

The purpose of this meeting is to discuss the resolution of post-fire safe shutdown circuit analysis issues, revisions to the Reactor Oversight Process (ROP) Fire SDP, and the preliminary results of the staff's Fire Risk Requantification Study. The Subcommittee will hear presentations by and hold discussions with the NRC staff, representatives of the Nuclear Energy Institute, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Marvin D. Sykes (Telephone: 301-415-8716) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official or the Cognizant Staff Engineer between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: April 2, 2004.

**Michael R. Snodderly,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49528; File No. PCAOB-2003-10]

### Public Company Accounting Oversight Board; Notice of Filing of Proposed Auditing Standard No. 1, References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board

April 6, 2004.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on December 22, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule described in Items I and II below, which items have been

prepared by the Board.<sup>1</sup> The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

On December 17, 2003, the Board adopted a rule, Auditing Standard No. 1, References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board ("the proposed rule"). The text of the proposed rule is set out below.

The text of the proposed rule, including an appendix of illustrative auditor's reports, is as follows:

#### *Auditing Standard No. 1—References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board*

1. The Sarbanes-Oxley Act of 2002 authorized the Public Company Accounting Oversight Board ("PCAOB") to establish auditing and related professional practice standards to be used by registered public accounting firms. PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, requires the auditor to comply with all applicable auditing and related professional practice standards of the PCAOB.

2. The Board has adopted as interim standards, on an initial, transitional basis, the generally accepted auditing standards, described in the American Institute of Certified Public Accountants' ("AICPA") Auditing Standards Board's Statement on Auditing Standards No. 95, *Generally Accepted Auditing Standards*, in existence on April 16, 2003.<sup>2</sup>

<sup>1</sup> Section 3(c) of the Act provides that "[n]othing in this Act or the rules of the Board shall be construed to impair or limit \* \* \* (2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law \* \* \*." When an independent accountant prepares a report for submission or filing with the Commission, the independent accountant would be considered to be representing that it has complied with the applicable federal securities laws and Commission rules and staff guidance, as well as with the standards of the Public Company Accounting Standards Board (United States) as referenced explicitly in the Board's proposed Auditing Standard No. 1. In a note to PCAOB Rule 3600T, Interim Independence Standards, the Board specifically provided that the PCAOB's rules do not supersede the Commission's rules, and, therefore, registered public accounting firms must comply with the more restrictive of the Commission's or the Board's rules.

<sup>2</sup> The Board's rules on interim standards were adopted by the Board on April 16, 2003, and approved by the Commission on April 25, 2003. See Release No. 33-8222 (April 25, 2003).

3. Accordingly, in connection with any engagement performed in accordance with the auditing and related professional practice standards of the PCAOB, whenever the auditor is required by the interim standards to make reference in a report to generally accepted auditing standards, U.S. generally accepted auditing standards, auditing standards generally accepted in the United States of America, or standards established by the AICPA, the auditor must instead refer to "the standards of the Public Company Accounting Oversight Board (United States)." An auditor must also include the city and state (or city and country, in the case of non-U.S. auditors) from which the auditor's report has been issued.

4. This auditing standard is effective for auditors' reports issued or reissued on or after the 10th day following approval of this auditing standard by the Securities and Exchange Commission.

5. Audit reports issued prior to the effective date of this standard were required to state that the audits that supported those reports were performed in accordance with generally accepted auditing standards. The PCAOB adopted those generally accepted auditing standards, including their respective effective dates, as they existed on April 16, 2003, as interim standards. Therefore, reference to "the standards of the Public Company Accounting Oversight Board (United States)" with respect to audits of financial statements performed prior to the effective date of this standard is equivalent to the previously-required reference to generally accepted auditing standards. Accordingly, upon adoption of this standard, a reference to generally accepted auditing standards in auditors' reports is no longer appropriate or necessary.

**Note:** The term "auditor" in this standard is intended to include both registered public accounting firms and associated persons thereof.

#### APPENDIX

##### Illustrative Reports

The following is an illustrative report on an audit of financial statements:

##### *Report of Independent Registered Public Accounting Firm*

We have audited the accompanying balance sheets of X Company as of December 31, 20X3 and 20X2, and the related statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 20X3. These

financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of [at] December 31, 20X3 and 20X2, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 20X3, in conformity with U.S. generally accepted accounting principles.

[Signature]  
[City and State or Country]  
[Date]

The following is an illustrative report on a review of interim financial information:

*Report of Independent Registered Public Accounting Firm*

We have reviewed the accompanying [describe the interim financial information or statements reviewed] of X Company as of September 30, 20X3 and 20X2, and for the three-month and nine-month periods then ended. This (these) interim financial information (statements) is (are) the responsibility of the Company's management.

We conducted our review in accordance with the standards of the Public Company Accounting Oversight Board (United States). A review of interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying interim financial (statements) for it (them) to be in conformity with U.S. generally accepted accounting principles.

[Signature]  
[City and State or Country]  
[Date]

**II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule**

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

(a) Purpose

Section 103(a)(1) of the Act authorized the PCAOB to establish, by rule, auditing standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by the Act. PCAOB Rule 3100, "Compliance with Auditing and Related Professional Practice Standards," requires auditors to comply with all applicable auditing and related professional practice standards established by the PCAOB. The Board has adopted as interim standards, on an initial, transitional basis, the generally accepted auditing standards, described in the American Institute of Certified Public Accountants' ("AICPA") Auditing Standards Board's Statement on Auditing Standards No. 95, *Generally Accepted Auditing Standards*, in existence on April 16, 2003 (the "interim standards").

The Board's interim standards—as did the profession's generally accepted auditing standards that preceded the Board's standards—require auditors to make reference in their audit and review reports to the standards that they followed in conducting the audits and reviews. To conform the language of auditors' reports to the requirement that auditors comply with PCAOB standards, the Board's proposed rule would require auditors' reports to refer to "the standards of the U.S. Public Company Accounting Oversight Board (United States)."

In addition, to make the Board's interim standards consistent with the Act and Rule 3100, this proposed rule provides that all references in the interim standards to generally accepted auditing standards, U.S. generally accepted auditing standards, auditing standards generally accepted in the United States of America, and standards established by the AICPA, would mean "the standards of the Public Company Accounting Oversight Board (United States)."

(b) Statutory Basis

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

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

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Pursuant to the Act and PCAOB Rule 3100, registered public accounting firms must comply with all applicable auditing and related professional practice standards established by the PCAOB. The proposed rule would simply require a registered public accounting firm to make reference in the auditor's report to the standards of the PCAOB whenever the engagement was performed pursuant to the Board's auditing and related professional practice standards.

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

The Board released the proposed rule for public comment in PCAOB Release No. 2003-021 (November 12, 2003). A copy of PCAOB Release No. 2003-021 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at [www.pcaobus.org](http://www.pcaobus.org). The Board received eight written comments. The Board has clarified and modified certain aspects of the proposed rule and the instructions to the related form in response to comments it received, as discussed below.

The Board received several comments related to transitional issues, including how the proposed standard would affect the reissuance of a report originally issued before the proposed standard became effective; issuance of a report on comparative financial statements when the audits of the financial statements for periods presented for comparative purposes were conducted before the proposed standard became effective and/or before the Board adopted its interim standards; and issuance of a dual-dated report that include dates that

straddle the effective date of this standard.

In the proposed standard, the Board had recommended the standard be effective for auditors' reports dated on or after the later of January 1, 2004 or the 10th day after SEC approval of the standard as adopted by the Board. In evaluating the comments with regard to transition, the Board decided to modify the effective date of this standard. Rather than linking the effective date of this standard to the date of the report, this auditing standard will be effective for reports issued or reissued on or after the 10th day following SEC approval of this auditing standard. After this standard becomes effective, any auditor's report issued or reissued with respect to the financial statements of a public company must state that the engagement was performed in accordance with "the standards of the Public Company Accounting Oversight Board (United States)."

One commenter also expressed concern that the proposed standard's requirement that a report state that an audit performed prior to the PCAOB's adoption of interim standards was performed in accordance with PCAOB standards would, in essence, require the auditor to re-audit the prior period's financial statements in order to bring that audit or review into conformity with current PCAOB standards. The Board does not intend to require auditors to bring audits that were performed in accordance with then-prevailing standards into conformity with later-prevailing standards in order to reissue a previously-issued report. When the Board adopted as interim standards the generally accepted auditing standards established by the ASB, the Board also adopted the effective dates of those standards. Therefore, reference in auditors' reports to the standards of the PCAOB with respect to financial statements audited or reviewed prior to the effective date of Auditing Standard No. 1 is equivalent to the previously-required reference to generally accepted auditing standards. The reference relates to those standards that were in effect when the audit or review was completed and should not be interpreted to imply a representation that the audit or review complied with standards that became effective after the audit or review was completed.

Several commenters recommended that the Board only require auditors' reports to refer to the auditing standards of the PCAOB for audits of financial statements and not to the standards of the PCAOB generally. The Board intends for report references to "the standards of the Public Company

Accounting Oversight Board (United States)" to mean those auditing and related professional practice standards that are applicable to the particular engagement. For example, if an issuer does not use any outside service organization that would affect its internal control over financial reporting, then the interim auditing standard on service organizations "described in the Codification of Statements on Auditing Standards at AU section 324 (*Service Organizations*), would not be applicable. On the other hand, the Board's independence standards apply to registered public accounting firms, and associated persons thereof, in connection with the preparation and issuance of audit reports for issuers.

As another example, quality control standards generally apply to a firm's system of quality control over its accounting and auditing practice and not to individual audit engagements. Thus, a breakdown in the system of quality control does not necessarily mean that a particular audit was not conducted in accordance with the standards of the PCAOB. However, such a breakdown might result in a deficient audit if it caused or contributed to an audit deficiency. The determination as to whether a particular auditing or related professional practice standard is applicable in the context of a particular audit is dependent on the nature of the standard in question and on the nature of the engagement at issue.

Thus a reference to "auditing standards" of the PCAOB would be too narrow and preclusive to other standards applicable to the audit. The Board believes that reference to "the standards of the Public Company Accounting Oversight Board (United States)" is a more descriptive reference to the standards applied in the audit.

The Board received a number of comments recommending that auditors' reports, with respect to financial statement audits, describe PCAOB standards as generally accepted auditing standards. The notion of general acceptance developed at a time when auditing and accounting standards were not established with the force of law by governmental or other authoritative bodies, but rather were established by consensus among the members of the accounting profession.

As far as auditing and related professional practice standards are concerned, the Board gained authority to establish such standards by the enactment of the Act. Professional consensus is no longer sufficient to establish auditing standards, and therefore the Board believes that it is no longer appropriate to refer to the

standards with which an auditor of the financial statements of a public company must comply as "generally accepted." While those standards may be generally accepted in a variety of contexts, what gives them the force of law in the context of public company audits is adoption by the PCAOB and approval by the SEC.

Therefore, for purposes of any engagement performed in accordance with the applicable auditing and related professional practice standards of the PCAOB, references in the interim standards to generally accepted auditing standards, U.S. generally accepted auditing standards, auditing standards generally accepted in the United States of America, and standards established by the AICPA, mean the standards of the PCAOB.

The Board also received comments recommending that the Board continue to require auditors to state in their reports that the standards according to which they performed their engagements were those standards applicable in the United States. Adopting this recommendation will make it easier for readers of audit reports that are used in cross-border offerings and listings of securities to quickly identify the jurisdiction in which the standards were promulgated. As such, the Board has required in Auditing Standard No. 1 that auditors' reports describe the PCAOB's standards as "the standards of the Public Company Accounting Oversight Board (United States)."

Another commenter recommended that auditors identify in their reports the city and state (or country) of the registered firms issuing the reports. The SEC's rules require disclosure in the auditor's report of the city and state of the accounting firm's office issuing the report. (17 CFR 210.2-02). The Board also concurs with this recommendation and, accordingly, has modified the auditing standard and the illustrative reports in the appendix to Auditing Standard No. 1.

The Board was asked to clarify the applicability of this standard, and the Board's standards generally, to circumstances where more than one auditing firm contributes to an audit of a consolidated entity. For example, a firm other than the firm engaged to report on the company's consolidated financial statements may be hired to audit the financial statements of a subsidiary company. In such circumstances, the auditor that conducts the majority of the audit is referred to as the principal auditor and the auditor of the subsidiary company is referred to as the other auditor. (See Codification of

Auditing Standards, AU section 543). Depending on the significance of the portion of the financial statements audited by the other auditor, the principal auditor may divide responsibility with the other auditor by making reference to the audit of the other auditor in his or her report, or the principal auditor may take responsibility for the work of the other auditor by not making any reference to the other auditor.

In either event, the entire audit must be performed in accordance with the Board's standards. Section 103 of the Act, and the Board's Rule 3100, require registered public accounting firms, and associated persons thereof, to comply with all applicable auditing and related professional practice standards in connection with the preparation and issuance of audit reports on the financial statements of issuers. Whether the other auditor is a registered public accounting firm or an associated person of a registered public accounting firm, the other auditor must comply with the standards of the PCAOB.

Another commenter asked the Board to clarify whether non-U.S. public accounting firms—who are not required to register with the PCAOB until 2004—will be permitted, until registered with the PCAOB, to continue to reference “auditing standards generally accepted in the United States of America” when reporting on an issuer's financial statements. Like the Board's interim standards, with which a public accounting firm is required to comply even before the firm's mandatory registration date, during the period preceding the mandatory registration date, standards of the PCAOB apply to firms engaged in work that requires their registration. Therefore, non-U.S. public accounting firms that have not yet registered, that engage in work that would require them to be registered as of the mandatory registration date, are nevertheless required to reference “the standards of the Public Company Accounting Oversight Board (United States).”

Another commenter recommended that the Board expand the proposed standard to specifically address the various scenarios that auditors will encounter with respect to reporting in conjunction with initial public offerings. The SEC's Rule 3-01 of Regulation S-X requires that, like other SEC filings that must comply with Regulation S-X, a registration statement filed in connection with an initial public offering must include or otherwise incorporate “for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of

each of the two most recent fiscal years.” (17 CFR 210.3-01). In addition, Rule 3-02 of Regulation S-X requires that there “be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet.” (17 CFR 210.3-02). Thus an issuer desiring to register a transaction involving the sale of securities must have financial statements audited in accordance with standards as required by the securities laws.

In Section 103 of the Act, Congress has provided the Board authority to establish auditing and related professional practice standards “to be used by registered public accounting firms in the preparation and issuance of audit reports.” In addition, the PCAOB has adopted, and the SEC has approved, PCAOB Rule 3100, which requires registered public accounting firms to comply with all applicable auditing and related professional practice standards of the PCAOB in connection with the preparation and issuance of audit reports on the financial statements of issuers. Accordingly, audit reports on the financial statements of issuers must now comply with—and under Auditing Standard No. 1 auditors must state that they performed the audit in accordance with—the standards of the PCAOB. So long as audits that were performed prior to April 25, 2003, were performed in accordance with then-prevailing generally accepted auditing standards, an auditor need not re-audit any financial statements that relate to periods preceding April 25, 2003. Further, as discussed above, because the Board adopted the “generally accepted auditing standards” in effect as of April 16, 2003, the Board believes it is appropriate to require auditors who issue or reissue reports on periods prior to the date Auditing Standard No. 1 becomes effective to state that their audits were performed in accordance with PCAOB standards, so long as they were performed in accordance with the “generally accepted auditing standards” prevailing at the time the audits were performed.

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

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date 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 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 Act. Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC Web site (<http://www.sec.gov>) or (2) e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File No. PCAOB-2003-10; this file number should be included on the subject line if e-mail is used. To help us 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>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All comments should be submitted on or before April 30, 2004.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-8084 Filed 4-8-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49525; File No. SR-BSE-2004-12]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. to Retroactively Apply and Extend Its Specialist Evaluation Program Pilot

April 2, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934