



CAQ Alert #2009-18 – February 20, 2009

NON-PUBLIC
BROKER-DEALER
INFORMATION

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On February 16, 2009, the [Securities and Exchange Commission's](#) (SEC or the Commission) staff of the Division of Trading and Markets and the Office of the Chief Accountant issued the "[PCAOB Registration of Auditors of Non-Public Broker-Dealers Frequently Asked Questions](#)" (FAQs) answering six questions relating to the registration of auditors of non-public broker-dealers with the [Public Company Accounting Oversight Board](#) (PCAOB or the Board). Additionally, on February 19, 2009, the PCAOB issued "[Staff Question and Answers - Registration of Broker-Dealer Auditors](#)" (Staff Q&As) addressing eleven registration questions regarding auditors of non-public broker-dealers. The requirement that auditors of non-public broker-dealers be registered with the PCAOB is a result of the recent expiration of the Commission's December 12, 2006, [Release No. 34-54920](#) "*Extension of Order Regarding Broker-Dealer Financial Statement Requirements under Section 17 of the Exchange Act*" – (Order) which covered non-public broker-dealer financial statements for fiscal years ending before January 1, 2009.

[Background](#)

Enacted in 2002, the [Sarbanes-Oxley Act](#) (Act) established the PCAOB and amended [Section 17\(e\)](#) of the Securities and Exchange Act of 1934 (Exchange Act) by requiring registered broker-dealers to annually file a balance sheet and income statement certified by a PCAOB-registered public accounting firm with the Commission. There was no requirement established for the registration of auditors of non-public broker-dealers with the PCAOB.

Beginning in August 2003, the Commission issued a series of orders permitting non-public broker-dealers to file financial statements under Section 17(e) of the Exchange Act that had been audited by an "independent" public accounting firm, as opposed to a registered public accounting firm. The latest Order, issued on December 12, 2006, extended the exemption to cover financial statements for fiscal years ending before January 1, 2009.

As a result of the recent expiration of the December 12, 2006 Order, the audits of non-public broker-dealers required under Exchange Act Section 17 (e) for fiscal years ending after December 31, 2008 must be performed by an accounting firm that is registered with the PCAOB. On January 8, 2009, the PCAOB issued a [statement](#) that provides information regarding the registration process with the Board for auditors of non-public broker-dealers and subsequently, on February 19, 2009, issued Staff Q&As on the registration of auditors of non-public broker-dealers. Information on the Staff Q&As issued by the PCAOB is addressed below under the heading “PCAOB Broker-Dealer FAQs.”

SEC Broker-Dealer FAQs

The SEC’s FAQs are a result of various questions received by the staff regarding the impact of the expiration of the SEC’s latest Order on audits and auditors of non-public broker-dealers. The answers to these questions are the staff’s responses and are not rules, regulations or statements of the SEC. Further, the Commission has neither approved nor disapproved them.

The following are the six questions addressed by the SEC staff in their FAQs: (Refer to the FAQs link above for the answers to these questions.)

Question #1 - ***How does a public accounting firm register with the Board?***

See additional information regarding the PCAOB registration process below.

Question #2 - ***Must an auditor of a non-public broker-dealer be registered with the Board as of the date of the financial statements, as of the date of the auditor’s report, or as of the date the financial statements are filed with the Commission?***

Question #3 - ***Are all broker-dealers now considered to be issuers under the Act?***

Question #4 - ***As a result of their registration with the PCAOB, are auditors of non-public broker-dealers now subject to different independence requirements than applied before the expiration of the exemption?***

Question #5 - ***As a result of the expiration of the exemption and registration with the PCAOB, have the audit reporting requirements changed? Under what auditing standards are audits of non-public broker-dealers to be conducted, and to what auditing standards should***

the audit opinion of a non-public broker-dealer refer?

Question #6 - Is the “Material Inadequacy Statement” required by Exchange Act Rule 17a-5(g)(1) still applicable (“The scope of the audit and review of the accounting system, the internal control and procedures for safeguarding securities shall be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination... would be disclosed.”)?

The SEC has indicated that additional questions regarding this matter can be directed to the Commission’s Division of Trading and Markets, Office of Interpretation and Guidance, at (202) 551-5777 or (tradingandmarkets@sec.gov) or Amy Hargrett in the Commission’s Office of the Chief Accountant at 202-551-5300 or (hargretta@sec.gov).

PCAOB Broker-Dealer FAQs

On February 19, 2009, the PCAOB issued a series of eleven questions and answers on the registration of broker-dealer auditors entitled, “[Staff Question and Answers - Registration of Broker-Dealer Auditors](#)” (Staff Q&As). The Staff Q&As were issued to address questions regarding registration for auditors of non-public broker-dealers as a result of a recently expired SEC Order (Refer to the “*Background*” section above for further information regarding the expired Order).

The following topics are addressed in the PCAOB’s eleven Staff Q&As:

- Registration process, including timing and fees;
- Extent to which applications are public and the process for seeking confidential treatment; and
- Obligations associated with being registered, including periodic reporting and annual fee requirements.

The Staff Q&As supplement guidance within the SEC staff FAQs and the [Financial Industry Regulatory Authority \(FINRA\) Information Notice](#).

Any further questions regarding PCAOB registration should be directed to the PCAOB’s registration staff by emailing registration-help@pcaobus.org or by calling (202) 207-9329.

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