

increase market fragmentation and raise additional manipulation concerns.

The Commission notes that under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."<sup>37</sup> The description of a proposed rule change, 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,<sup>38</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.<sup>39</sup>

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

#### IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>40</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the

proposal should be approved or disapproved by January 17, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 31, 2019. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal which are set forth in the Notice,<sup>41</sup> in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-39 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAMER-2018-39. This file number should be included on the subject line if email 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-NYSEAMER-2018-39 and should be submitted on or before January 17, 2019. Rebuttal comments should be submitted by January 31, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 10592/ December 19, 2018; Securities Exchange Act of 1934 Release No. 84877/December 19, 2018]

### Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2019

The Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"),<sup>1</sup> established the Public Company Accounting Oversight Board ("PCAOB") to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")<sup>2</sup> amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Securities and Exchange Commission (the "Commission"). The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. The PCAOB is subject to the comprehensive oversight of the Commission.

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate "recoverable budget expenses," which may include operating, capital, and accrued items. The PCAOB's annual budget and accounting support fee are subject to approval by the Commission. In

<sup>37</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>38</sup> See *id.*

<sup>39</sup> See *id.*

<sup>40</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>41</sup> See Notice, *supra* note 4.

<sup>42</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 7201 *et seq.*

<sup>2</sup> Public Law 111-203, 124 Stat. 1376 (2010).

addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission. Rule 190 of Regulation P governs the Commission's review and approval of PCAOB budgets and annual accounting support fees.<sup>3</sup> This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2018 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2019 budget year. In response, the Commission provided the PCAOB with economic assumptions and general budgetary guidance for the 2019 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Office of the Chief Accountant and Office of Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects, and budget estimates; reviewed the PCAOB's estimates of 2018 actual spending; and attended several meetings with management and staff of the PCAOB to further develop their understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "passback" letter to the PCAOB on November 1, 2018. On November 15, 2018, the PCAOB adopted its 2019 budget and accounting support fee during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2019 budget adopted by the PCAOB that are

not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2019 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2019.

The Commission also acknowledges the PCAOB's updated strategic plan, which involved extensive outreach, and encourages the PCAOB to continue keeping the Commission and its staff apprised of significant new developments during its implementation. In addition, the PCAOB should submit its 2018 annual report to the Commission by April 1, 2019.

The Commission directs the PCAOB during 2019 to schedule monthly meetings with the Commission's staff about the transformation initiatives that are expected to have a significant impact on the 2020 PCAOB budget. In addition, the Commission directs the Board during 2019 to continue providing quarterly updates to the Commission that describe (i) the activities and progress towards the stated goals of the PCAOB's Office of Economic and Risk Analysis ("ERA"); (ii) detailed information about the state of the PCAOB's information technology program as administered by the PCAOB's Office of Information Technology ("OIT"); and (iii) information about the PCAOB's inspections program as administered by the PCAOB's Division of Registration and Inspections ("DRI"), consistent with the quarterly updates reflected in the Commission's Order approving the PCAOB's annual budget and accounting support fee for calendar year 2018 dated January 10, 2018. In addition, the quarterly updates should include updates on the transformation projects for ERA, OIT, and DRI.

The Commission understands that the Office of Management and Budget ("OMB") has determined that the 2019 budget of the PCAOB is subject to sequestration under the Budget Control Act of 2011.<sup>4</sup> For 2018, the PCAOB sequestered \$17.2 million. That amount will become available in 2019. For 2019, the sequestration amount will be 6.2% or \$17.0 million. Consequently, we expect the PCAOB will have approximately \$0.2 million in excess funds available from the 2018 sequestration for spending in 2019. Accordingly, the PCAOB has reduced its

accounting support fee for 2019 by approximately \$0.2 million.

The Commission has determined that the PCAOB's 2019 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

*It is ordered*, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2019 are approved.

By the Commission.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2018-27978 Filed 12-26-18; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 33332; 812-14961]**

**RYZZ Capital Management, LLC, et al.**

December 19, 2018.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(j) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds; and (f) certain Funds ("Feeder Funds") to create and

<sup>4</sup> See "OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2019", Appendix page 16 of 17 available at [https://www.whitehouse.gov/wp-content/uploads/2018/02/Sequestration\\_Report\\_February\\_2018.pdf](https://www.whitehouse.gov/wp-content/uploads/2018/02/Sequestration_Report_February_2018.pdf).

<sup>3</sup> 17 CFR 202.190.