

## **SECURITIES AND EXCHANGE COMMISSION**

### **17 CFR PART 241**

**[Release No. 34-62991]**

#### **Commission Guidance Regarding Auditing, Attestation, and Related Professional Practice Standards Related to Brokers and Dealers**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretation.

**SUMMARY:** The Securities and Exchange Commission is publishing interpretive guidance to clarify the application of certain Commission rules, regulations, releases, and staff bulletins in light of the authority granted to the Public Company Accounting Oversight Board in the Dodd-Frank Wall Street Reform and Consumer Protection Act to establish auditing, attestation, and related professional practice standards governing the preparation and issuance of audit reports to be included in broker and dealer filings with the Commission.

**EFFECTIVE DATE:** October 1, 2010

**FOR FURTHER INFORMATION CONTACT:** Questions should be referred to Rebekah Goshorn (Attorney), Division of Trading and Markets, at (202) 551-5777, or to John Offenbacher (Senior Associate Chief Accountant) or Jeffrey Cohan (Senior Special Counsel), Office of the Chief Accountant, at (202) 551-5300, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-7561.

#### **SUPPLEMENTARY INFORMATION:**

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>1</sup> (“Dodd-Frank Act”) amended the Sarbanes-Oxley Act of 2002<sup>2</sup> (the “Sarbanes-Oxley Act”) to authorize the

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 17 U.S.C. 7202 *et seq.*

Public Company Accounting Oversight Board (“PCAOB”), among other things, to establish, subject to approval by the Commission, auditing and related attestation, quality control, ethics, and independence standards to be used by registered public accounting firms with respect to the preparation and issuance of audit reports to be included in broker and dealer filings with the Commission pursuant to Rule 17a-5<sup>3</sup> under the Exchange Act of 1934<sup>4</sup> (“Exchange Act”). The amendments directly impact certain Commission rules, regulations, releases, and staff bulletins related to brokers and dealers (collectively referred to in this release as “Commission rules and staff guidance”) and certain provisions in the federal securities laws for brokers and dealers, which refer to Generally Accepted Auditing Standards (“GAAS”) and to specific standards under GAAS (including related professional practice standards).<sup>5</sup> There may be confusion on the part of brokers, dealers, auditors, and investors with regard to the professional standards auditors should follow for reports filed and furnished by brokers and dealers pursuant to the federal securities laws and the rules of the Commission.

The Commission is considering a rulemaking project to update the audit and related attestation requirements under the federal securities laws for brokers and dealers, particularly in light of the Dodd-Frank Act. In addition, the PCAOB has not yet revised its rules, which currently refer only to issuers, to require registered public accounting firms to comply with PCAOB standards for audits of

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<sup>3</sup> 17 CFR 240.17a-5

<sup>4</sup> 15 U.S.C. 78a et seq.

<sup>5</sup> Many parts of Commission rules and staff guidance related to obligations of brokers and dealers refer to GAAS and contain requirements for audits to be conducted in accordance with GAAS. Rule 17a-5(g)(1) under the Exchange Act, for example, states that the audit of the report required by Rule 17a-5(d) “...shall be made in accordance with generally accepted auditing standards...” (See 17 CFR 240.17a-5) Rule 17a-12 under the Exchange Act requires that the audit of certain over-the-counter derivative dealers “...shall be made in accordance with U.S. Generally Accepted Auditing Standards...” (17 CFR 240.17a-12)

non-issuer brokers and dealers.<sup>6</sup>

As a result, the Commission is providing transitional guidance with respect to its existing rules regarding non-issuer brokers and dealers. Specifically, references in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to non-issuer brokers or dealers, should continue to be understood to mean auditing standards generally accepted in the United States of America,<sup>7</sup> plus any applicable rules of the Commission. The Commission intends, however, to revisit this interpretation in connection with its rulemaking project referenced above.

### **List of Subjects**

#### **17 CFR Part 241**

Brokers, Reporting and recordkeeping reports, Securities.

### **Amendments to the Code of Federal Regulations**

For the reasons set forth above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

#### **PART 241 - INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER**

Part 241 is amended by adding Release No. 34-62991 to the list of interpretive releases as follows:

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<sup>6</sup> See PCAOB Rule 3100. See also, e.g., PCAOB Rules 3200T, 3300T, 3400T, and 3500T.

<sup>7</sup> Audit and attestation standards established by the AICPA.

<u>Subject</u>	<u>Release No.</u>	<u>Date</u>	<u>Fed. Reg. vol. .and page</u>
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By the Commission.

Elizabeth M. Murphy  
Secretary

Dated: September 24, 2010