

establish an inspection program by rule.⁶ Section 104(a)(2) of the Sarbanes-Oxley Act provides that, in establishing such a program:

- The Board may allow for differentiation among classes of brokers and dealers;
- The Board shall 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
- If the Board exempts any public accounting firm from such an inspection program, the auditor would not be required to register with the Board.

The Board has filed a proposed rule change to establish 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. The Board explained that it intended to take a careful and informed approach 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.⁷ 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.⁸

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.

III. Discussion of Comments

The Commission received one comment letter on the proposed rule

change.⁹ The commenter, a small registered accounting firm that performs audits of broker-dealers but not issuers, expressed strong support for the inclusive scope of the temporary rule and also for the establishment of a permanent program of inspection that would include all auditors of broker-dealers.¹⁰ The commenter supported a program that would not differentiate among types of brokers and dealers or exempt certain public accounting firms, noting their view that any such limitations would not be "fully protecting the public interest and interest of investors."¹¹

IV. Conclusion

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and is necessary or appropriate in the public interest or for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. PCAOB-2011-01) be and hereby is approved.

For the Commission, by the Office of the Chief Accountant, pursuant to delegated authority.¹²

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65162; File No. PCAOB-2011-02]

Public Company Accounting Oversight Board; Order Approving Proposed Board Funding Final Rules for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules

August 18, 2011.

I. Introduction

On June 21, 2011, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 107(b)¹ of the

Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and Section 19(b)(1)² of the Securities Exchange Act of 1934 (the "Exchange Act"), a proposed rule change (PCAOB-2011-02) relating to the funding of the Board's operations (PCAOB Rules 7100 through 7106) and proposed amendments to certain definitions that would appear in PCAOB Rule 1001. The proposed rule change was published for comment in the **Federal Register** on July 12, 2011.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Discussion

Section 109⁴ of the Sarbanes-Oxley Act, as originally enacted, provided that funds to cover the Board's annual budget (less registration and annual fees paid by public accounting firms⁵) would be collected from issuers⁶ based on each issuer's relative average, monthly equity market capitalization.⁷ The amount due from issuers was referred to as the Board's "accounting support fee."

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")⁸ amended the Sarbanes-Oxley Act to grant the Board explicit oversight authority with respect to audits of brokers and dealers registered with the Commission.⁹ To provide funds for the Board's oversight of those audits, the Dodd-Frank Act amended Section 109 of the Sarbanes-Oxley Act to require that the Board allocate a portion of the accounting

² 15 U.S.C. 78s(b)(1).

³ Release No. 34-64816 (Jul. 6, 2011) [76 FR 40950 (Jul. 12, 2011)].

⁴ 15 U.S.C. 7219.

⁵ Section 102(f) of the Sarbanes-Oxley Act (15 U.S.C. 7212(f)) states that the PCAOB shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to cover the costs of processing and reviewing registration applications and annual reports.

⁶ Section 2(a)(7) of the Sarbanes-Oxley Act (15 U.S.C. 7201(a)(7)) and PCAOB rules define "issuer" to mean an issuer (as defined in Section 3 of the Exchange Act (15 U.S.C. 78c)), the securities of which are registered under Section 12 of the Exchange Act (15 U.S.C. 78j), or that is required to file reports under Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*, and that it has not withdrawn. *See* PCAOB Rule 1001(i)(iii).

⁷ Section 109(g) of the Sarbanes-Oxley Act.

⁸ Public Law 111-203, 124 Stat. 1376 (Jul. 21, 2010).

⁹ For information regarding the audit of brokers' and dealers' financial statements and examination of reports regarding compliance with Commission requirements, *see generally* Rule 17a-5 under the Exchange Act (17 CFR 240.17a-5) and related SEC rules and forms.

⁶ Section 104(a)(2)(A) of the Sarbanes-Oxley Act.

⁷ *See* PCAOB Release No. 2011-01 (Jun. 14, 2011), at 3.

⁸ *See id.*

⁹ *See* letter from Farkouh Furman & Faccio LLP.

¹⁰ *See id.*

¹¹ *Id.*

¹² 17 CFR 200.30-11(b)(2).

¹³ 15 U.S.C. 7217(b).

support fee among brokers and dealers, or classes of brokers and dealers, based on their relative “net capital (before or after any adjustments).”¹⁰

As amended by the Dodd-Frank Act, Section 109 of the Sarbanes-Oxley Act requires that the rules of the Board provide for the equitable allocation, assessment, and collection by the Board of the accounting support fee among issuers, brokers, and dealers, and allow “for differentiation among classes of issuers, brokers, and dealers, as appropriate.”¹¹ This section further provides that “[t]he 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 rules issued by the Board.”¹²

Accordingly, the Board has filed a proposed rule change to its funding rules to allocate a portion of the accounting support fee among brokers and dealers,¹³ to establish classes of brokers and dealers for funding purposes, to describe the methods for allocating the appropriate portion of the accounting support fee to each broker and dealer within each class, and to address the collection of the assessed share of the broker-dealer accounting support fee from brokers and dealers.

In addition, the proposed rule change includes amendments to the Board’s funding rules with respect to the allocation, assessment, and collection of the accounting support fee among issuers. Among other things, the proposed rule change:

- Revises the basis for calculating an issuer’s market capitalization to include the market capitalization of all classes of the issuer’s voting and non-voting common equity;

- Increases the average, monthly market capitalization thresholds in the funding rules for classes of equity issuers and investment companies; and

- Includes technical amendments to the Board’s funding rules.

Pursuant to Section 109(d)(3) of the Sarbanes-Oxley Act, the PCAOB is required to begin the allocation, assessment, and collection of the accounting support fee from brokers and dealers to fund the first full fiscal year beginning after the date of the enactment of the Dodd-Frank Act, which is the Board’s 2011 fiscal year. Accordingly, the Board has indicated that the amendments to its funding rules are effective for the allocation, assessment, and collection of the 2011 broker-dealer accounting support fee for brokers and dealers and the 2012 issuer accounting support fee for issuers.

III. Conclusion

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and is necessary or appropriate in the public interest or for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. PCAOB–2011–02) be and hereby is approved.

For the Commission, by the Office of the Chief Accountant, pursuant to delegated authority.¹⁴

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65160; File No. SR–NYSEArca–2011–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Relating to Listing and Trading of the WisdomTree Dreyfus Australia & New Zealand Debt Fund Under NYSE Arca Equities Rule 8.600

August 18, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that, on August

3, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the shares of the following fund of the WisdomTree Trust (the “Trust”) under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): WisdomTree Dreyfus Australia & New Zealand Debt Fund. The shares of the Fund are collectively referred to herein as the “Shares.” The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.com>.

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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the WisdomTree Dreyfus Australia & New Zealand Debt Fund (“Fund”) under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.³ The Shares

³ The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-

¹⁰ Sections 109(d)(2) and 109(h) of the Sarbanes-Oxley Act, which state, in part, that amounts due from brokers and dealers “shall be in proportion to the net capital of the broker or dealer (before or after any adjustments).”

¹¹ Section 109(d)(2) of the Sarbanes-Oxley Act. Pursuant to Section 109(e) of the Sarbanes-Oxley Act, the Financial Accounting Standards Board (“FASB”) accounting support fee is to be allocated among issuers. Brokers and dealers therefore will not be allocated a portion of the FASB annual accounting support fee.

¹² Section 109(h)(3) of the Sarbanes-Oxley Act.

¹³ The PCAOB is amending its rules to add definitions of “broker” and “dealer” consistent with the definitions that the Dodd-Frank Act added to Section 110 of the Sarbanes-Oxley Act. These definitions incorporate the definition of “broker” in Section 3(a)(4) of the Exchange Act and “dealer” in Section 3(a)(5) of the Exchange Act, but only include those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement certified by a registered public accounting firm. See Sections 110(3) and (4) of the Sarbanes-Oxley Act.

¹⁴ 17 CFR 200.30–11(b)(2).

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b–4.