

Information Notice

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Public Company Accounting Oversight Board Registration Relief Expired December 31, 2008

Executive Summary

FINRA is issuing this *Notice* to remind firms that the SEC's December 12, 2006, Order¹ permitting non-public broker-dealer firms to have their balance sheet and income statements audited by independent public accounting firms not registered with the Public Company Accounting Oversight Board (PCAOB) expired December 31, 2008.

Firms whose fiscal year ends December 31, 2008, or earlier may continue to rely on the December 12, 2006, SEC Order to conduct the 2008 annual financial audit of their income statement and balance sheet. Their fiscal year 2009 and subsequent audits must, however, be conducted by a PCAOB-registered accounting firm.

Firms whose fiscal year ends after December 31, 2008, must comply with the section of the Sarbanes-Oxley Act of 2002 that requires that their financial statements be audited by a PCAOB-registered accounting firm.

A small number of firms have fiscal years that end in January or February but do not have PCAOB-registered accountants. FINRA will contact these firms to ensure timely compliance with the requirement to have an audit conducted by a PCAOB-registered audit firm in light of the limited time available to obtain a PCAOB-registered accountant.

Questions concerning this *Notice* should be directed to Chip Jones, Vice President, Member Relations, at (240) 386-4797; or Susan DeMando, Associate Vice President, Financial Operations, at (202) 728-8411.

January 8, 2009

Suggested Routing

- Compliance
- Financial Reporting
- Legal
- Senior Management

Key Topics

- Annual Financial Audit

Referenced Rules & Notices

- Sarbanes-Oxley Act of 2002
- SEA Rule 17a-5(f)(4)

Background & Discussion

The Sarbanes-Oxley Act of 2002 established the PCAOB and amended Section 17(e) of the Securities Exchange Act of 1934 to replace the requirement of an audit by “an independent public accountant” with an audit by “a registered public accounting firm,” meaning a public accounting firm registered with the PCAOB.

The SEC issued a temporary order on August 4, 2003,² permitting non-public broker-dealers to file with the SEC and send to their customers documents and information required by Section 17(e) certified by an independent public accountant instead of by a PCAOB-registered public accounting firm. That temporary order was extended on July 14, 2004,³ December 7, 2005⁴ and, finally, on December 12, 2006.

Expiration of December 12, 2006, Order

The SEC has not extended its December 12, 2006, extension order—and has not announced plans to do so—and thus it expired on December 31, 2008.

Because that order covered non-public firms whose fiscal year ended on or before the December 31, 2008, deadline, those firms can use a non-PCAOB-registered accounting firm to audit their balance sheets and income statements for 2008, but not for 2009 and subsequent fiscal years.

All non-public firms whose fiscal year ends after December 31, 2008, must comply with the Sarbanes-Oxley Act of 2002 and have their financial statements audited by a PCAOB-registered accounting firm.

Audit Due Date

Less than 1 percent of firms have a fiscal year that ends in January or February. FINRA recognizes the limited time that these firms have to obtain a PCAOB-registered accounting firm for their audit of the fiscal year that is about to close, and will contact them to discuss the requirement to have an audit conducted by a PCAOB-registered audit firm and their compliance.

Additional Information

Firms can find a list of PCAOB-registered accounting firms at www.pcaobus.org. That site also provides information on how accounting firms that are not yet registered can become PCAOB-registered.

Firms that change their accounting firms are reminded of their obligations under SEC Rule 17a-5(f)(4) (Replacement of Accountant) to file a notice with the SEC within 15 days of termination of their previous auditor.

Endnotes

- 1 Exchange Act Release No. 54920, 71 FR 75779 (December 18, 2006).
- 2 Exchange Act Release No. 48281, 68 FR 47375 (August 8, 2003).
- 3 Exchange Act Release No. 50020, 69 FR 43482 (July 20, 2004).
- 4 Exchange Act Release No. 52909, 70 FR 73809 (December 13, 2005).