

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 Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. PCAOB-2011-02 and should be submitted on or before August 2, 2011.

For the Commission, by the Office of the Chief Accountant, pursuant to delegated authority.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64814; File No. PCAOB-2011-01]

### Public Company Accounting Oversight Board; Notice of Filing of Proposed Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers

July 6, 2011.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on June 21, 2011, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rules described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

### I. Board's Statement of the Terms of Substance of the Proposed Rules

On June 14, 2011, the Board adopted a temporary rule for an interim inspection program related to audits of brokers and dealers. The proposed Rule 4020T amends Section 4 of the Board's rules. The Board also adopted amendments to Section 1 of its rules to add notes following Rules 1001(a)(v), 1001(a)(vi), and 1001(p)(vi).

The text of the proposed amendments is set out below. Language added by the amendments is underlined.

#### Rules of the Board

##### Section 1. General Provisions

\* \* \*

Rule 1001. Definitions of Terms Employed in Rules.

\* \* \*

##### (a)(v) Audit

\* \* \*

*Note: Effective [insert effective date of Rule 4020T], pursuant to Rule 4020T, when used in Rule 3502, Section 5 of the Rules of the Board, or the definition of "disciplinary proceeding" in Rule 1001(d)(i), the term "audit" has the meaning provided in Section 110 of the Act.*

##### (a)(vi) Audit Report

\* \* \*

*Note: Effective [insert effective date of Rule 4020T], pursuant to Rule 4020T, when used in Rule 3502, Section 5 of the Rules of the Board, or the definition of "disciplinary proceeding" in Rule 1001(d)(i), the term "audit report" has the meaning provided in Section 110 of the Act.*

\* \* \*

##### (p)(vi) Professional Standards

\* \* \*

*Note: Effective [insert effective date of Rule 4020T], pursuant to Rule 4020T, when used in Rule 3502, Section 5 of the Rules of the Board, or the definition of "disciplinary proceeding" in Rule 1001(d)(i), the term "professional standards" has the meaning provided in Section 110 of the Act.*

\* \* \*

##### Section 4. Inspections

\* \* \*

*Rule 4020T. Interim Inspection Program Related to Audits of Brokers and Dealers.*

##### (a) Purposes of Interim Inspection Program

*This rule provides for an interim program of inspection in connection with audits of brokers and dealers in order, among other things—*

*(1) to assess the degree of compliance of registered public accounting firms and their associated persons with the Act, the Board's rules, the Commission's rules, and professional standards in connection with the performance of audits, issuance of audit reports, and related matters involving brokers and dealers;*

*(2) to inform the Board's consideration, in connection with establishing a permanent program of inspection to assess the matters described in paragraph (1), of—*

*(i) whether to differentiate among classes of brokers and dealers;*

*(ii) whether to exempt any category of public accounting firms; and*

*(iii) the establishment of minimum inspection frequency schedules.*

##### (b) Definitions

*When used in this rule, the term "interim program," means the interim program of inspection described in paragraph (c). When used in this rule, Rule 3502, Section 5 of the Rules of the Board, or the definition of "disciplinary proceeding" in Rule 1001(d)(i), the terms "audit," "audit report," and "professional standards" have the meaning provided in Section 110 of the Act.*

##### (c) Interim Program of Inspection

*On an interim basis, the Board shall conduct a program of inspection, for the purposes described in paragraph (a), that may include inspection procedures to assess the policies, practices, and procedures of any registered public accounting firm related to the performance of audits or the issuance of audit reports for any broker or dealer after July 21, 2010 and related matters involving brokers and dealers. The provisions of Rules 4000(b), 4000(c), 4004, 4006, 4007, 4008, 4009 and 4010 shall apply to the interim program.*

##### (d) Reporting

*No less frequently than every twelve months, beginning twelve months after the date this rule takes effect and continuing until rules for a permanent program of inspection in connection with audits of brokers and dealers take effect, the Board will publish a report that describes the progress of the interim program, including data about the number of registered public accounting firms and the number of broker or dealer audits that have been subjected to inspection procedures and any significant observations from those procedures.*

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

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. 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 Rules

##### (a) Purpose

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>1</sup> amended the Sarbanes-

<sup>1</sup> Public Law 111-203, 124 Stat. 1376 (July 21, 2010).

Oxley Act to give the Board oversight authority with respect to audits of brokers and dealers that are registered with the Commission. Among other things, the amended Act authorizes the Board to establish an inspection program by rule.<sup>2</sup> Section 104(a)(2) of the Act (1) Provides that, in establishing the program, the Board may allow for differentiation among classes of brokers and dealers; (2) requires that the Board consider whether differing inspection schedules would be appropriate with respect to auditors that issue audit reports only for brokers or dealers that do not receive, handle, or hold customer securities or cash or are not members of the Securities Investor Protection Corporation; and (3) provides that if the Board exempts any public accounting firm from such an inspection program, the firm would not be required to register with the Board.

In a release issued on December 14, 2010, the Board explained that it intended to take a careful and informed approach to those questions in establishing a permanent program that appropriately protects the public interest and the interests of investors, including consideration of potential costs and regulatory burdens that would be imposed on different categories of registered public accounting firms and classes of brokers and dealers. The Board also explained that it did not intend to make the necessary judgments without first gathering and assessing relevant information, but that it did not intend to postpone all use of its new inspection authority until after those judgments were made. Accordingly, the Board proposed for public comment a temporary rule for an interim program of inspection that would allow the Board to begin inspections of relevant audits and auditors and provide a source of information to help guide decisions about the scope and elements of a permanent program.

#### (b) Statutory Basis

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

#### *B. Board's Statement on Burden on Competition*

The Board does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes would apply equally to all registered public accounting firms that audit brokers and dealers.

#### *C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others*

The Board released the proposed rule amendment for public comment in Release 2010-008 (December 14, 2010). A copy of Release No. 2010-008 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at <http://www.pcaobus.org/Rules/Rulemaking/Pages/Docket032>. The Board received twelve written comment letters. The Board has carefully considered the comment letters, as discussed below.

#### 1. Scope of the Interim Program

The temporary rule that the Board proposed did not reflect any exercise of the Board's authority to differentiate among classes of brokers and dealers or to exempt any category of public accounting firm. The Board received a number of comments addressing the inclusive scope of the proposed interim program. Some commenters supported the proposed scope, while nevertheless suggesting that the Board focus its interim inspection efforts on audits of certain categories of brokers and dealers, such as those that have possession and control of customer cash and securities or act as clearing, carrying, or custodial brokers. One of those commenters also suggested that the Board consider, in connection with a permanent program, whether the public interest would be best served by focusing on those that carry accounts and maintain customer cash and securities.

Other commenters disagreed with the proposed approach. They argued, and some submitted data intended to support the argument, that certain categories of brokers and dealers pose little or no risk to the investing public. They suggested that the Board could identify those categories by focusing on factors such as whether the broker or dealer has custody of, or meaningful access to, client assets, or whether it is exclusively an introducing broker or dealer. These commenters suggested that the Board either should exempt the auditors of low-risk categories of firms from the Board's authority without delay or should collect and study currently available data on the question before subjecting auditors of all brokers and dealers to an inspection program. One commenter expressed concern that PCAOB regulation would significantly increase the cost of an audit to these entities, potentially forcing some of them out of business, with no corresponding contribution to meaningful protection of investors.

Other commenters similarly expressed concern that the costs of compliance with PCAOB regulation may negatively impact auditors of introducing brokers and dealers, which are typically small businesses.

After considering these comments, the Board decided to adopt a temporary rule for an interim program of the same scope as proposed. The Board explained in the release that the inclusive scope of the interim program should not be construed as either foreshadowing the likely scope of a permanent program or suggesting that every broker or dealer auditor will be inspected as part of the interim program. The Board expects to be able to gather the information necessary to inform its consideration of a permanent program without having to inspect most firms during the interim program. The Board intends to consider carefully whether there should be exemptions from the permanent program. For example, the Board expects to give consideration to whether a broker's or dealer's meaningful access to client assets is a relevant factor in determining the investor protection and public interest benefits of PCAOB oversight of the auditor of that broker or dealer.

The Board continues to believe, however, that information gathered during the course of the interim program will be relevant to making appropriate judgments about that question and other significant elements of a permanent inspection program. While data of the type submitted by commenters who favor immediate exemptions will also be relevant to those judgments, the Board believes that it is not prepared at the present time to conclude that such data is the only type of information that will be relevant or that an analysis of all such data necessarily compels the exemptions urged by these commenters.

#### 2. Processes Relating to Inspectors' Firm-Specific Observations

A few commenters requested clarification on how the Board will bring deficiencies to the firm's attention and what the Board's expectations would be for the firm to address the issues. Two commenters suggested that the Board address that point in the text of the rule. In response to the commenters, the Board described in the release the general communication process between PCAOB inspectors and the audit engagement team or other representatives of the firm. The Board anticipates that communications with firms will follow a course similar to that in inspections of auditors of issuers, but the Board believes that the details of the

<sup>2</sup> Section 104(a)(2)(A) of the Act, as amended.

process are subject to variation in light of circumstances during an inspection.

The proposing release included references to the possibility of firm-specific inspection reports during the interim program.<sup>3</sup> Commenters sought clarification on what they saw as a tension between references to that possibility and the statement in the proposing release that the Board would expect results of inspection procedures performed under the interim program to be included in firm-specific reports, if at all, only after rules for a permanent program take effect.

The Board intends for inspection procedures performed on a firm as part of the interim program to constitute a foundational portion of the first inspection of the firm's audit practice related to brokers and dealers, which would be completed after a permanent program is established. This means that, for firms that audit brokers or dealers but not issuers, the Board does not expect to issue a firm-specific inspection report unless and until a permanent program replaces the interim program, the firm is included in the scope of the permanent program, and the firm has been inspected under the permanent program.<sup>4</sup> Unusual circumstances, however, could give rise to exceptions. As a precaution in light of that possibility, the Board has incorporated in the final version of Rule 4020T the provisions of PCAOB Rule 4007, Procedures Concerning Draft Inspection Reports, PCAOB Rule 4008, Procedures Concerning Final Inspection

Reports, and PCAOB Rule 4009, Firm Response to Quality Control Defects.<sup>5</sup>

Commenters also expressed concern about including observations from the interim inspection program in a firm-specific inspection report that may be issued years later, after the permanent program is established and after the relevant standards and rules, as well as the firm's practices, may have changed. The commenters urged the Board to reconsider including observations from interim program procedures in the first firm-specific report. These commenters also requested clarification on whether the eventual report would present cumulative findings or deficiencies observed.

During the interim program, the Board will be obtaining a broad view of practice related to audits of brokers and dealers under current standards and interpretive guidance, and at the same time the standards and rules applicable to the audits will be evolving. Having both that broad view and the new standards as a foundation will be helpful to making consistent and meaningful evaluations of the types of quality control issues that, going forward, firms need to address in their practices related to audits of brokers and dealers. It is possible that observations from interim program procedures will be relevant to the Board's inspection-related dialogue with a particular firm—though not necessarily with every firm—even after standards and rules have changed, and it may be appropriate for aspects of those observations to be included in the first inspection report that addresses the firm's audit practice related to audits of brokers and dealers. The Board does not contemplate that firms' first reports will routinely serve as historical records of all observations from interim program procedures. Depending on the circumstances, however, aspects of some observations may retain their relevance to an assessment of audit quality issues at a particular firm even at the time of the first report, and those aspects may be discussed in a report. If that occurs, the Board intends that the report will make clear the timing of the original inspection observation at issue.

### 3. General Reports During the Inspection Period

The temporary rule provides that the Board will publish a report on the interim program no less frequently than every twelve months, beginning twelve months after the date the rule takes effect and continuing until rules for a permanent program take effect. Each report will describe the progress of the interim program and any significant observations that either may bear on the Board's consideration of a permanent program or the publication of which may otherwise be appropriate to protect the interests of investors or to further the public interest.

Commenters supported the Board's proposal to publish a report at least annually on the progress of the interim inspection program. Some commenters suggested that the Board include in the report sufficient details on the nature and types of brokers and dealers inspected and group the inspection observations based on these classifications to help public accounting firms understand the specific issues identified in the report. The Board will take those suggestions into consideration when preparing the progress reports.

### 4. Voluntary Cooperation

When Rule 4020T takes effect, cooperation with Board inspection procedures under the interim program will be mandatory for registered firms and their associated persons. The proposing release also noted, however, that even before the rule takes effect, the Board might conduct relevant procedures with the voluntary cooperation of certain firms. Two commenters inquired about the Board's expectations for voluntary cooperation. Specifically, commenters sought clarification on whether the procedures with which the Board may request voluntary cooperation would include actual inspections of audits of brokers and dealers or be limited in scope. These commenters also requested information on the timing of the voluntary cooperation and the identity of registered public accounting firms expected to cooperate voluntarily.

The Board explained in the release that it does not have any expectation for particular firms to cooperate voluntarily, or have a view that there is a particular scope of procedures to which firms should voluntarily consent. The Board's ongoing inspections of auditors of issuers include inspections of some firms that audit brokers and dealers in addition to issuers. During regular inspections of any such firm's

<sup>3</sup> The proposing release stated that nothing in the temporary rule "would necessarily preclude the Board from issuing a firm-specific inspection report on, or including, inspection observations from the interim program before a permanent program takes effect." Proposing release at 11, n.21. The proposing release also noted that inspection procedures performed in the interim program would be carried out in accordance with, and subject to, the provisions of Section 104 of the Act, including provisions concerning a firm's opportunities to respond to a draft inspection report and to seek Commission review of certain matters in a final inspection. See proposing release at 6, n.10.

<sup>4</sup> While the interim program is in place, a Board inspection of a firm that performs audit work for issuers and for brokers or dealers would include the full, regular inspection—including the firm-specific inspection report—of the firm's issuer practice. Such an inspection could also include inspection procedures under the interim program with respect to the firm's broker and dealer practice. As with firms that audit brokers or dealers but not issuers, the Board, absent unusual circumstances, would not incorporate any evaluation of the firm's broker and dealer practice into the public portion of a firm-specific report before the report on the first inspection of the firm that occurs after a permanent program takes effect and would not include observations from the interim program procedures in the nonpublic portion of any such report.

<sup>5</sup> Rule 4007 was not incorporated in the version of Rule 4020T that the Board proposed, and commenters noted the discrepancy between the omission of a provision incorporating Rule 4007 and the proposing release's references to the possibility of firm-specific inspection reports. To fully address that discrepancy, the Board has also incorporated Rules 4008 and 4009 in the final version of Rule 4020T.

issuer audit practice before Rule 4020T takes effect, inspection staff may discuss with the firm the possibility of the firm submitting voluntarily to inspection procedures concerning its audit practice related to brokers and dealers. The Board does not contemplate discussing the possibility of voluntary cooperation with any firm that the Board is not otherwise inspecting because of the firm's issuer audit practice.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate 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 or disapprove such proposed rule; or
- (b) Institute proceedings to determine whether the proposed rule 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 rules are consistent with the requirements of Title I of the Sarbanes-Oxley 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](mailto:rule-comments@sec.gov). Please include File Number PCAOB-2011-01 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-2011-01. 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 Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. PCAOB-2011-01 and should be submitted on or before August 2, 2011.

For the Commission, by the Office of the Chief Accountant, pursuant to delegated authority.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64825; File No. SR-C2-2011-014]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

July 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 1, 2011, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fees Schedule to extend a fee waiver related to the PULSe workstation and to adopt a limited fee waiver for new users of the PULSe workstation. The text of the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com>), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

##### 1. Purpose

The purpose of this proposed rule change is to extend a fee waiver related to the PULSe workstation and to adopt a limited fee waiver for new users of the PULSe workstation. By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of C2. In addition to providing the capability to send orders to the C2 market, the PULSe workstation will also provide a user with the capability to send options orders to other U.S. options exchanges and stock orders to other U.S. stock exchanges through a PULSe Routing Intermediary.<sup>5</sup>

The first purpose of this proposed rule change is to extend the waiver of the PULSe Routing Intermediary fee. Currently the Exchange has waived the Routing Intermediary fee through June 30, 2011. The Exchange is proposing to extend this waiver through September 30, 2011. Thus this fee will be assessed beginning October 1, 2011.

<sup>5</sup> For a more detailed description of the PULSe workstation and its other functionalities, see, e.g., Securities Exchange Act Release No. 63246 (November 4, 2010), 75 FR 69478 (November 12, 2010) (SR-C2-2010-007).