

Public Company Accounting Oversight Board
June 14, 2011

Fact Sheet – Funding Rules

1. Statutory Background

Section 109 of the Sarbanes-Oxley Act, as amended by section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, provides for two sources of outside funding for the Board –

- Registration and annual fees from public accounting firms,¹ and
- An annual accounting support fee allocated equitably among issuers and brokers and dealers –
 - Under the Sarbanes-Oxley Act, the accounting support fee initially was allocated only to issuers. The Dodd-Frank Act assigned the Board the additional responsibility to oversee the audits of brokers and dealers and, accordingly, provided for the Board to allocate the accounting support fee equitably among not only issuers but also brokers and dealers (see section 109(d)). The Board may establish different classes of issuers and of brokers and dealers for funding purposes (see Sections 109(g) and 109(h)(2)).

2. Brokers and Dealers

Section 109 states that the Board shall begin the allocation of the accounting support fee among brokers and dealers in the Board's first full fiscal year after date of enactment of the Dodd-Frank Act, which is 2011 (see Section 109(d)(3)).

The law further states that the 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 the rules of the Board (see Section 109(h)(3)).

- The rules adopted require that the fee be based on “tentative net capital,” which under the SEC's Rules is net capital before deducting certain securities haircuts and charges for certain commodities transactions (see SEC Rule 15c3-1(c)(15)). Because those deductions depend on types of investments and transactions the broker or dealer may elect to enter during the period, tentative net capital is considered to be a more consistent measure than net capital.

¹ These fees are not part of the rules adopted today (see Sections 102(f) and 109(c)(1); PCAOB Rule 2103).

- Both tentative net capital and net capital are reported on brokers' and dealers' FOCUS reports.
- Tentative net capital is not spread evenly among all brokers and dealers. Of the approximately 4,600 brokers and dealers are registered with the Financial Industry Regulatory Authority (FINRA),² approximately 86% have average, quarterly tentative net capital of less than \$5 million.³ Combined, these brokers and dealers hold only approximately 1% of the industry's total average, quarterly tentative net capital. The remaining 14% of brokers and dealers hold the other 99% of the industry's average, quarterly tentative net capital, with only about 33 FINRA brokers and dealers holding approximately 80% of the average, quarterly tentative net capital held by all FINRA brokers and dealers.
- Due to this concentration of the industry's aggregate tentative net capital in a relatively few brokers and dealers, combined with the statutory requirement that the accounting support fee be proportioned among brokers and dealers based on their relative net capital (before or after any adjustments), the rules adopted today results in approximately 86% of FINRA brokers and dealers, each with average, quarterly tentative net capital less than \$5 million, being allocated a share of the broker-dealer accounting support fee of zero.
 - In adopting the rules today, the Board considered the administrative burden that would be imposed on smaller brokers and dealers as compared to the relatively small fees that would be collected by the Board. It is anticipated that establishing the \$5 million average, quarterly tentative net capital threshold will have a negligible effect on the shares of the accounting support fee paid by larger brokers and dealers.
 - Under this approach, about 640, or approximately 14%, of 4,600 FINRA brokers and dealers would pay a share of the accounting support fee.

3. Issuers

The Board also adopted revisions to its funding rules related the accounting support fee paid by issuers.

Based on experiences from assessment and collection of eight annual accounting support fees, the Board adopted amendments to its funding rules including –

² Additional brokers and dealers are registered with the Commission but have other designated examining authorities; audits of these brokers and dealers also are subject to oversight by the Board.

³ Based on tentative net capital reported by FINRA broker and dealers as of the third and fourth quarters of 2009 and the first and second quarters of 2010.

- Changing the basis for calculating the issuer accounting support fee from the relative market value of all classes of an issuer’s “common stock” that trade in the United States to the relative market value of all classes of an issuer’s voting and non-voting “common equity” securities that trade in the United States. This change would make the Board’s funding rules more consistent with SEC rules and reduce the need for PCAOB staff interpretations regarding whether various categories of equity securities fit within the definition of “common stock.”
- Changing the descriptions of various classes of issuers for funding purposes to –
 - Raise the market capitalization threshold from \$25 million to \$75 million for equity issuers (other than investment companies) to be assigned a share of the accounting support fee equal to zero. For the 2010 accounting support fee allocation, this would have meant that approximately 1,100 less equity issuers (which as a group were assessed 0.4% of the total 2010 accounting support fee allocated to equity issuers) would have been assessed. The administrative burden placed on such smaller equity issuers appears disproportionate to the negligible effect of reallocating the amount to other equity issuers.
 - Raise the market capitalization, or net asset value, threshold from \$250 million to \$500 million for investment companies to be assigned a share of the accounting support fee equal to zero. For the 2010 accounting support fee allocation, this would have meant that approximately 1,480 less investment companies (which as a group were assessed 5% of the total 2010 accounting support fee allocated to investment company issuers) would have been assessed. As with the smaller issuers discussed above, the administrative burden placed on such investment companies appears disproportionate to the negligible effect of the amount to other investment companies.
 - Require an issuer claiming to be within the jurisdiction of a bankruptcy court and entitled to file with the Commission modified reports under the Securities Exchange Act of 1934 (and therefore, assessed of the accounting support fee equal to zero), to obtain an opinion of counsel that the issuer meets the conditions set forth in SEC Staff Legal Bulletin No. 2 (April 15, 1997) for filing such modified reports.

4. The adopting release and comments received on the proposed rules may be found on the PCAOB’s website at <http://pcaobus.org/Rules/Rulemaking/Pages/Docket033.aspx>

5. The rules are subject to approval by the Securities and Exchange Commission.