounting support fee, as allocated under Rule 7101, rounded to the nearest hundred. Accordingly, issuers whose share of the accounting support fee, is less than \$50 will have their shares rounded to zero and will not be assessed a fee. Rule 7102 also provides that the Board will use its best efforts to send a notice, as defined in Rule 1001(n)(i), to each issuer. Notices will be sent either electronically or by first-class mail to the address shown on such issuer's most recent periodic report filed with the Commission, at the address submitted to the Commission's EDGAR system, or at such other address as the issuer provides to the Board.² Rule 7102 also provides that the Board's failure to send an issuer a notice, or the failure of the notice to reach the issuer, shall not constitute a

^{2/} Issuers wishing to provide the Board with an address different than the one that appears on the issuer's most recent periodic Commission filing should send the address to Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Letters should clearly indicate "Address for Notice of Accounting Support Fee" in the reference line and should include the issuer's full name, preferred address for receiving a notice under this rule, and name and contact information for a person at the issuer to whom questions about the address can be directed.

waiver of the Board's right to assess such issuer for its share of the accounting support fee or the issuer's responsibility to pay its share of the accounting support fee.

Rule 7103 -- Collection of the Accounting Support Fee

Rule 7103 governs the collection of the Board's accounting support fee. Paragraph (a) of the rule provides that payment of an issuer's share of an accounting support fee shall be due on the 30th day after the notice is sent. The rule also provides that the Board may "direct[] otherwise" to account for unusual situations in which the standard 30-day period is inequitable. The rule also provides that, beginning on the 31st day, interest on the share of the accounting support fee due will accrue at a rate of 6 percent per annum.

Paragraph (b) of the rule contains an additional collection measure. This paragraph of the Rule provides that no registered public accounting firm shall sign an unqualified audit opinion with respect to an issuer's financial statements, or issue a consent to include an audit opinion issued previously, unless the auditor has ascertained that the issuer has outstanding no past-due share of the accounting support fee. The proposed rules would permit a qualified, adverse or disclaimed opinion irrespective of whether the issuer's share had been paid.

Paragraph (c) of the Rule provides for a third collection measure. If an issuer has not paid its share of the accounting support fee by the 60th day after a notice was sent, the Board may send a second notice by certified mail. If the Board has sent a

second notice and payment has still not been made by the 90th day after the original notice was sent, the Board may report the issuer's non-payment to the Commission. An issuer's failure to pay its share of the accounting support fee is a violation of Section 13(b)(2) of the Exchange Act and could, like any other Exchange Act violation, result in administrative, civil, or criminal sanctions.³

Rule 7104 – Service as Designated Collection Agent

Under Section 109(e) of the Act, the standard-setting body designated by the Commission to establish accounting principles is also authorized to collect an accounting support fee from issuers to cover its annual budget. The Board's proposed rules recognize that, as contemplated in the Act, the standard-setting body may designate a collection agent for its accounting support fee and the Board may be that collection agent. Rule 7104 provides that, if that occurs, the Board's assessment and collection of the standard-setting body's fees will be governed by the same rules as apply to the Board's fees. Consistent with Section 109(e) of the Act, the Board would not be responsible for calculating the standard-setting body's accounting support fee or for allocating its accounting support fee among issuers.

^{3/} See Sections 21C(a), 21(d), and 32(a) of the Exchange Act.