

February 15, 2011

Public Company Accounting Oversight Board
Office of the Secretary
1666 K Street, N.W.
Washington, D.C. 20006-2803

Re: Request for Public Comment on the Proposal for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, And Other Amendments to the Board's Funding Rules (PCAOB Release No. 2010-009, December 14, 2010, Rulemaking Docket Matter No. 033)

Deloitte & Touche LLP appreciates the opportunity to respond to the request for comments from the Public Company Accounting Oversight Board (the "PCAOB" or the "Board") on its *Proposal for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, And Other Amendments to the Board's Funding Rules* (PCAOB Release No. 2010-009 (the "Release"), December 14, 2010, Rulemaking Docket Matter No. 033 (the "Proposed Rules")). Our comments herein are focused on the sections of the current and Proposed Rules that impact registered public accounting firms, specifically the confirmation or determination of payment of accounting support fees and reports of non-payment. We believe these rules and the related required procedures are unnecessary and can detract auditors from focusing on performing procedures directly related to the audit of the financial statements and internal control over financial reporting.

Under current PCAOB Rule 7103(b)(1), auditors are required to ascertain that an issuer¹ has outstanding no past-due share of the accounting support fee or has a petition pursuant to PCAOB Rule 7102(c) *before* issuing an auditors' report or consenting to the use of an auditors' report. This rule results in the auditor performing several procedures to obtain the appropriate evidence that there is no past-due accounting support fee. These procedures include the following:

- Evaluating whether an issuer meets the criteria such that it is subject to a fee.
- Examining the invoices supporting the accounting support fees owed.
- Tracing amounts owed per the invoice to supporting audit evidence.

¹ Under proposed Rule 7104(b)(1) this requirement would also apply to brokers and dealers.

- Checking the PCAOB's website to determine if the issuer is on the list as having no past due fee. If the issuer is not on the list, sending a confirmation to the PCAOB to ascertain whether a fee has been paid and/or to confirm that the issuer is not subject to a fee.
- Obtaining a management representation that there is no past-due accounting support fee or that a petition appealing the amount of the fee has been filed.
- If a petition has been filed, obtaining a copy of the petition.
- Documenting the procedures performed and conclusions reached.

If, after performing the appropriate procedures outlined above the auditor determines that there is a past due accounting support fee, current PCAOB Rules² allow for certain exceptions as explained in the PCAOB Frequently Asked Questions (FAQs) as follows:

- Rule 7103(b)(1) does not prohibit a registered public accounting firm from signing an unqualified opinion, or issuing a consent to include an audit opinion issued previously, with respect to the financial statements of an issuer who has an outstanding past-due share of the accounting support fee if that issuer has a petition for correction pending as to that outstanding share.
- PCAOB Rule 7103(b)(2) allows for an exception when an issuer needs the auditor report or consent in order to submit a report to, or make a filing with the Commission or to issue securities. To avoid unnecessarily preventing issuers in these situations from submitting a report to, or making a filing with, the SEC or from issuing securities, Rule 7103(b)(2) creates a one-time, time-limited exception to the prohibition in Rule 7103(b)(1). This exception may be invoked once per assessment.
- Further, the Board does not enforce Rule 7103(b) against a registered public accounting firm that signs an unqualified audit opinion, or issues a consent to include an audit opinion issued previously, with respect to the financial statements of an issuer whose outstanding past-due shares of the accounting support fees of the PCAOB or the FASB total less than \$50 each.

Since adopting these rules and related FAQs, the PCAOB has developed its internal accounting and financial systems and has hired personnel and implemented mechanisms to identify and collect payment from delinquent issuers. When these rules were first adopted and implemented, the Board's mechanisms were in their infancy; and we appreciate why the Board may have believed the requirement that auditors ascertain whether there is a past due accounting support fee would serve as an appropriate means of collecting its fees. However, we believe the Board's systems and resources now in place provide such a function. We also recognize that the Board may prefer to have in place another mechanism (in addition to the collection actions the Board and its staff can take) to compel payment. We believe that the Board should consider alternative regulatory mechanisms or resources and not auditors for this purpose.

Issuers currently have sufficient incentive to pay the support fee in order to avoid paying late fees and violating SEC rules. Additionally, based on the PCAOB's financial statements, the PCAOB's collection rate has been close to 100% every year beginning in 2004 (approximately

² These exceptions continue to exist in the Proposed Rules.

99.7% for 2009 and 99.9% for each year prior to 2009).³ These collection rates, which have been high since the first year of funding, provide evidence that additional procedures by auditors to assist in collection efforts are unnecessary. The fact that the PCAOB is now seeking fees from brokers and dealers should not affect whether this mechanism remains in place. The PCAOB should not assume there will be any more difficulty collecting fees from the largest brokers and dealers than there has been in collecting fees from issuers.

Furthermore, under both current and Proposed Rules even if there is a past due fee, auditors are permitted in most cases to issue the report or consent. As a result, the intended outcome of the rules (i.e., to encourage payment of fees by not allowing an independent auditor to issue a report or consent) is unlikely to occur, and there does not appear to be a clear purpose for determining whether an accounting support fee is past due.

Based on the above, we recommend that the PCAOB delete current Rule 7103(b)(1) and not move forward with Proposed Rule 7104(b)(1). Following this recommendation, Rule 7103(b)(2) and Proposed Rule 7104(b)(2) would no longer be necessary.⁴

Alternatively, we understand pursuant to Note 1 to Proposed Rule 7104(b)(2) that an auditor may satisfy the obligation to “ascertain” whether there is a past due accounting support fee based solely on getting a management representation. This Note, however, may be perceived as contrary to the Proposed Rules. If the Board determines to move forward with the Proposed Rules, we recommend that the Board remove any uncertainty in this regard by inserting the word “solely” in Note 1 so that it is clear that the auditor’s only obligation with respect to this requirement is to obtain a management representation.

If you have any questions or would like to discuss these matters further, please do not hesitate to contact William Platt 203-761-3755. We thank you for your consideration of these matters.

Very truly yours,

/s/ Deloitte & Touche LLP

³ Collection rate information obtained from PCAOB Annual Reports.

⁴ Rule 7103(b)(2) currently requires that when an issuer has a past due fee and meets one of the exceptions explained in this letter, that the issuer submit to the Board a notice of the signing of the opinion or issuance of the consent no later than the next business day after the filing is made with the Commission. Under Proposed Rule 7104(b)(2), this would change such that the registered public accounting firm would be required to submit the notice to the Board. If the Board moves forward with the Proposed Rule 7104(b)(2) despite our objections, we believe this requirement should remain a requirement of the issuer, as it is the issuer that is past due with its accounting support fee payment, it is the issuer making the filing with the Commission, and a process is already in place for issuers to execute such notices.

cc: James Doty, PCAOB Chairman
Lewis Ferguson, PCAOB Member
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