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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78289; File No. PCAOB-2007-04)

July 11, 2016

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Amendments to Board Rules Relating to Inspections

I. Introduction

On March 24, 2016, the Public Company Accounting Oversight Board (the “Board” or the “PCAOB”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 107(b)¹ of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) and Section 19(b)² of the Securities Exchange Act of 1934 (the “Exchange Act”), a proposal to adopt amendments to Rule 4003, *Frequency of Inspections*, to revise paragraphs (b) and (d) and add new paragraphs (e) and (h) (collectively, the “Proposed Rules”).³ The Proposed Rules were published for comment in the Federal Register on April 13, 2016.⁴ At the time the notice was issued, the Commission extended to July 12, 2016 the date by which the Commission should take action on the Proposed Rules.⁵ The Commission received two comment letters in response to the notice.⁶ This order approves the Proposed Rules.

¹ 15 U.S.C. 7217(b).

² 15 U.S.C. 78s(b).

³ On October 22, 2007, the Board filed amendments related to Rule 4003 with the Commission and requested Commission approval. The Commission did not act on the amendments subject to the 2007 filing. On February 26, 2016, the Board adopted revisions to those proposed amendments and, on March 24, 2016 amended the 2007 filing to reflect those revisions.

⁴ See Release No. 34-77558 (April 7, 2016), 81 FR 21909 (April 13, 2016).

⁵ Ibid.

⁶ See letters from Deloitte Touche Tohmatsu Limited, dated April 29, 2016 (“Deloitte”), available at <https://www.sec.gov/comments/pcaob-2007-04/pcaob200704-1.pdf>, and an anonymous letter, dated May 3, 2016 (“anonymous letter”), available at <https://www.sec.gov/comments/pcaob-2007-04/pcaob200704-2.htm>.

II. Description of the Proposed Rules

On February 26, 2016, the Board adopted amendments to Rule 4003 to (i) require that at least five percent of registered public accounting firms that play a substantial role in the preparation or furnishing of an audit report be inspected on an annual basis, (ii) maintain the requirement to inspect all firms that issue an audit report for an issuer but provide the Board the discretion to forego an inspection, on a case-by-case basis, for a firm that does not subsequently issue an audit report for two consecutive years, (iii) qualify the term “audit report” to keep relevant portions of the rule consistent with the original meaning, and (iv) specify that no inspection requirement arises solely because a firm consented to an issuer’s use of a previously issued audit report.

A. Amendments Related to the Inspection of Substantial Role Only Firms

Under the Proposed Rules, the triennial inspection requirement for registered public accounting firms that play a substantial role in audits but do not issue audit reports (“substantial role only”)⁷ is eliminated and replaced with a requirement to inspect at least five percent of such “substantial role only” firms. As a result, Rule 4003(b) is amended to delete the references to “substantial role only” firms and Proposed Rule 4003(h) is added to require that the Board will inspect at least five percent of the “substantial role only” firms on an annual basis. Additionally, Rule 4003(d) is amended to remove the references to “substantial role only” firms.

⁷ We are using the phrase “substantial role only” to identify the registered public accounting firms that play a substantial role in audits of issuers but do not issue audit reports with respect to any issuers as distinguished from the category of firms that play a substantial role in some audits and separately issue audit reports with regards to other audits. Firms that play a substantial role in an audit of an issuer must register with the PCAOB. See PCAOB Rule 2100(b).

B. Amendments Related to the Inspections of Firms that Have Not Issued Audit Reports in Two Consecutive Years

Under the Proposed Rules, Rule 4003(b) will continue to retain the requirement to inspect any registered public accounting firm that issues an audit report with respect to an issuer.

However, Proposed Rule 4003(e) is added to provide the Board with the discretion to forego the inspection of a registered public accounting firm that has not issued any audit reports in two consecutive years.

C. Amendments Related to the Term “Audit Report” and Consents to the Use of Previously Issued Audit Reports

Under the Proposed Rules, Rule 4003(d) is amended to add the phrase “with respect to an issuer” to qualify the term “audit report” within the rule. The added qualification is needed to clarify that the Proposed Rules apply only to the audits of issuers because, after the original rule was adopted, the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)⁸ amended the Sarbanes-Oxley Act to establish the PCAOB’s oversight of the audits of broker-dealers.⁹ Additionally, Rule 4003(b) is amended to provide that no inspection requirement arises under the rule solely because a firm consents to an issuer’s use of a previously issued audit report.

D. Applicability and Effective Date

The Proposed Rules would become effective upon approval by the Commission and apply to the audits of all issuers, including audits of emerging growth companies (“EGCs”),¹⁰ as

⁸ Pub. L. 111-203, 124 Stat. 1376 (2010).

⁹ See Section 101 of the Sarbanes-Oxley Act [15 U.S.C. 7211].

¹⁰ The term “emerging growth company” is defined in Section 3(a)(80) of the Exchange Act [15 U.S.C. 78c(a)(80)].

discussed in Section IV below. The Proposed Rules do not impact the inspection frequency of the audits of brokers and dealers under Exchange Act Rule 17a-5.¹¹

III. Comment Letters

As noted above, the Commission received two comment letters concerning the Proposed Rules. Both commenters expressed support for the Proposed Rules.¹²

IV. The PCAOB's EGC Request

Section 103(a)(3)(C) of the Sarbanes-Oxley Act requires that any rules of the Board “requiring mandatory audit firm rotation or a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit and the financial statements (auditor discussion and analysis)” shall not apply to an audit of an EGC.¹³ The Proposed Rules do not fall into this category of rules. Section 103(a)(3)(C) further provides that “[a]ny additional rules” adopted by the PCAOB after April 5, 2012 shall not apply to the audits of EGCs “unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.” The Proposed Rules fall within this category of additional rules and thus the Commission must make a determination under the statute about the applicability of the Proposed Rules to audits of EGCs. Having considered those statutory factors, and as explained further herein, the Commission finds that applying the Proposed Rules to audits of EGCs is necessary or appropriate in the public interest.

¹¹ If the broker or dealer is also an issuer, the Proposed Rules could impact the inspection frequency of the audits of such broker or dealer.

¹² See Deloitte letter and anonymous letter.-

¹³ 15 U.S.C. 7213(a)(3)(C).

In proposing application of the Proposed Rules to audits of all issuers, including EGCs, the Board requested that the Commission make the determination required by Section 103(a)(3)(C). To assist the Commission in making its determination under Section 103(a)(3)(C), the PCAOB prepared and submitted to the Commission its own EGC analysis, which was included in the Commission's public notice soliciting comment on the Proposed Rules. In its analysis, the Board states that the Proposed Rules do not change or add to the requirements that apply to the audits of any issuers, including EGCs. Any inspection of an audit of an EGC would be conducted in the same manner as it would have under existing PCAOB rules. The Proposed Rules only impact the frequency with which the PCAOB may inspect a small number of firms.¹⁴

The Board does not anticipate that the Proposed Rules would impact the audit quality for audits of EGCs by altering auditors' perception regarding inspection likelihood. Specifically, the Board does not believe that the Proposed Rules will affect an auditor's perception, during an audit of an EGC, of the possibility of such audit being inspected or the nature of any inspection or review, if conducted.

Based on the PCAOB's EGC analysis, we believe the information in the record is sufficient for the Commission to make the requested EGC determination in relation to the Proposed Rules. The Commission notes that because only a small number of firms fall within the categories of the Proposed Rules, the impact on the inspection frequency of the audits of EGCs is likely limited. Further, as to the "substantial role only" firms, the PCAOB

¹⁴ Specifically, out of the proposed amendments, only Proposed Rule 4003(e) would potentially change inspection frequency. However, the number of firms that would be covered by Proposed Rule 4003(e) appear to be small. The Board notes that there were 12 firms in 2015 that had previously issued an audit report in one year but none in the following two consecutive years. For the firms that would be covered by Proposed Rule 4003(h), the practice of the PCAOB has been to inspect five percent of those firms on an annual basis since 2009.

is merely codifying its current practice.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules and the information submitted therewith by the PCAOB, including the PCAOB's EGC analysis, and the comment letters received. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules to EGC audits is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

IT IS THEREFORE ORDERED, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB-2007-04) be and hereby are approved.

By the Commission.

Jill M. Peterson
Assistant Secretary

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