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BOARD FUNDING )

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

PCAOB Rulemaking  
Docket Matter No. 033

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**Summary:** The Public Company Accounting Oversight Board ("PCAOB" or the "Board") is proposing to amend its funding rules to provide for the equitable allocation and assessment among brokers and dealers of the appropriate portion of the accounting support fee established under the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed amendments would also make certain revisions to the Board's existing rules for the allocation among issuers of the accounting support fee. The funding rules are in Section 7 of the PCAOB Rules and related definitions are in PCAOB Rule 1001. Certain issuers, brokers, and dealers would be affected by the proposed amendments to the Board's funding rules.

**Public**

**Comment:** Interested persons may submit written comments to the Board. Such comments should be sent to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments also may be submitted via email to [comments@pcaobus.org](mailto:comments@pcaobus.org) or through the Board's Web site at [www.pcaobus.org](http://www.pcaobus.org). All comments should refer to PCAOB Rulemaking Docket Matter No. 033 in the subject or reference line and should be received by the Board no later than February 15, 2011.

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### Board

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### I. Introduction

Section 109 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), as originally enacted, provided that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms<sup>1/</sup>) would be collected from issuers<sup>2/</sup> based on each issuer's relative average, monthly equity market capitalization.<sup>3/</sup> The amount due from issuers was referred to as the Board's "accounting support fee."

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>4/</sup> (the "Dodd-Frank Act") granted the Board oversight of the audits of brokers and dealers registered with the U.S. Securities and Exchange Commission ("SEC" or "Commission").<sup>5/</sup> To provide funds for the Board's oversight of those audits, the Dodd-

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<sup>1/</sup> Section 102(f) of the Sarbanes-Oxley Act, states that registered public accounting firms shall pay fees sufficient for the Board to recover the costs of processing and reviewing registration applications and annual reports.

<sup>2/</sup> Section 2(a)(7) of the Sarbanes-Oxley Act and PCAOB rules define "issuer" to mean an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 ("Exchange Act")), the securities of which are registered under Section 12 of the Exchange Act, or that is required to file reports under Section 15(d) of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 and that it has not withdrawn. See PCAOB Rule 1001(i)(iii).

<sup>3/</sup> Section 109(g) of the Sarbanes-Oxley Act.

<sup>4/</sup> Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

<sup>5/</sup> For information regarding the audit of brokers' and dealers' financial statements and examination of reports regarding compliance with Commission

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Frank Act amended Section 109 of the Sarbanes-Oxley Act to require that the Board allocate a portion of the accounting support fee among brokers and dealers, or classes of brokers and dealers, based on their relative "net capital (before or after any adjustments)."<sup>6/</sup> Accordingly, the Board is proposing amendments to its funding rules to provide for a portion of the accounting support fee to be allocated among brokers and dealers.<sup>7/</sup>

The Board is also proposing amendments to its funding rules with respect to the allocation of the accounting support fee for issuers. The proposed amendments are intended to make the allocation and assessment process more efficient, and are based on the Board's experience of having conducted eight annual cycles of funding under its current funding rules. Under the proposed amendments, the basis for calculating an issuer's market capitalization would be revised to include the market capitalization of all classes of the issuer's voting and non-voting common equity. In addition, the Board is proposing to increase the average, monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies.

Appendix A to this release provides the proposed amendments as incorporated into the Board's rules. Appendix B to this release contains additional analyses related to the allocation of the accounting support fee among classes of brokers and dealers.

### II. Brokers and Dealers

As amended by the Dodd-Frank Act, Section 109 of the Sarbanes-Oxley Act requires that the rules of the Board provide for the equitable allocation, assessment and

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requirements, see generally Rule 17a-5 under the Exchange Act, and related SEC rules and forms.

<sup>6/</sup> Sections 109(d)(2) and 109(h) of the Sarbanes-Oxley Act, which states, in part, that amounts due from brokers and dealers "shall be in proportion to the net capital of the broker or dealer (before or after any adjustments)."

<sup>7/</sup> Pursuant to Section 109(e) of the Sarbanes-Oxley Act, the Financial Accounting Standards Board ("FASB") accounting support fee is to be allocated among issuers. Brokers and dealers therefore will not be allocated a portion of the FASB annual accounting support fee.

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collection by the Board of the accounting support fee among issuers, brokers, and dealers, and allow "for differentiation among classes of issuers, brokers, and dealers, as appropriate."<sup>8/</sup> This section further provides that "[t]he amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board."<sup>9/</sup>

Accordingly, the Board is proposing to amend its funding rules to allocate a portion of the accounting support fee among brokers and dealers,<sup>10/</sup> to establish classes of brokers and dealers for funding purposes, to describe the methods for allocating the appropriate portion of the accounting support fee to each broker and dealer within each class, and to address the collection of assessed shares of the broker-dealer accounting support fee from brokers and dealers.

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, the PCAOB is to begin the allocation, assessment and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board's 2011 fiscal year. Accordingly, the Board anticipates that the proposed amendments to its funding rules for brokers and dealers would be effective, subject to approval by the SEC, for its 2011 funding cycle.<sup>11/</sup>

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<sup>8/</sup> Section 109(d)(2) of the Sarbanes-Oxley Act.

<sup>9/</sup> Section 109(h)(3) of the Sarbanes-Oxley Act.

<sup>10/</sup> Under the proposal, PCAOB rules would be amended to add definitions of "broker" and "dealer" consistent with the definitions that the Dodd-Frank Act added to Section 110 of the Sarbanes-Oxley Act. These definitions would incorporate the definition of "broker" in Section 3(a)(4) of the Exchange Act and "dealer" in Section 3(a)(5) of the Exchange Act, but only include those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement certified by a registered public accounting firm. See Sections 110(3) and (4) of the Sarbanes-Oxley Act.

<sup>11/</sup> The Board anticipates that its funding cycle for brokers and dealers will take place during the last half of the Board's fiscal year.

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### A. The Broker-Dealer Accounting Support Fee

The Report of the Senate Committee on Banking, Housing, and Urban Affairs that accompanied the legislation that would become the Dodd-Frank Act, stated:

The Committee expects that the PCAOB will reasonably estimate the amounts required to fund the portions of its programs devoted to the oversight of audits of brokers and dealers, as contrasted to the oversight of audits of issuers, in deciding the total amounts to be allocated to, assessed, and collected from all brokers and dealers.... Cost accounting for each program is not required.<sup>12/</sup>

In accordance with this expectation, the Board each year will reasonably estimate amounts required to fund the portions of the Board's programs devoted to the oversight of audits of issuers and the amounts required to fund the portions of its programs devoted to the oversight of the audits of brokers and dealers. Under the proposed rules, at the time the Board establishes a total accounting support fee, it also will allocate the respective portions of the total accounting support fee among issuers (the "issuer accounting support fee") and among brokers and dealers (the "broker-dealer accounting support fee"). In accordance with Section 109(b) of the Sarbanes-Oxley Act, the Board's budget, which includes the total accounting support fee and the portion of the total accounting support fee to be allocated to issuers and the portion to be allocated to brokers and dealers, is subject to the Commission's approval.

### B. Classes of Brokers and Dealers

The Board is proposing to establish classes of brokers and dealers for funding purposes to allow for the equitable distribution of the accounting support fee. Establishing classes allows the Board to allocate the broker-dealer accounting support fee to those brokers and dealers whose audits, due to their relative size and complexity, may require more Board time and resources during an inspection than other audits of brokers and dealers with relatively small and less complex operations.

Further, because Section 109 requires that allocations be based on a broker's or dealer's net capital "before or after any adjustments," the Board is proposing to base the

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<sup>12/</sup> S. Rep. No. 176, 111th Cong., 2d Sess.(April 30, 2010) at 154.

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classes of brokers and dealers on the average "tentative net capital" reported at the end of the calendar quarters during the previous calendar year.<sup>13/</sup> "Tentative net capital" would be defined in the Board's rules to have the same meaning that the term has in Rule 15c3-1(c)(15) under the Securities Exchange Act of 1934 ("Exchange Act").<sup>14/</sup> This definition generally provides that the "tentative net capital" of a broker or dealer is its net capital before deducting certain securities haircuts and changes in inventory used in calculating the broker's or dealer's net capital. Because the investment decisions made by a broker or dealer can influence the amount of these deductions and thus influence the net capital calculation, "tentative net capital" may be a more consistent basis for allocation of the broker-dealer accounting support fee. Both tentative net capital and the net capital amounts are reported by brokers and dealers on their quarterly FOCUS reports filed on Form X-17A-5.<sup>15/</sup>

In considering the effect of this measurement criterion, the Board has reviewed the tentative net capital of 4,656 brokers and dealers as of the third and fourth quarters of 2009 and the first and second quarters of 2010.<sup>16/</sup> Below is the distribution of the number of brokers and dealers and the average, quarterly tentative net capital for the four referenced quarters:

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<sup>13/</sup> "Tentative net capital" is the net capital of a broker or dealer before certain adjustments. See Rule 15c3-1(c)(15) under the Exchange Act.

<sup>14/</sup> Id.

<sup>15/</sup> See generally, Rule 17a-5 under the Exchange Act. The tentative net capital and net capital amounts may be reported in Part I, II and IIA of the FOCUS report and are unaudited.

<sup>16/</sup> The data examined by the Board and used in this release represents data for brokers and dealers that (i) are members of Financial Industry Regulatory Authority ("FINRA) and have designated FINRA as their designated examining authority ("DEA"); (ii) are members of FINRA and have designated another self regulatory organization ("SRO") as their DEA but file FOCUS information with FINRA on a voluntary basis; or (iii) are members of other SROs for which FINRA, through a regulatory service agreement, performs financial reviews.

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Average, Quarterly Tentative Net Capital Range	Number of Brokers or Dealers	Percentage of Total Brokers or Dealers	Total Average, Quarterly Tentative Net Capital (in \$ millions)	Percentage of Total Average, Quarterly Tentative Net Capital
Less than \$0	18	0.39%	(\$12)	-0.01%
\$0 - \$1,000,000	3,355	72.06%	\$707	0.36%
\$1,000,001 - \$5,000,000	645	13.85%	\$1,503	0.77%
\$5,000,001 - \$10,000,000	186	3.99%	\$1,317	0.67%
\$10,000,001 - \$25,000,000	176	3.78%	\$2,811	1.43%
\$25,000,001 - \$50,000,000	87	1.87%	\$3,008	1.54%
\$50,000,001 - \$75,000,000	43	0.92%	\$2,552	1.30%
\$75,000,001 - \$100,000,000	26	0.56%	\$2,291	1.17%
\$100,000,001 - \$250,000,000	50	1.07%	\$7,326	3.74%
\$250,000,001 - \$500,000,000	24	0.52%	\$8,237	4.20%
\$500,000,001 - \$1,000,000,000	13	0.28%	\$9,197	4.69%
\$1,000,000,001 +	33	0.71%	\$157,008	80.13%
<b>Total</b>	<b>4,656</b>		<b>\$195,945</b>	

The average, quarterly tentative net capital amounts for the four quarters ranged from negative amounts to approximately \$15.8 billion. As the above table reflects, however, 33 brokers and dealers held approximately 80.1% of the total average, quarterly tentative net capital maintained by all 4,656 broker and dealers. In addition, only 120 brokers and dealers each had average, quarterly tentative net capital in excess of \$100 million, 452 brokers and dealers each had average, quarterly tentative net capital in excess of \$10 million, and 638 brokers and dealers had average, quarterly tentative net capital in excess of \$5 million.

As the table also reflects, approximately 86.3% of the brokers and dealers have average, quarterly tentative net capital of less than \$5 million. At the same time, the total average, quarterly tentative net capital for all brokers and dealers in that group was approximately 1.1% of the total average, quarterly tentative net capital for all brokers and dealers. Conversely, approximately 13.7% of all brokers and dealers have approximately 98.9% of the total average, quarterly tentative net capital.

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Based on the above analysis, which illustrates the significant number of brokers and dealers with average, quarterly tentative net capital of less than \$5 million, the Board is proposing to establish two classes of brokers and dealers, those with average, quarterly tentative net capital greater than \$5 million and those with average, quarterly tentative net capital less than or equal to \$5 million or not filing audited financial statements pursuant to a Commission rule or other action of the Commission or its staff (sometimes referred to as a \$5 million threshold in this release).<sup>17/</sup> The average would be based on the tentative net capital reported as of the end of the calendar quarters of the calendar year immediately prior to the Board's calculation of the broker-dealer accounting support fee.<sup>18/</sup>

### C. Allocation of the Broker-Dealer Accounting Support Fee

Consistent with Section 109 of the Sarbanes-Oxley Act, the proposed rule would allocate to brokers and dealers in the class with average, quarterly tentative net capital greater than \$5 million a share of the broker-dealer accounting support fee based on a ratio where the numerator is the average, quarterly tentative net capital of the broker or dealer for the calendar quarters of the immediately prior calendar year and the denominator is the sum of the average, quarterly tentative net capital of all the brokers and dealers in this class.

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<sup>17/</sup> Brokers or dealers with larger tentative net capital amounts may be "clearing" or "carrying" brokers and dealers rather than "introducing" brokers and dealers. Because of the nature of their businesses, audits of the compliance reports for clearing or carrying brokers and dealers may require more testing and documentation than audits of introducing brokers and dealers. PCAOB inspections of audits of brokers' and dealers' financial statements and examinations of reports regarding compliance with Commission and regulatory requirements of brokers and dealers with larger amounts of tentative net capital, consequently, may require more Board resources.

<sup>18/</sup> Rules 17a-5(a) (2)(ii) and (iii) under the Exchange Act require brokers and dealers to file Part II or Part IIA of Form X-17A-5 "within 17 business days after the end of the calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than the end of the calendar quarter."

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In a manner similar to the allocation for issuers, the proposed amendments would allocate to those brokers and dealers with average, quarterly tentative net capital equal to or less than \$5 million a share of the broker-dealer accounting support fee equal to zero.<sup>19/</sup> Because of the concentration of the industry's aggregate tentative net capital among relatively few brokers and dealers, the allocation of the broker-dealer accounting support fee without the \$5 million threshold may impose a relatively costly administrative burden on many smaller brokers and dealers. At the same time, allocating a share of the broker-dealer accounting support fee equal to zero to such small entities would have a negligible effect on the share of the broker-dealer accounting support fee allocated to the larger brokers and dealers.

For example, based on the data for the third and fourth quarters of 2009 and the first and second quarters of 2010, assuming a broker-dealer accounting support fee of \$15 million,<sup>20/</sup> if no average, quarterly tentative net capital threshold was applied, 1,557

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<sup>19/</sup> Assigning a broker or dealer a share of the accounting support fee equal to zero when its average, quarterly tentative net capital is equal to or less than \$5 million would not affect the Board's oversight of the audits of that broker or dealer. The Dodd-Frank Act amendments to the Sarbanes-Oxley Act state that, if the Board establishes a program of inspection for audits of brokers and dealers, it shall consider whether differing inspection schedules are appropriate for auditors of brokers or dealers that do not receive, hold, or handle customer securities, and that the Board may exempt certain auditors from its inspection program and, consequently, from registration with the Board. See Section 104(a)(2) of the Sarbanes-Oxley Act. Any Board decisions in these matters would be made only after additional rulemakings specific to the Board's inspection and registration programs for auditors of brokers and dealers and would be subject to Commission approval. If the Board decides at a later time that auditors of certain groups of brokers or dealers are exempt from the Board's inspection program and, therefore, eligible to withdraw their registration from the PCAOB, no share or portion of any accounting support fee paid by any broker or dealer would be refundable.

<sup>20/</sup> On November 23, 2010, the Board approved its 2011 budget, which included a total accounting support fee of approximately \$202.3 million. The allocated portion of the total accounting support fee to brokers and dealers, which is referred to as the broker-dealer accounting support fee, was approximately \$14.4 million for 2011. There is no assurance that future broker-dealer accounting support fees will be the same as the 2011 broker-dealer accounting support fee.

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brokers and dealers would be allocated a share of the broker-dealer accounting support fee of \$100 or more.<sup>21/</sup> The aggregate share of the broker-dealer accounting support fee allocated to brokers and dealers with average, quarterly tentative net capital of \$5 million or less, however, would be \$141,700, representing 0.9% of the assumed \$15 million broker-dealer accounting support fee.

Under the proposed \$5 million threshold, assuming a broker-dealer accounting support fee of \$15 million, 638 brokers and dealers would be allocated a share of the broker-dealer accounting support fee. Although under this threshold, 919 fewer brokers and dealers would be allocated a share of the broker-dealer accounting support fee, generally brokers and dealers with average, quarterly tentative net capital greater than \$45 million would experience an increase of less than 2% in their assessed share of the broker-dealer accounting support fee.<sup>22/</sup> Furthermore, as discussed below, generally decreasing or increasing the average, quarterly tentative net capital threshold does not appear to have a significant impact on the amount of the broker-dealer accounting support fee allocated to particular brokers and dealers subject to the fee.

The Board has analyzed the allocation of the broker-dealer accounting support fee under various average, quarterly tentative net capital thresholds assuming broker-dealer accounting support fee amounts of \$20 million, \$40 million, and \$60 million. Appendix B to this release contains summaries of these analyses.

Assuming no average, quarterly tentative net capital threshold, 1,776, 2,309, and 2,613 brokers and dealers would be allocated a share of the broker-dealer accounting support fee of \$100 or more if the broker-dealer accounting support fee was \$20 million, \$40 million or \$60 million, respectively. Although under these scenarios more brokers and dealers are assessed a share of the broker-dealer accounting support fee as the

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<sup>21/</sup> The allocated share for each of the remaining 3,099 brokers and dealers would be less than \$50 and, therefore, under the Board's rules rounded down to zero. See PCAOB Rule 7102(a).

<sup>22/</sup> The allocated share of the broker-dealer accounting support fee for 48 out of 441 broker and dealers with average, quarterly tentative net capital between \$5 million and \$45 million may increase by \$100 because the additional allocated amount would result in the unrounded allocated share being greater than \$50 and, therefore, under the Board's rules rounded up to the nearest \$100. See PCAOB Rule 7102(a).

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broker-dealer accounting support fee increases, only approximately 1% of the broker-dealer accounting support fee would be allocated to brokers and dealers with average, quarterly tentative net capital of \$5 million or less under each scenario. In fact, 92% of the broker-dealer accounting support fee would be assessed to the 100 brokers and dealers with the largest average, quarterly tentative net capital. Under each broker-dealer accounting support fee evaluated, this distribution does not change significantly due to the concentration of the industry's aggregate tentative net capital among relatively few brokers and dealers.

Under a \$5 million threshold, an increase in the broker-dealer accounting support fee appears to cause an increase in the share of the broker-dealer accounting support fee allocated to all brokers or dealers. However, the brokers and dealers with the largest average, quarterly tentative net capital would see a larger dollar increase in their allocated share of the broker-dealer accounting support fee versus all other brokers and dealers. This is reflected by the fact that the 100 brokers and dealers with the largest average, quarterly tentative net capital would continue to bear 93% of the broker-dealer accounting support fee if the broker-dealer accounting support fee is \$20 million, \$40 million, or \$60 million. Based on the above analyses, under a \$5 million threshold, an increase to the broker-dealer accounting support fee generally would result in a larger allocated share of the fee to the 100 brokers and dealers with the largest average, quarterly tentative net capital.

Because the accounting support fee would be divided into an issuer accounting support fee and a broker-dealer accounting support fee, it is possible that affiliated entities may be allocated separate shares of both the issuer and broker-dealer accounting support fees. For example, if an issuer has one or more broker or dealer subsidiaries, the issuer may be allocated a share of the issuer accounting support fee and each broker or dealer subsidiary may be allocated a share of the broker-dealer accounting support fee. The allocations are designed to support oversight programs tailored to the audits of different types of entities. The issuer would be responsible for payment of the allocated share of the issuer accounting support fee and each subsidiary would be responsible for payment of the allocated share of the broker-dealer accounting support fee.

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### D. Collection

The Board's current rules regarding the assessment and collection of the accounting support fee would be amended under the proposal to include appropriate references to brokers and dealers.

Currently, if a share of the accounting support fee allocated to an issuer is past-due<sup>23/</sup> and the issuer has not filed a petition with the Board seeking correction of its assigned share, then, with certain exceptions,<sup>24/</sup> no registered public accounting firm is permitted to sign an unqualified audit opinion with respect to that issuer's financial statements or to sign a consent to the use of prior audit opinions for that issuer. Under the proposal, the same concept would be extended to brokers and dealers in that no

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<sup>23/</sup> Pursuant to PCAOB Rule 7103(a), payment is due 30 days after the notice setting forth the allocated share of the accounting support fee to the issuer. Under the Board's current rules, the "notice" referenced in Rule 7103(a) relates to the document sent by the Board setting forth an entity's share of the accounting support fee under Section 109 of the Sarbanes-Oxley Act and the Board's funding rules. The Board is proposing to replace the term "notice" with "invoice" in its funding rules so as not to cause any confusion with the definition of "audit" and "audit report", which both now contain a reference to "notice."

<sup>24/</sup> To avoid unnecessarily preventing issuers from timely access to the capital markets, the funding rules contain a limited exception to the prohibition on the signing of audit reports and the issuance of consents. An issuer may have a past-due share of the accounting support fee, including possibly through mistake, inadvertence, or confusion, at a time when, in order to access or preserve its ability to access the capital markets in a timely manner, the issuer needs to submit a report to, or make a filing with, the Commission and the issuer must include an auditor's opinion or consent in that report or filing. If circumstances cause an issuer to rely upon the exception, however, the rule requires the issuer to submit an electronic notice to the Board no later than the next business day after the filing is made with the Commission. The rule limits the use of the exception to a single 15 business day period beginning on the earlier of the date of the filing with the Commission or the date of the notice to the Board. See PCAOB Rule 7103(b)(2) and PCAOB Release No. 2003-02, Amended SEC Filing Form 19b-4 (June 30, 2003). The Board is proposing an amendment to Rule 7103(b)(2) by requiring that the notice be filed by the registered public accounting firm instead of the issuer.

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registered public accounting firm would be permitted to sign an audit report or a document, report, notice, or other record concerning procedures or controls for a broker or dealer if its share of the broker-dealer accounting support fee was past-due and no petition for correction had been filed. For issuers with one or more broker or dealer subsidiaries, if the share of the accounting support fee allocated either to the issuer or any broker or dealer subsidiary is past due and no petition for correction had been filed by either the issuer or subsidiary, no registered public accounting firm would be permitted to sign an audit report or a document, report, notice, or other record concerning procedures or controls for the issuer or for any of its broker or dealer subsidiaries.

A note to the funding rules would state that for the purposes of the prohibition on signing unqualified audit reports for issuers, brokers, and dealers with past-due shares of the accounting support fee, the term "audit" would mean an examination of the financial statements, reports, documents, procedures, controls, and notices of any issuer, broker, or dealer by a registered accounting firm for the purpose of expressing an opinion on the financial statements or providing an audit report. "Audit report" in these circumstances would mean a document, report, notice, or other record prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws and in which the auditor either (i) sets forth an opinion of the firm regarding the financial statement, report, notice, or other document, procedures, or controls, or (ii) asserts that no such opinion can be expressed.<sup>25/</sup> These are the same definitions found in new Section 110 of the Sarbanes-Oxley Act. These definitions recognize that auditors today not only examine entities' financial statements but, for larger companies, auditors also examine internal control over financial reporting, and, for brokers and dealers, auditors further issue mandated reports under Rule 17a-5 and other applicable regulations.

In addition, similar to issuers, if the Board does not receive payment within 30 days of a broker or dealer being notified of its share of the accounting support fee, the payment shall be deemed past due and interest shall accrue at a rate of 6% per year. If payment is not received by the 90<sup>th</sup> day after the original notice was sent, then the

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<sup>25/</sup> In connection with other rulemaking projects, the Board may consider amending its rules to apply more broadly the definitions of "audit" and "audit report" in Section 110 of the Sarbanes-Oxley Act. If such rulemaking occurs, the Board may revisit the need for the proposed Note in the funding rules.

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Board may report the nonpayment to the Commission or the designated examining authority, which may pursue appropriate disciplinary action in accordance with its rules.<sup>26/</sup> Section 109(h)(1) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

### III. Issuers

The Board also is proposing certain amendments to its existing rules for the allocation, assessment, and collection of the issuer accounting support fee. The Board has conducted its funding under these rules since 2003. While the rules generally have functioned as intended, the Board's experience has led it to believe that the allocation and assessment process could be more efficient. The Board anticipates that the proposed amendments to its funding rules would be effective, subject to approval by the Commission, for its 2012 funding cycle for issuers.<sup>27/</sup>

#### A. Definitions of Market Capitalization and Common Equity

The Board's rules currently define the terms "issuer market capitalization" and "market capitalization of an issuer" to be the aggregate market value of all classes of an issuer's common stock that trade in the United States.<sup>28/</sup> Determining an issuer's market capitalization based on its outstanding common stock, however, has led to interpretive issues such as whether to include in the calculation certain categories of securities such as limited partnership units or interests, securities convertible into common stock, and rights or options to purchase common stock.

To reduce issues regarding the meaning of "common stock" in the Board's rules, the Board proposes to amend the definition of "issuer market capitalization" and "market capitalization of an issuer" to replace the reference to "common stock" with a reference

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<sup>26/</sup> For issuers, nonpayment of PCAOB accounting support fees would continue to be a violation of Section 13(b)(2)(C) of the Exchange Act.

<sup>27/</sup> The Board's funding cycle for issuers typically takes place during the first half of the Board's fiscal year.

<sup>28/</sup> PCAOB Rule 1001(i)(i)(1).

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to "voting and non-voting common equity." These terms, therefore, would refer to the issuer's aggregate market value of all classes of voting and non-voting common equity traded in the United States.

The Board's proposed definition of "common equity" would track the definition in Rule 12b-2 under the Exchange Act. As applied by the Board for funding purposes, the amount of common equity considered in deriving an issuer's market capitalization would be based on any class of common stock or equivalent interest, any beneficial interest in a trust or a limited partnership interest, and any other security that the Commission, by rule, deems to treat as common equity.

### B. Classes of Issuers

The Board also proposes to change the descriptions of the existing classes of issuers. Under the Board's current funding rules, there are four classes of issuers: (1) equity issuers whose average, monthly market capitalization during the preceding calendar year is greater than \$25 million, (2) investment company issuers (and entities that have elected to be regulated as business development companies) whose average, monthly market capitalization during the preceding calendar year is greater than \$250 million, (3) issuers that, as of the date the accounting support fee is calculated (i) do not have to file financial statements pursuant to Commission rule or other action of the staff of the Commission, (ii) are employee stock purchase, savings, and similar plans, or (iii) are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2 ("SLB No. 2"), and (4) all other issuers.

The Board is proposing to amend the description of the classes of issuers in two significant ways. First, the Board is proposing to raise the average, monthly market capitalization threshold for the first two classes of issuers. Second, the Board is proposing to change the description of issuers that are subject to the jurisdiction of a bankruptcy court and satisfy the modified reporting requirements of SLB No. 2.

#### 1. Change in Average, Monthly Market Capitalization Threshold

The Board is proposing to raise the average, monthly market capitalization threshold during the preceding calendar year for the first class of issuers from \$25 million to \$75 million. Companies with a market capitalization between \$25 million and

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\$75 million, therefore, would move from the first class to the fourth class and be allocated a share of the accounting support fee equal to zero. The Board notes that the aggregate issuer accounting support fee collected from equity issuers with average, monthly market capitalizations between \$25 million and \$75 million<sup>29/</sup> during the past six funding cycles have been a relatively small part (less than 0.4%) of the Board's total accounting support fee from equity issuers. At the same time, approximately 1,100 equity issuers, representing approximately 23% of all equity issuers assessed a fee, have average, monthly market capitalization within that range.<sup>30/</sup> As discussed further below, not allocating a share of the issuer accounting support fee to these issuers appears to have a negligible effect on the amounts allocated to other issuers.

The Board similarly is proposing to raise the average, monthly market capitalization threshold for the second class of issuers consisting of investment company issuers (and business development companies) currently subject to allocation of the support fee from \$250 million to \$500 million.<sup>31/</sup> Investment companies (including

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<sup>29/</sup> The Board's use and calculation of \$75 million in market capitalization for funding purposes should not be confused with the criteria to determine whether issuers are deemed an "accelerated filer", as defined by Rule 12b-2 under the Exchange Act. Under that rule, an issuer is an accelerated filer if, among other things, it has an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates (i.e., public float) of \$75 million or more as of the end of the entity's second quarter. See Release No. 33-8128 (September 5, 2002)

<sup>30/</sup> The aggregate FASB accounting support fee collected on behalf of FASB from equity issuers with average, monthly market capitalizations between \$25 million and \$75 million during the 2010 funding cycle was a relatively small part (less than 0.4%) of the FASB accounting support fee from equity issuers despite the fact that approximately 1,100 equity issuers, representing approximately 24% of all equity issuers assessed a fee, have average, monthly market capitalization within that range.

<sup>31/</sup> Market capitalization for an issuer that is an investment company whose shares are not traded on a national exchange or quoted on NASDAQ is the investment company's net asset value. See PCAOB Rule 1001(i)(i)(2). Since the Board's adoption of its funding rules in 2003, NASDAQ Stock Market LLC has become a national exchange under Commission rules. In light of this change, and to more clearly reflect

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business development companies) with market capitalizations between \$250 million and \$500 million, therefore, would move from the second class to the fourth class and be allocated a share of the accounting support fee equal to zero. The Board notes that the aggregate fees collected from investment company issuers (including business development companies) with average, monthly market capitalizations between \$250 million and \$500 million during the past six funding cycles have been a relatively small part (approximately 5%) of the Board's total accounting support fee from investment companies. At the same time, approximately 1,480 investment companies, representing approximately 33% of all investment companies assessed a share of the issuer accounting support fee, have average, monthly market capitalization within that range.<sup>32/</sup> As discussed further below, not allocating a share of the issuer accounting support fee to these investment companies appears to have a negligible effect on the amounts allocated to other investment companies.

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its current practice, the Board is proposing to revise PCAOB Rule 1001(i)(i)(2) by replacing the reference to NASDAQ with a reference to the "OTC Bulletin Board."

Approximately 7.9% of the 2010 accounting support fee was allocated to investment companies. Under the Board's current funding rules, when allocating the issuer accounting support fee to investment companies, 10% of the investment company issuer's actual average monthly market capitalization or net asset value is used in the calculation. Accordingly, the amount of the issuer accounting support fee allocated to investment companies over the past six funding cycles has represented a relatively small portion (average of approximately 6%) of the total issuer accounting support fee assessed.

<sup>32/</sup> The aggregate fees collected on behalf of FASB from investment company issuers (including business development companies) with average, monthly market capitalizations between \$250 million and \$500 million during the 2010 funding cycle was a relatively small part (approximately 5%) of the FASB accounting support fee from investment companies despite the fact that approximately 1,450 investment companies, representing approximately 33% of all investment companies assessed a share of the FASB accounting support fee, have average, monthly market capitalization within that range.

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2. Effects of Change in Average, Monthly Market Capitalization on Issuers

Raising the threshold for the first class of issuers from \$25 million in average, monthly market capitalization to \$75 million and raising the threshold for the second class of issuers from \$250 million in average, monthly market capitalization to \$500 million should have a negligible effect on the amounts allocated to issuers under Section 109 of the Sarbanes-Oxley Act.<sup>33/</sup>

Below is the distribution of the accounting support fee allocated among issuers in classes one and two in 2010 based on the current and proposed average, monthly market capitalization thresholds.

Fee Range	Number of Issuer Invoices		Change
	2010 Funding Cycle (Current Thresholds)	2010 Funding Cycle (Proposed Thresholds)	
\$100-500.....	1,698	-	(1,698)
\$501-1,000.....	1,788	920	(868)
\$1,001-5,000.....	3,012	3,021	9
\$5,001-10,000.....	868	865	(3)
\$10,001-50,000.....	1,289	1,294	5
\$50,001-100,000.....	251	255	4
\$100,001-500,000.....	258	258	-
\$500,001-1,000,000.....	27	27	-
\$1,000,001+.....	24	24	-
<b>Total</b>	<b>9,215</b>	<b>6,664</b>	<b>(2,551)</b>

Note: The numbers reflected under the "Proposed Thresholds" column reflect only changes in the market capitalization thresholds for issuers in class one and two. The information provided in this column does not incorporate any other proposed changes to the funding rules.

<sup>33/</sup> The proposed changes to the thresholds for the first and second classes of issuers would also be applicable to the allocation of the FASB accounting support fee, which pursuant to Section 109(e) of the Sarbanes-Oxley Act, is allocated among issuers only.

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Generally, equity issuers with average, monthly market capitalization of approximately \$600 million or greater are likely to see an increase in their allocated share of the issuer accounting support fee.<sup>34/</sup> The entity's allocated share of the fee increases, however, by approximately 1% or less. For investment company issuers, on average, the allocated share of the accounting support fee would increase for entities with average, monthly market capitalization of approximately \$4 billion or greater, with the entity's allocated share of the fee increasing by approximately 2% or less.<sup>35/</sup> Accordingly, the proposed change to the average, monthly market capitalization for class one and two issuers should not result in a significant increase in any issuer's assessed share of the accounting support fee.

### 3. Modified Reporting Requirements of SLB No. 2

The Board is also proposing to change the description of the class of issuers that are not assessed a share of the accounting support fee because they are in bankruptcy. As noted above, under the Board's current funding rules, companies that are under the jurisdiction of a bankruptcy court and "satisfy the modified reporting requirements of Commission Staff Legal Bulletin No. 2" are in the third class and are assigned a share of the accounting support fee equal to zero.<sup>36/</sup>

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<sup>34/</sup> The allocated share of the issuer accounting support fee for 465 out of 1,190 equity issuers with average, monthly market capitalization between \$75 million and \$600 million would increase by \$100 because the additional allocated amount would result in the unrounded allocated share being greater than \$50 and, therefore, under the Board's rules, rounded up to the nearest \$100. See PCAOB Rule 7102(a).

<sup>35/</sup> The allocated share of the issuer accounting support fee for 327 out of 2,367 investment companies with average, monthly market capitalization between \$500 million and \$4 billion may increase by \$100 because the additional allocated amount would result in the unrounded allocated share being greater than \$50 and, therefore, under the Board's rules rounded up to the nearest \$100. See PCAOB Rule 7102(a).

<sup>36/</sup> SEC Staff Legal Bulletin No. 2 (CF) (April 15, 1997), available at <http://sec.gov/interps/legal/slbcf2.txt>, reflects the views of the Commission's Division of Corporation Finance that companies under the jurisdiction of a bankruptcy court are not relieved of their reporting obligations under the securities laws but, upon the satisfaction

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SLB No. 2 states that an issuer under the jurisdiction of a bankruptcy court may request that the Commission's Division of Corporation Finance ("Division") provide a "no-action" letter indicating that the Division will not recommend enforcement action if the issuer files with the Commission modified reports in lieu of the reports required under the Exchange Act. SLB No. 2 describes the information and assertions that should be in a request for a "no-action" letter, including information related to the issuer's financial condition, prior compliance with Exchange Act filing requirements, the timing of the announcement by the issuer of its bankruptcy filing, the issuer's ability to continue to file Exchange Act reports, and a description of the current market for and trading in the issuer's securities.<sup>37/</sup>

Although acceptance of modified reports is at the discretion of the Commission, there is no requirement in SLB No. 2 or elsewhere that an issuer in bankruptcy ask the Division for a "no-action" letter prior to filing modified reports. Such "no-action" requests are voluntary. An issuer in bankruptcy may choose to file modified reports without providing the Division with the information and assertions in SLB No. 2.<sup>38/</sup> Because the Board's funding rules, however, are based on whether an issuer has "satisf[ie]d the modified reporting requirements" of SLB No. 2, when the issuer has not requested or not received a "no-action" letter from the Division, the PCAOB staff has been placed in the position of having to evaluate available public information to determine whether the conditions in SLB No. 2 are satisfied. To address such situations, PCAOB staff generally has requested that issuers provide an analysis demonstrating its compliance with the conditions set forth in SLB No. 2 and/or an opinion of counsel that the company meets the conditions set forth in SLB No. 2.<sup>39/</sup>

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of certain conditions, may file reports that "differ in form or content" from the reports required under the Exchange Act.

<sup>37/</sup> Id.

<sup>38/</sup> The Commission may deem such a filing to be deficient and not to satisfy the issuer's obligations under the Exchange Act and Commission rules and forms.

<sup>39/</sup> See Question 14 of the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, dated March 15, 2010. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

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The Board proposes to amend its rules to require that in order to be assigned a share of the accounting support fee equal to zero, an issuer that is subject to the jurisdiction of a bankruptcy court and asserts that it falls within the third class of issuers provide an opinion of counsel that the issuer satisfied the modified reporting requirements of Commission Staff Legal Bulletin No. 2 as of the date that the issuer accounting support fee is calculated. This proposed amendment is consistent with the staff's past practices as noted above. The impact of this proposed amendment is believed to be negligible on the amounts allocated and assessed to issuers under Section 109 of the Sarbanes-Oxley Act.<sup>40/</sup>

### IV. Other amendments to the Board's Funding Rules

The Board also is proposing certain technical changes to its funding rules. The most significant of these changes are listed below.

- Rule 7100 – The Board is proposing to make certain changes to Rule 7100 to reflect that the Board establishes a total accounting support fee each year as part of its budget process.<sup>41/</sup> In addition, the proposed amendment to Rule 7100 would reflect the Board's obligation under Section 109 of the Sarbanes-Oxley Act to equitably allocate the total accounting support fee between issuers, as a group, and brokers and dealers, as a group.

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<sup>40/</sup> During the 2008-2010 funding cycles, 26 equity companies that were allocated a share of the accounting support fee had filed for bankruptcy.

<sup>41/</sup> The PCAOB Budget is approved by the Board in the preceding calendar year and must be approved by the Commission. PCAOB Rule 7101(a) refers to the date the issuer accounting supporting fee is calculated. This date is referred to as the "calculation date" during the Board's funding cycle. As discussed in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process, the issuer calculation date will represent the date as of which the allocation of the issuer accounting support fee is determined for equity issuers and investment company issuers. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>. See also Proposed Rule 7102(a), which contains a similar reference to the date the broker-dealer accounting support fee is calculated. Under the proposed rules, this date will be referred to as the "broker-dealer calculation date" during the Board's funding cycle.

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- Notes to Rule 7101 – The Board is proposing certain technical changes to the notes to Rules 7101(a)(1) and (2) to clarify how an entity's monthly market capitalization is calculated and that such calculation will include market capitalization information for all classes of the issuer's voting and non-voting common equity, consistent with the proposed change to the definition of "issuer market capitalization" discussed above.
- Rule 7103(c) – The Board is proposing to extend the time frame within which any issuer, broker, or dealer may petition the Board for correction of the class in which it has been placed or its allocated share of the accounting support fee. Under the proposed rules, an issuer, broker, or dealer would have 60 days after an invoice is sent to submit a petition for correction rather than the 30 days under the current rules. In addition, the Board is proposing to codify its existing practice of considering petitions received after the deadline when there is good cause to do so.<sup>42/</sup>
- Rule 7104(b) – The Board is proposing to replace the word "Confirmation" with "Determination" in the caption for Rule 7104(b) and to delete the reference in Note 1 to the rule to obtaining a confirmation from the Board that no past due share of the accounting support fee is outstanding. This proposed amendment will clarify that registered public accounting firms are not required to confirm with the Board whether an issuer, broker or dealer has any outstanding past due share of the accounting support fee prior to signing an unqualified audit opinion, consenting to including an audit report issued previously or signing a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer, required under the securities laws. Confirmation with the Board is one of a number of procedures that a registered public accounting firm may use in determining whether an issuer, broker, or dealer has any outstanding past due share of the accounting support fee.<sup>43/</sup>

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<sup>42/</sup> See Question 6 in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

<sup>43/</sup> See Questions 21-25 in the Frequently Asked Questions – The Accounting Support Fee and the Funding Process. The Frequently Asked Questions are located at <http://pcaobus.org/About/Ops/Pages/SupportFeeFAQ.aspx>.

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### V. Effective Date

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, the PCAOB shall begin the allocation, assessment and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board's 2011 fiscal year. Accordingly, the Board anticipates that the proposed amendments to its funding rules would be effective, subject to approval by the SEC, for its 2011 funding cycle for brokers and dealers and its 2012 funding cycle for issuers.

### VI. Request for Public Comment

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

1. For brokers and dealers, are the class levels appropriate? If not, what levels would be appropriate, and what empirical information is available to support those levels?
2. Is tentative net capital an appropriate measure of "net capital (before or after any adjustments)"? If not, what criteria should be used, and what empirical information is available to support that criteria?
3. For issuers, are changes to the definitions of "market capitalization" appropriate to reflect all classes of an issuer's voting and non-voting common equity appropriate? Should the Board consider also including all classes of preferred stock, all classes of convertible preferred stock, warrants, or options when calculating an issuer's market capitalization?
4. Are the proposed market capitalization thresholds for equity issuers and investment company issuers appropriate? If not, what market capitalization thresholds for equity issuers and investment company issuers should the Board consider for allocation of the issuer accounting support fee among issuers?
5. Does requiring an issuer in bankruptcy to provide an opinion of counsel that it satisfies the modified reporting requirements of Commission Staff Legal Bulletin No. 2 in order to be placed in a class that is assigned a share of the accounting

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support fee equal to zero place an undue hardship on such issuers? Is there another test that could be used to determine the appropriate funding classification for such issuers?

Written comments should be sent to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments also may be submitted by e-mail to [comments@pcaobus.org](mailto:comments@pcaobus.org) or through the Board's Web site at [www.pcaobus.org](http://www.pcaobus.org). All comments should refer to PCAOB Rulemaking Docket Matter No. 33 in the subject or reference line and should be received by the Board no later than February 15, 2011.

On the 14th day of December, in the year 2010, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD

/s/ J. Gordon Seymour

J. Gordon Seymour  
Secretary  
December 14, 2010

Appendix A – Proposed Amendment to Board Rules (PCAOB Rules 1001, 7100 through 7106).

Appendix B – Broker-Dealer Accounting Support Fee Analyses

## Appendix A – Proposed Amendments to Board Rules

The Board proposes to amend the Sections 1 and 7 of its rules as set out below. Language deleted by the proposed amendments is struck through. Language that is added is underlined.

### RULES OF THE BOARD

#### SECTION 1. GENERAL PROVISIONS

##### Rule 1001. Definitions of Terms Employed in Rules.

\* \* \*

##### ~~(a)(i) Accounting Support Fee~~

~~The term "Accounting Support Fee" means the fee described in Rule 7100 Sarbanes-Oxley Act of 2002, as amended.~~

##### (a)(iii) Act

The term "Act" means the Sarbanes-Oxley Act of 2002, as amended.

\* \* \*

##### (b)(iii) Broker

The term "broker" means a broker (as defined in Section 3(a)(4) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

**(b)(iv) Broker-Dealer Accounting Support Fee**

The term "broker-dealer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among brokers and dealers pursuant to the rules of the Board.

\* \* \*

**(c)(ii) Common Equity**

The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

\* \* \*

**(d)(iii) Dealer**

The term "dealer" means a dealer (as defined in Section 3(a)(5) of the Exchange Act), that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

\* \* \*

**(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 voting and non-voting common common stock~~equity~~ 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 OTC Bulletin Board, the issuer's net asset value.

**(i)(ii) Issuer Accounting Support Fee**

The term "issuer accounting support fee" means the portion of the accounting support fee established by the Board that is to be allocated among issuers pursuant to the rules of the Board.

\* \* \*

**(i)(vi) Notice Invoice**

The term "~~notice invoice~~" means the document sent by the Board to an issuer, broker, or dealer, pursuant to Rule 710~~32~~, setting forth such issuer's, broker's, or dealer's share of the accounting support fee under Section 109 of the Act and Rules 7101, 7102, and 710~~32~~.

\* \* \*

**(s)(v) Self-Regulatory Organization**

The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of Sections 19(b), 19(c), and 23(b) of the Exchange Act) the Municipal Securities Rulemaking Board established by Section 15B of the Exchange Act.

\* \* \*

**(t)(ii) Tentative Net Capital**

The term "tentative net capital" has the same meaning as such term is defined under Rule 15c3-1(c)(15) under the Exchange Act.

(t)(iii) Total Accounting Support Fee

The term "total accounting support fee" means the fee described in Rule 7100.

\* \* \*

**SECTION 7. FUNDING**

**Rule 7000. [Reserved]**

[Reserved]

**Rule 7100. Accounting Support Fees.**

The Board shall ~~calculate~~ establish a ~~total~~ accounting support fee each year in accordance with the Act. The total accounting support fee shall be equitably allocated between issuers (the "issuer accounting support fee") and brokers and dealers— (the "broker-dealer accounting support fee"). ~~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. The accounting support fees shall then be equitably allocated among issuers, in accordance with Rule 7101(b), and among brokers and dealers, in accordance with Rule 7102(b).~~

**Rule 7101. Allocation of Issuer Accounting Support Fee.**

**(a) Classes of Issuers**

For purposes of allocating the issuer accounting support fee, those entities that are issuers as of the date the issuer 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 is greater than \$75 million during the ~~preceding~~ preceding the date the issuer accounting support fee is calculated ~~is greater than \$25 million~~, other than those described in

paragraphs (a)(2) and (a)(3) of this Rule, and whose share price on a monthly, or more frequent, basis is publicly available.

Note: ~~The Average, mm~~ monthly issuer market capitalization will be based on closing ~~stock-share~~ prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month ~~measured~~during which trading in the common equity occurred.

## **(2) Investment Company Issuers**

All issuers (i) who, 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), (ii) whose average, monthly issuer market capitalization is greater than \$500 million during the ~~preceding~~ preceding the date the issuer accounting support fee is calculated is greater than \$250 million, and (iii) whose share price (or net asset value) on a monthly, or more frequent, basis is publicly-available.

Note: ~~AverageThe,~~ monthly issuer market capitalization will be based on closing ~~stock-share~~ prices of all classes of the issuer's voting and non-voting common equity on the closest trading day on or before the last day of each calendar month ~~measured~~during which trading in the common equity occurred.

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

All issuers that, as of the date the issuer accounting support fee is calculated ~~under Rule 7100~~, (i) have a basis, under the federal securities laws, 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 have provided an opinion of counsel that the issuer satisfies the modified reporting requirements of Commission Staff Legal Bulletin No. 2.

Note: ~~As of April 16, 2003, i~~ssuers 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~~ calendar year preceding the date the issuer accounting support fee is calculated, 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 calendar year preceding the date the issuer accounting support fee is calculated~~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 Issuer Accounting Support Fee Among Issuers**

The issuer 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 issuer accounting support fee in an amount equal to the issuer accounting support fee multiplied by a fraction –

(i) the numerator of which is the average, monthly issuer market capitalization of the issuer during the ~~preceding~~ calendar year preceding the date the issuer accounting support fee is calculated, except that for issuers described in paragraph (a)(2) of this Rule, the numerator is one-tenth of the average, monthly issuer market capitalization of the issuer; and

(ii) the denominator of which is the sum of the average, monthly issuer market capitalizations of the issuers described in paragraph (a)(1) of this Rule and one-tenth of the average, monthly issuer 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 issuer accounting support fee equal to \$0.

**(c) Adjustments**

After the issuer 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. Allocation of Broker-Dealer Accounting Support Fee**

**(a) Classes of Brokers and Dealers**

For purposes of allocating the broker-dealer accounting support fee, those entities that are brokers or dealers as of the date the broker-dealer accounting support fee is calculated shall be divided into two classes:

**(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million**

All brokers and dealers whose average, quarterly tentative net capital is greater than \$5 million during the calendar year preceding the date the broker-dealer accounting support fee is calculated, other than those described in paragraphs (a)(2) of this Rule.

Note: Average, quarterly tentative net capital will be based on the tentative net capital reported by the broker or dealer in the calendar quarterly reports filed pursuant to Commission rules during the calendar year preceding the date the broker-dealer accounting support fee is calculated.

**(2) Brokers and Dealers Permitted Not to File Audited Financial Statements and Brokers and Dealers Not Described in Paragraph (a)(1) of This Rule**

All brokers and dealers that, as of the date the broker-dealer accounting support fee is calculated, (i) have a basis, under the federal securities laws, a Commission rule

or pursuant to other action of the Commission or its staff, not to file audited financial statements or (ii) are not described in paragraph (a)(1) of this Rule.

**(b) Allocation of Broker-Dealer Accounting Support Fee**

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

**(1) Brokers and Dealers with Average, Quarterly Tentative Net Capital Greater than \$5 million**

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

(i) the numerator of which is the average, quarterly tentative net capital of the broker or dealer during the calendar year preceding the date the broker-dealer accounting support fee is calculated; and

(ii) the denominator of which is the sum of the average, quarterly tentative net capital of the brokers and dealers described in paragraph (a)(1) of this Rule.

**(2) All Other Brokers and Dealers**

Each broker and dealer described in paragraph (a)(2) of this Rule shall be allocated a share of the broker-dealer accounting support fee equal to \$0.

**(c) Adjustments**

After the broker-dealer accounting support fee is calculated and allocated under this Rule, any adjustment to the share allocated to a broker or dealer shall not affect the share allocated to any other broker or dealer.

**Rule 710~~3~~2. Assessment of Accounting Support Fees.**

**(a) Amount of Assessment**

Each issuer and each broker and dealer is required to pay its share of the accounting support fee, as allocated under Rules 7101 and 7102, rounded to the nearest hundred\$100.

Note: If the allocated an issuer's share of the accounting support fee to an issuer, broker, or dealer is less than \$50, that issuerthe assessed shares of the accounting support fee will not be assessedzero. If the issuer's allocated share of the accounting support fee is exactly \$50 or \$50 more than a the closest multiple of \$100, then the assessed share will be rounded up to the nearest \$100; otherwise, the assessed share will be rounded down to the nearest \$100.

**(b) Notice of Assessment**

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

**(c) Petition for Correction**

Any issuer, broker, or dealer who disagrees with the class in which it has been placed, or with the calculation by which its share of the accounting support fee was determined, may petition the Board for a correction of the share of the accounting support fee it was allocated. Any such petition shall include an explanation of the nature of the claimed mistake in classification or calculation, in writing and must be filed with the Board, on or before the 630th day after the notice-invoice is sent, or within such longer period as the Board allows for good cause shown. After a review of such a

petition, the Board will determine whether the allocation is consistent with Section 109 of the Act and the Board's rules thereunder and provide the issuer a written explanation of its decision. The provisions of Rule 710~~43~~ shall be suspended while such a petition is pending before the Board.

**Rule 710~~43~~. Collection of Accounting Support Fees.**

**(a) Accounting Support Fee Payment Due Date**

Unless the Board directs otherwise, payment shall be due on the 30th day after the ~~notice-invoice~~ 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-Determination~~ of Payment of Accounting Support Fees by Registered Accounting Firm**

(1) Except as provided in paragraph (b)(2) of this Rule, no registered public accounting firm shall (i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements, or (ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or (iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer, required under the securities laws unless the registered public accounting firm has ascertained that the issuer, broker, dealer, or a subsidiary thereof has outstanding no past-due share of the issuer accounting support fee or broker-dealer accounting support fee, whichever is applicable, or has a petition pursuant to Rule 710~~32~~(c) pending.

(2) A registered public accounting firm may (i) sign an unqualified audit opinion with respect to an issuer's, broker's, or dealer's financial statements, or (ii) issue a consent to include an audit ~~opinion-report~~ issued previously, or (iii) sign a document, report, notice, or other record concerning procedures or controls of any issuer, broker, or dealer, required under the securities laws even though the issuer, broker, or dealer has outstanding a past-due share of the accounting support fee and has not filed a petition under Rule 710~~32~~(c), if the issuer, broker, or dealer needs the audit report or consent in order to submit a report to, or make a filing with, the Commission or, in the case of an issuer only, to issue securities. The issuer-registered public accounting firm shall submit to the Board a notice of the signing of the opinion or issuance of the consent not later than the next business day after the filing is made with the Commission. This exception to paragraph (b)(1) of this Rule shall not continue longer

than 15 business days after the earlier of the date of the notice's submission or the filing of the report with the Commission, and may not be invoked for more than one such period with respect to any share of the accounting support fee that the issuer is assessed under Rule 710~~3~~2.

Note 1: A registered public accounting firm may ascertain that an issuer, broker, or dealer has no outstanding past-due share of the accounting support fee by obtaining a representation from the issuer, broker, or dealer ~~or a confirmation from the Board that no past due share of the accounting support fee is outstanding.~~

Note 2: A notice pursuant to paragraph (b)(2) of this Rule must be submitted electronically by email to rule710~~4~~3stay@pcaobus.org.

Note 3: For purposes of Rule 7104, the term "audit" means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statement or providing an audit report. For purposes of Rule 7104, the term "audit report" means a document, report, notice, or other record (1) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or (ii) asserts no such opinion can be expressed.

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

(1) If an issuer has not paid its share of the issuer accounting support fee by the 60th day after the notice invoice was sent, and the issuer does not have a petition pursuant to Rule 710~~2~~3(c) pending, the Board may send a second notice invoice to such issuer by certified mail. If the Board has sent such a second notice invoice and has not been paid by the 90th day after the original notice invoice was sent, the Board may report the issuer's nonpayment 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."

(2) If a broker or dealer has not paid its share of the broker-dealer accounting support fee by the 60th day after the invoice was sent, and the broker or dealer does not have a petition pursuant to Rule 7103(c) pending, the Board may send a second invoice to such broker or dealer by certified mail. If the Board has sent such a second invoice and has not been paid by the 90th day after the original invoice was sent, the Board may report the broker's or dealer's nonpayment to the Commission and/or the broker's or dealer's designated self-regulatory organization.

Note: Section 109(h)(1) of the Act provides that "[e]ach broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section."

**(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 71054. 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 7103 and 2 and 71043, as if the accounting support fee of the standard-setting body were the issuer accounting support fee of the Board.

**Rule 7106. (d) Excess Fees Funds.**

If in any Board fiscal year, the Board receives fees funds in excess of the budget of the Board for that fiscal year, as approved by the Commission, the Board shall hold those excess fees funds in escrow. Such escrowed excess fees funds shall be released

| to the Board at the beginning of the next fiscal year and shall reduce the Board's [total](#) accounting support fee in that next fiscal year.

**RELEASE**

Appendix B – Broker-Dealer Accounting Support Fee Analyses

This appendix contains analyses of the allocation of the broker-dealer accounting support fee under various average, quarterly tentative net capital thresholds based on a \$15 million, \$20 million, \$40 million and \$60 million broker-dealer accounting support fee.

Based on <b>\$15M</b> Broker-Dealer Accounting Support Fee							
Fee Range	MINIMUM AVERAGE QUARTERLY TENTATIVE NET CAPITAL						
	None	\$1M	\$5M	\$10M	\$25M	\$50M	
\$100-500	1,023	749	103	-	-	-	-
\$501-1,000	152	152	151	67	-	-	-
\$1,001-5,000	226	226	228	228	117	30	
\$5,001-10,000	60	59	58	58	60	60	
\$10,001-50,000	57	58	59	59	59	59	
\$50,001-100,000	13	13	13	14	13	13	
\$100,001-500,000	17	17	17	17	18	18	
\$500,001-1,000,000	6	6	6	6	6	5	
\$1,000,001+	3	3	3	3	3	4	
<b>Total Number of ASF Invoices</b>	<b>1,557</b>	<b>1,283</b>	<b>638</b>	<b>452</b>	<b>276</b>	<b>189</b>	
Percent Paid by Top 100	92%	92%	93%	93%	95%	96%	
Lowest Fee	\$ 100.00	\$ 100.00	\$ 400.00	\$ 800.00	\$ 2,000.00	\$ 4,000.00	
Largest Fee	\$ 1,216,400.00	\$ 1,217,800.00	\$ 1,227,200.00	\$ 1,235,600.00	\$ 1,253,900.00	\$ 1,274,100.00	

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Based on \$20M Broker-Dealer Accounting Support Fee						
Fee Range	MINIMUM AVERAGE QUARTERLY TENTATIVE NET CAPITAL					
	None	\$1M	\$5M	\$10M	\$25M	\$50M
\$100-500	1,158	665	18	-	-	-
\$501-1,000	172	171	172	2	-	-
\$1,001-5,000	256	256	257	259	83	-
\$5,001-10,000	68	69	69	69	70	65
\$10,001-50,000	75	75	75	75	76	76
\$50,001-100,000	14	14	14	14	13	13
\$100,001-500,000	22	22	22	22	23	24
\$500,001-1,000,000	4	4	4	4	4	4
\$1,000,001+	7	7	7	7	7	7
<b>Total Number of ASF Invoices</b>	<b>1,776</b>	<b>1,283</b>	<b>638</b>	<b>452</b>	<b>276</b>	<b>189</b>
Percent Paid by Top 100	92%	92%	93%	93%	95%	96%
Lowest Fee	\$ 100.00	\$ 100.00	\$ 500.00	\$ 1,000.00	\$ 2,700.00	\$ 5,400.00
Largest Fee	\$ 1,620,800.00	\$ 1,623,700.00	\$ 1,636,300.00	\$ 1,647,500.00	\$ 1,671,900.00	\$ 1,698,900.00

Based on \$40M Broker-Dealer Accounting Support Fee						
Fee Range	MINIMUM AVERAGE QUARTERLY TENTATIVE NET CAPITAL					
	None	\$1M	\$5M	\$10M	\$25M	\$50M
\$100-500	1,444	418	-	-	-	-
\$501-1,000	234	234	6	-	-	-
\$1,001-5,000	355	354	354	173	-	-
\$5,001-10,000	85	86	87	86	83	-
\$10,001-50,000	121	121	120	121	121	117
\$50,001-100,000	23	23	24	25	25	24
\$100,001-500,000	32	32	32	32	32	33
\$500,001-1,000,000	4	4	4	4	4	4
\$1,000,001+	11	11	11	11	11	11
<b>Total Number of ASF Invoices</b>	<b>2,309</b>	<b>1,283</b>	<b>638</b>	<b>452</b>	<b>276</b>	<b>189</b>
Percent Paid by Top 100	92%	92%	93%	93%	95%	96%
Lowest Fee	\$ 100.00	\$ 200.00	\$ 1,000.00	\$ 2,100.00	\$ 5,300.00	\$ 10,800.00
Largest Fee	\$ 3,238,600.00	\$ 3,247,400.00	\$ 3,272,600.00	\$ 3,295,000.00	\$ 3,343,800.00	\$ 3,397,700.00

**RELEASE**

Based on \$60M Broker-Dealer Accounting Support Fee						
Fee Range	MINIMUM AVERAGE QUARTERLY TENTATIVE NET CAPITAL					
	None	\$1M	\$5M	\$10M	\$25M	\$50M
\$100-500	1,610	279	-	-	-	-
\$501-1,000	240	240	-	-	-	-
\$1,001-5,000	413	414	287	99	-	-
\$5,001-10,000	114	113	112	112	35	-
\$10,001-50,000	150	151	153	155	154	102
\$50,001-100,000	29	29	28	28	28	28
\$100,001-500,000	34	34	35	35	36	36
\$500,001-1,000,000	12	12	12	12	12	12
\$1,000,001+	11	11	11	11	11	11
<b>Total Number of ASF Invoices</b>	<b>2,613</b>	<b>1,283</b>	<b>638</b>	<b>452</b>	<b>276</b>	<b>189</b>
Percent Paid by Top 100	92%	92%	93%	93%	95%	96%
Lowest Fee	\$ 100.00	\$ 300.00	\$ 1,500.00	\$ 3,100.00	\$ 8,000.00	\$ 16,200.00
Largest Fee	\$ 4,856,400.00	\$ 4,871,100.00	\$ 4,908,900.00	\$ 4,942,500.00	\$ 5,015,700.00	\$ 5,096,600.00