

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59792; File No. PCAOB-2008-06)

April 20, 2009

Public Company Accounting Oversight Board; Notice of Filing of Proposed Amendment to Board Rules Relating to Inspections

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on December 9, 2008, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule

On December 4, 2008, the Board adopted an amendment to its rule relating to the frequency of inspections. The proposed amendment adds a new paragraph (f) to existing Rule 4003. The text of the proposed amendment is set out below. Language added by the amendment is in italics.

Rule 4003. Frequency of Inspections

* * *

(f) With respect to any foreign registered public accounting firm concerning which the preceding provisions of this Rule would set a 2008 deadline for the first Board inspection, such deadline is extended to 2009.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose Of, and Statutory Basis for, the Proposed Rule

(a) Purpose

The Sarbanes-Oxley Act of 2002 ("the Act") directs the Board to conduct a continuing program of inspections to assess registered public accounting firms' compliance with certain requirements.^{1/} The Act prescribes inspection frequency requirements but also authorizes the Board to adjust the frequency requirements by rule if the Board finds that an adjustment is consistent with the purposes of the Act, the public interest, and the protection of investors.^{2/} Inspection frequency requirements adopted by the Board are set out in PCAOB Rule 4003, "Frequency of Inspections."

The Board began a regular cycle of inspections of U.S. firms in 2004 and has conducted 911 such inspections, including repeat inspections of several firms. Inspections of non-U.S. firms began in 2005, and the Board has inspected 123 non-U.S. firms that have issued audit reports while registered with the Board. Those firms are located in 24 jurisdictions.^{3/} There are, however, 21 non-U.S. firms that have issued audit reports while registered and that Rule 4003 requires the Board to inspect by the end of 2008, but that the Board has not yet inspected. For

^{1/} See Section 104(a) of the Act.

^{2/} See Section 104(b) of the Act.

^{3/} The Board has inspected non-U.S. firms located in Argentina, Australia, Bermuda, Brazil, Canada, Chile, Colombia, Greece, Hong Kong, India, Indonesia, Ireland, Israel, Japan, Kazakhstan, Mexico, New Zealand, Panama, Peru, Singapore, South Africa, South Korea, Taiwan R.O.C., and the United Kingdom.

the reasons described below, the Board has adopted Rule 4003(f) to extend for one year the deadline for the Board to conduct the first inspections of non-U.S. firms that are otherwise required before the end of 2008.^{4/}

The PCAOB has recognized since the outset of its inspection program that inspections of non-U.S. firms pose special issues.^{5/} In its oversight of non-U.S. firms, the Board seeks, to the extent reasonably possible, to coordinate and cooperate with local authorities. Since 2003, when the PCAOB began operations, a number of jurisdictions have also developed their own auditor oversight authorities with inspection responsibilities or enhanced existing oversight systems.^{6/} The Board has a specific framework for working cooperatively with its non-U.S. counterparts to conduct joint inspections and, to the extent deemed appropriate by the Board in any particular case, relying on inspection work performed by that counterpart.^{7/} The Board has previously expressed the view that it is in the interests of the public and investors for the Board to develop

^{4/} Existing Rule 4003 effectively sets deadlines for the Board's inspections not only of firms that issue audit reports, but also of firms that play a substantial role in the preparation or furnishing of an audit report (as defined in PCAOB Rule 1001(p)(ii)). The Board has previously submitted for Commission approval amendments to Rules 4003(b) and 4003(d) that would eliminate from the Rule any frequency requirement or deadline for the Board to inspect a firm that plays a substantial role but does not issue an audit report. Unless and until the Commission approves such a rule change, however, the one-year extension in proposed rule 4003(f) would (if approved by the Commission) apply to required 2008 PCAOB inspections of non-U.S. firms that have played a substantial role as well as to required 2008 inspections of non-U.S. firms that have issued audit reports.

^{5/} See Briefing Paper, Oversight of Non-U.S. Public Accounting Firms (October 28, 2003); Final Rules Relating to the Oversight of Non-U.S. Public Accounting Firms, PCAOB Release No. 2004-005 (June 9, 2004) (hereinafter "Oversight of Non-U.S. Firms").

^{6/} In 2006, for instance, the European Union enacted a directive requiring the creation of an effective system of public oversight for statutory auditors and audit firms within each Member State. See The Directive 2006/43/EC of the European Parliament and the Council (May 17, 2006) (the "Eighth Directive"). In addition, among others, Canada created the Canadian Public Accountability Board, and in Australia, the responsibilities of the Australian Securities and Investments Commission were expanded to include auditor oversight. In Asia, Japan created the Certified Public Accountants and Auditing Oversight Board, South Korea gave responsibility for auditor oversight to its Financial Supervisory Service, and Singapore created the Accounting and Corporate Regulatory Authority.

^{7/} See PCAOB Rules 4011 and 4012; see also Oversight of Non-U.S. Firms at 2-3.

efficient and effective cooperative arrangements with its non-U.S. counterparts.^{8/} In jurisdictions that have their own inspection programs, this may include conducting joint inspections of firms that are subject to both regulators' authority. Even where the Board does not work with a local regulator to conduct joint inspections, the Board communicates with its counterpart or other local authorities (such as securities regulators or other government agencies and ministries) regarding its inspections to be conducted in the jurisdiction.

In some jurisdictions, the PCAOB's ability to conduct inspections, either by itself or jointly with a local regulator, is complicated by the need to address with local authorities potential legal obstacles and sovereignty concerns. The Board seeks to work with the home-country authorities to try to resolve potential conflicts of laws.^{9/}

In addition, PCAOB Rule 4011 permits non-U.S. firms that are subject to Board inspection to formally request that the Board, in conducting its inspection, rely on a non-U.S. inspection to the extent deemed appropriate by the Board. If a Rule 4011 request is made, Rule 4012 provides that the Board will, at an appropriate time before each inspection of the firm, determine the degree, if any, to which the Board may rely on the non-U.S. inspection. Rule 4012 describes aspects of the non-U.S. system that the Board will evaluate in making that determination.

Where the need arises to try to resolve potential conflicts of law, or to evaluate a non-U.S. system in response to a Rule 4011 request, the effort can be substantial. The effort typically involves negotiating the principles of an arrangement for cooperation consistent with the inspection obligations that the Act imposes on the Board. It also involves the Board gaining a

^{8/} See Oversight of Non-U.S. Firms at 2-3.

^{9/} See Oversight of Non-U.S. Firms at 3.

detailed understanding of the other jurisdiction's auditor oversight system in order for the Board to determine the degree of reliance it is willing to place on inspection work performed under that system in a particular inspection year.

Additional effort is involved in coordinating the scheduling of specific inspections. Where possible, the Board seeks to conduct inspections jointly with local authorities both to take advantage of potential efficiencies and to avoid imposing unnecessary regulatory burdens on the firm. Like the PCAOB, several of these other authorities proceed according to inspection frequency requirements. While some of the Board's counterparts are established and have inspection programs, many are new organizations still building up their inspections resources. As a result, synchronizing the inspections schedules of these authorities and the PCAOB's requirements may sometimes require one-time scheduling adjustments by the PCAOB and/or the other authority.

Notwithstanding these challenges, the Board has so far conducted 123 non-U.S. inspections. Fifty-seven of those inspections, in five jurisdictions, have been conducted jointly with other auditor oversight authorities, while 66 have been conducted solely by the PCAOB.

Because of the types of issues described above, however, the Board faces certain challenges related to conducting, in 2008, the inspections of 18 non-U.S. firms that have issued audit reports while registered and that the Board is currently required to inspect by the end of 2008.^{10/} Those 18 inspections involve firms in nine jurisdictions, several of which have newly

^{10/} Inspections of three other non-U.S. firms that have issued audit reports while registered and that the Board is currently required to conduct by the end of 2008 will be delayed beyond 2008 for reasons unrelated to the issues discussed above. In October 2007, after soliciting public comment, the Board adopted and submitted for Commission approval an amendment to Rule 4003 that would give the Board discretion not to conduct an otherwise required inspection of a firm if, after the firm issued the audit report that gave rise to the inspection requirement, the firm went two consecutive calendar years without issuing an audit report. The three non-U.S. firms referred to here fall into that category and, although the Commission has not acted on that proposed rule amendment, the Board's planning for, and conduct of, 2008 inspections did not include those three firms.

established auditor oversight entities that have just recently started their own inspections programs. In some of those nine jurisdictions, the auditor oversight authority's 2008 inspection schedules did not include some or any of the firms the PCAOB is required to inspect in 2008. In still other jurisdictions, local authorities have raised sovereignty concerns or potential legal conflicts, and efforts to resolve those issues are incomplete.

The Board has made an effort to resolve issues with authorities in the nine jurisdictions in time to conduct these inspections in 2008.^{11/} The Board remains hopeful that ongoing discussions with these authorities will result in the resolution of outstanding issues. It is now apparent, however, that this will not occur in time to conduct those inspections in 2008. Accordingly, the choice the Board now faces is whether to (1) postpone these inspections while continuing discussions on the outstanding issues or (2) proceed with inspections by making inspection demands on the individual firms over the objection of local authorities, including in circumstances where local authorities take the position that a firm's cooperation in a Board inspection would violate local law.

Neither option is ideal. While the Board sees value in cooperation and joint inspections, that value must be balanced against the statutory presumption that PCAOB-registered firms will be subject to timely PCAOB inspections in order to protect the interests of investors in U.S. markets. On balance, in light of the status of the ongoing discussions with authorities in the nine jurisdictions described above, the Board believes that a rule amendment allowing the Board to postpone those inspections for up to one year is the appropriate course. For that reason, the Board is adopting a new paragraph (f) to Rule 4003, which extends for one year the deadline for

^{11/} In two of these jurisdictions, the Board was able to arrange for and conduct some joint inspections in 2008, but, due to scheduling conflicts, could not conduct joint inspections of all firms with 2008 deadlines.

the Board to conduct the first inspection of any non-U.S. firm that existing Rule 4003 otherwise requires the Board to conduct by the end of 2008. The Board is adopting Rule 4003(f) to take effect upon Commission approval.

In the Board's view, this adjustment to the inspection frequency requirement is consistent with the purposes of the Act, the public interest, and the protection of investors. The Board believes that its approach to implementing Rules 4011 and 4012, developing cooperative arrangements, and conducting joint inspections with foreign regulators is enhancing the Board's efforts to carry out its inspection responsibilities. There is long-term value in accepting a limited delay in inspections to continue working toward cooperative arrangements where it appears reasonably possible to reach them. The Board recognizes that some non-U.S. firms may be reluctant to comply with PCAOB inspection demands because of a concern that doing so might violate local law. Up to a point, the purposes of the Act, the public interest, and the protection of investors are better served by delaying a first inspection to work toward a cooperative resolution than by precipitating legal disputes involving conflicts between U.S. and non-U.S. law that could arise if the Board sought to enforce compliance with its preferred schedule without regard for the concerns of non-U.S. authorities.

The Board will continue to work toward cooperation and coordination with authorities in all relevant jurisdictions. The Board does not intend, however, to make any further adjustments to the inspection frequency requirements applicable to firms whose first inspection was due no later than 2008.^{12/}

^{12/} Nothing in this notice is inconsistent with the Board's willingness to place reliance on a non-U.S. inspection consistent with Rules 4011 and 4012, or suggests any position on the nature of the inspection process in circumstances in which the Board relies on a non-U.S. inspection to the maximum extent that would be consistent with the Board's responsibilities under the Act.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule imposes no burden beyond the burdens clearly imposed and contemplated by the Act.

C. Board's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

The Board did not solicit or receive comments before adopting the proposed rule.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period as (i) the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the requirements of Title I of the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/pcaob.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number PCAOB-2008-06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number PCAOB-2008-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/pcaob/shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCAOB.

All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number PCAOB-2008-06 and should be submitted on or before **[insert date 21 days from publication in the Federal Register]**.

By the Commission.

Elizabeth M. Murphy
Secretary