

to a PCAOB inspection report, including whether a request for review is granted or denied, shall not be reviewable under 15 U.S.C. 78y and shall not be deemed to be “final agency action” for purposes of 5 U.S.C. 704.

(4) Any action taken by the Commission relates solely to the publication of the relevant inspection report and does not affect the ability of the Commission or PCAOB to take appropriate action.

(g) *Designation of address; Representation.* (1) When a registered public accounting firm first submits a request for interim Commission review, or an associated person first submits information related to a request, the firm or associated person shall submit to the Commission, and keep current, an address at which any notice or other written communication furnished to the firm or associated person may be sent, a contact name and telephone number where the firm or associated person may be reached during business hours and, if represented, the representative’s name, business address, and telephone number.

(2) If the firm, PCAOB, or associated person will be represented by a representative, the initial submission of that person shall be accompanied by the notice of appearance required by § 201.102(d). The other provisions of § 201.102 with respect to representation before the Commission shall apply.

[75 FR 47449, Aug. 6, 2010]

§ 202.170 Initiation of disapproval proceedings for PCAOB proposed rules.

Initiation of disapproval proceedings for proposed rules of the Public Company Accounting Oversight Board as defined by section 107 of the Sarbanes-Oxley Act of 2002 are subject to the provisions of §§ 201.700 and 201.701 of this chapter as fully as if it were a *registered securities association*, except that:

(a) *Demonstration of consistency with the Sarbanes-Oxley Act of 2002.* For purposes of proposed rules of the Public Company Accounting Oversight Board, apply this paragraph in lieu of paragraph (b)(3) of § 201.700 of this chapter. The burden to demonstrate that a proposed rule is consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and

regulations issued thereunder, or as necessary or appropriate in the public interest or for the protection of investors, is on the Public Company Accounting Oversight Board. In its filing the Public Company Accounting Oversight Board must explain in a clear and comprehensible manner why the proposed rule change is consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002 and the rules and regulations thereunder, or as necessary or appropriate in the public interest or for the protection of investors. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. Instead, the description of the proposed rule, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure by the Public Company Accounting Oversight Board in its proposed rule filing with the Commission may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder, or as necessary or appropriate in the public interest or for the protection of investors.

(b) For each reference to “the Exchange Act and the rules and regulations thereunder applicable to the self-regulatory organization” apply “title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors.”

[76 FR 4072, Jan. 24, 2011]

§ 202.190 Public Company Accounting Oversight Board budget approval process.

(a) *Purpose.* These procedures are established in connection with consideration and approval of the budget and the accounting support fee for the Public Company Accounting Oversight Board (PCAOB). Actions attributed to the PCAOB in this section shall be performed as authorized by the Sarbanes-

Oxley Act of 2002 and the PCAOB's by-laws.

(b) *Definitions.* For the purposes of this section, the following definitions shall apply:

(1) *Budget category* means a grouping of similar expenditures within the PCAOB's budget. Budget categories shall include, among others: personnel, training, recruiting and relocation expenses, information technology, consulting and professional fees, travel, administrative expenses, lease costs and related expenses, and capital improvements of facilities.

(2) *Budget justification* means the justification for each annual budget, prepared in concise and specific terms, covering all of the PCAOB's programs and activities, and including, among other things as may be requested by the Commission:

(i) A performance budget for the budget year;

(ii) An analysis of the PCAOB's budget, including a tabular presentation that identifies the budgetary resources required for each program area (with a breakout of resources by budget category); a description of the budgetary resources identified in the budget in the context of the PCAOB's programs and activities; and an explanation of the analysis used to determine the resources needed to accomplish each program and strategic goal that demonstrates that reasonable opportunities for making more efficient and effective use of resources have been explored;

(iii) A description of the relationship between the results or outcomes the PCAOB expects to achieve (as discussed in the PCAOB's strategic plan) and the resources requested in the budget;

(iv) Assumptions underlying the calculation of the working capital reserve as permitted in paragraph (d)(3) of this section and assumptions underlying PCAOB estimates, including work years, program outputs, base compensation levels and proposed compensation increases, and costs of inputs such as materials or contract costs;

(v) A discussion of any models used to develop PCAOB estimates;

(vi) Detailed funding levels for education, training, and travel of the PCAOB workforce;

(vii) Information sufficient for the Commission to assess current and proposed capital projects and information technology projects; and

(viii) A statement that the PCAOB has considered relative costs and benefits in formulating the programs, projects and activities described in the budget.

(3) *Budget year* means the PCAOB fiscal year that is the subject of the budget prepared and submitted by the PCAOB to the Commission for approval.

(4) *Current year* means the PCAOB fiscal year that precedes the budget year, and is the year in which the PCAOB prepares the budget.

(5) *Performance budget* means a budget that presents what the PCAOB proposes to accomplish in the budget year and what resources these proposals will require, and that serves as the primary basis for the justification of the budget submitted to the Commission for approval. The performance budget includes:

(i) A description of what the PCAOB plans to accomplish, organized by strategic goal;

(ii) Background on what the PCAOB has accomplished, organized by strategic goal;

(iii) Analyses of the strategies the PCAOB uses to influence strategic outcomes, including whether those strategies could be improved and, if so, how they could be improved;

(iv) Analyses of the programs that contribute to each goal and their relative roles and effectiveness;

(v) Performance targets for the budget year and the current year and how the PCAOB expects to achieve those targets, as well as actual performance levels achieved in the year immediately preceding the current year;

(vi) The budgetary resources the PCAOB is requesting to achieve those targets;

(vii) Descriptions of the operations, processes, staff skills, information and other technologies, human resources, capital assets, and other resources to be used in achieving the PCAOB's performance goals; and

(viii) Descriptions of the programs, policies, and management, regulatory, and other initiatives and approaches to

be used in achieving the PCAOB's performance goals.

(6) *Preliminary budget* means the draft budget submitted for initial consideration by the Commission, which shall be a complete or substantially complete budget for the budget year, and which is accompanied by a budget justification.

(7) *Program area* means the array of the budgeted amounts and other budget-related data according to the major purpose served, such as registration, inspection, standard-setting, enforcement, and administration.

(8) *Receipts* means collections that result from issuers' payments of accounting support fees; public accounting firms' payment of registration fees and fees associated with annual reports; interest income; and other sources of revenue.

(9) *Strategic plan* means the PCAOB's overarching plan for accomplishing its strategic goals, including forecasts for the current and four following years; estimates of the effect that reasonably foreseeable changes impacting the auditing profession and securities mar-

kets could have on program levels; and a discussion of the impact that program levels and changes in methods of program delivery, including advances in technology, could have on program operations and administration.

(10) *Supplemental budget* means a budget or amendment thereto submitted to the Commission for approval subsequent to Commission approval of the budget for the budget year, when:

(i) There is a need for additional funds in a program area;

(ii) Resources are to be applied in a manner not fairly implied in the Commission-approved budget and budget justification, such as when programs are created to perform functions that are not, or to perform functions in a way that is not, fairly implied from the Commission-approved budget and budget justification; or

(iii) Programs described in the Commission-approved budget and budget justification are to be eliminated.

(c) *Timetable*. The timetable for preparation and submission of the annual budget is as follows:

Date	Event
On or before March 15	PCAOB provides a narrative of its program issues and outlook for the budget year.
On or before April 30	Commission provides economic assumptions and general budgetary guidance to the PCAOB.
On or before July 31	PCAOB submits preliminary budget and budget justification for Commission review.
August–October	Consultation between Commission and PCAOB; Commission staff conducts review of PCAOB preliminary budget, budget justification and related information.
On or before October 31	Commission passback of budget to the PCAOB with proposed revisions.
On or before November 30	PCAOB adopts budget and submits it, along with the budget justification, to the Commission.
On or before December 23	Commission votes on the PCAOB budget.

(d) *Contents of budget*. (1) To facilitate Commission review and approval, each budget (including each preliminary budget and budget submitted for Commission approval) shall:

(i) Be accompanied by a budget justification.

(ii) Include information for the budget year, the current year, and the year immediately preceding the current year, regarding actual or projected spending by program area, receipts, debt, and employment levels.

(iii) Be consistent with, or explain any deviations from, the economic assumptions and budgetary guidance provided by the Commission.

(iv) Include statements of PCAOB programs, initiatives and strategies for the budget year.

(v) Earmark each amount for a specific budget category within a program area.

(vi) Include planned beginning-of-year and end-of-year headcounts for each program area.

(2) Each budget submitted for Commission approval shall be consistent with the preliminary budget and any revisions proposed by the Commission when the budget was passed from the Commission back to the PCAOB or explain any changes from the preliminary budget and/or such proposed revisions.

(3) In addition to amounts needed to fund disbursements during the budget year, a budget may reflect receipts in amounts needed to fund expected disbursements during a period not to exceed the first five months of the fiscal year immediately following the budget year (the working capital reserve), provided such amounts shall be disbursed only as specified in the following year's budget or in a supplemental budget approved by the Commission.

(4) In approving the budget the Commission may not change the amounts earmarked for programs, program areas, or activities, or any other aspects of the budget; provided, that if the budget is conditionally rather than finally approved, then the Commission may transmit to the Board such proposed changes as are consistent with the preliminary budget and any revisions previously proposed by the Commission when it passed the budget back to the PCAOB. No proposed reduction or increase may be greater than that included in the preliminary budget and any revisions previously proposed by the Commission when it passed the budget back to the PCAOB.

(5) In the event the budget is conditionally approved by the Commission, the PCAOB shall have the opportunity to consider the changes proposed by the Commission and to vote again for final approval of the budget as amended. If this iterative process has not resolved differences between the Commission and the PCAOB by December 23, then the terms of the most recent conditional approval shall become final, and the budget shall be deemed finally approved.

(e) *Limitation on spending.* (1) The PCAOB shall not spend in a budget year more than the amount specified in the Commission-approved PCAOB budget for that year, regardless of the source of the funds, unless such expenses have been approved by the Commission through a supplemental budget request.

(2) Funds may be disbursed by the PCAOB only in accordance with the Commission approved budget, *provided however*, during the budget year the PCAOB may transfer amounts totaling not more than \$1,000,000 into or out of each program area without prior Com-

mission approval. Further, the PCAOB shall not:

(i) Apply its resources in a manner not fairly implied in the Commission-approved budget and budget justification, such as to create programs to perform functions that are not, or to perform functions in a way that is not, fairly implied from the Commission-approved budget and budget justification, or

(ii) Eliminate programs described in the Commission-approved budget and budget justification.

(3) In the event that the Commission has not approved a budget for a PCAOB fiscal year before the beginning of that fiscal year, the PCAOB may spend funds from the reserve and continue to incur obligations as if the PCAOB budget or supplemental budget most recently approved by the Commission were continuing in effect for that fiscal year.

(f) *Supplemental budget.* (1) The PCAOB may submit to the Commission a request for approval of a supplemental budget subsequent to Commission approval of the budget for the budget year in order to spend any amounts in excess of, or contrary to, the limitations described in paragraphs (e)(1) and (e)(2) of this section.

(2) To facilitate Commission review and approval, a supplemental budget shall include:

(i) Detailed information regarding the impact of the supplemental budget on each affected program area, including costs by cost category, project or activity;

(ii) A statement regarding how the supplemental budget facilitates the strategic and policy goals of the PCAOB;

(iii) Information indicating why the amount was not included in the budget for the current year, including a description of any subsequent and unforeseen events or circumstances necessitating the supplemental budget request;

(iv) Information indicating why the request should not or cannot be postponed until the next regular annual budget process; and

(v) The proposed source for the funds, including any offsets to be made elsewhere in the PCAOB's programs and activities.

(g) *Maintenance of records; reports.* (1) The PCAOB shall maintain, and make available to the Commission or Commission staff upon request, a strategic plan and records in reasonable detail that support each preliminary budget, budget, budget justification, supplemental budget and other report or communication in compliance with this section, including past and projected receipts, outlays, obligations, and employment levels.

(2) The PCAOB is required to maintain and, within 30 business days after the end of each fiscal quarter, to furnish to the Commission a report of its spending and staffing levels for the quarter just ended, comparing those levels to the levels in the Commission approved budget.

(h) *Publication of budget.* (1) Following submission of the PCAOB-approved budget to the Commission, such budget and budget justification, subject to any applicable exemption under the Freedom of Information Act, shall be made available to the public. Neither the Commission nor the PCAOB shall publish a preliminary budget, budget, budget justification, or any underlying materials in connection therewith, until such time as the budget is approved by the PCAOB and submitted to the Commission for its approval.

(2) Supplemental budgets shall be made public, following approval by the PCAOB and submission to the Commission, in the same manner as described in paragraph (h)(1) of this section.

(3) The Commission-approved budget shall be made available to the public at the time of such approval.

(i) *Waivers of rule provisions.* The Commission, in its discretion, may waive compliance with any provision of this § 202.11.

[71 FR 42001, July 24, 2006. Redesignated at 75 FR 47451, Aug. 6, 2010]

PART 203—RULES RELATING TO INVESTIGATIONS

Subpart A—In General

Sec.

203.1 Application of the rules of this part.

203.2 Information obtained in investigations and examinations.

203.3 Suspension and disbarment.

Subpart B—Formal Investigative Proceedings

203.4 Applicability of §§ 203.4 through 203.8.

203.5 Non-public formal investigative proceedings.

203.6 Transcripts.

203.7 Rights of witnesses.

203.8 Service of subpoenas.

AUTHORITY: 15 U.S.C. 77s, 77sss, 78w, 80a–37, and 80b–11, unless otherwise noted.

SOURCE: 29 FR 3620, Mar. 21, 1964, unless otherwise noted.

Subpart A—In General

§ 203.1 Application of the rules of this part.

The rules of this part apply only to investigations conducted by the Commission. They do not apply to adjudicative or rulemaking proceedings.

§ 203.2 Information obtained in investigations and examinations.

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public, but the Commission approves the practice whereby officials of the Divisions of Enforcement, Corporation Finance, Market Regulation and Investment Management and the Office of International Affairs at the level of Assistant Director or higher, and officials in Regional Offices at the level of Assistant Regional Director or higher, may engage in and may authorize members of the Commission's staff to engage in discussions with persons identified in § 240.24c-1(b) of this chapter concerning information obtained in individual investigations or examinations, including formal investigations conducted pursuant to Commission order.

[58 FR 52419, Oct. 8, 1993, as amended at 59 FR 5945, Feb. 9, 1994; 73 FR 32227, June 5, 2008]