26. Securities and Exchange Commission—Chairperson
27. Smithsonian Institution—Secretary
28. United States International Trade Commission—Chairperson
29. United States Postal Service—Governors of the Postal Service

Federal Entities and Entity Heads

1. Advisory Council on Historic Preservation—Chairperson
2. African Development Foundation—Chairperson
3. American Battle Monuments Commission—Chairperson
4. Architectural and Transportation Barriers Compliance Board—Chairperson
5. Armed Forces Retirement Home—Board of Directors
6. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
7. Chemical Safety and Hazard Investigation Board—Chairperson
8. Christopher Columbus Fellowship Foundation—Chairperson
9. Commission for the Preservation of America's Heritage Abroad—Chairperson
10. Commission of Fine Arts—Chairperson
11. Commission on Civil Rights—Chairperson
12. Commission on Ocean Policy—Chairperson
13. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
14. Court of Appeals for Veterans Claims—Chief Judge
15. Defense Nuclear Facilities Safety Board—Chairperson
16. Delta Regional Authority—Federal Co-Chairperson
17. Farm Credit System Financial Assistance Corporation—Chairperson
18. Farm Credit System Insurance Corporation—Chairperson
19. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
20. Federal Mediation and Conciliation Service—Director
21. Federal Mine Safety and Health Review Commission—Chairperson
22. Federal Retirement Thrift Investment Board—Executive Director
23. Harry S. Truman Scholarship Foundation—Chairperson
24. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
25. Institute of Museum and Library Services—Director
26. Inter-American Foundation—Chairperson
27. James Madison Memorial Fellowship Foundation—Chairperson
28. Japan-U.S. Friendship Commission—Chairperson
29. Marine Mammal Commission—Chairperson
30. Merit Systems Protection Board—Chairperson
31. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson
32. National Capital Planning Commission—Chairperson
33. National Council on Disability—Chairperson
34. National Mediation Board—Chairperson
35. National Transportation Safety Board—Chairperson
36. National Veterans Business Development Corporation—Chairperson
37. Neighborhood Reinvestment Corporation—Chairperson
38. Nuclear Waste Technical Review Board—Chairperson
39. Occupational Safety and Health Review Commission—Chairperson
40. Office of Government Ethics—Director
41. Office of Navajo and Hopi Indian Relocation—Chairperson
42. Office of Special Counsel—Special Counsel
43. Offices of Independent Counsel—Independent Counsels
44. Overseas Private Investment Corporation—Board of Directors
45. Pacific Charter Commission—Chairperson
46. Postal Rate Commission—Chairperson
47. Presidio Trust—Chairperson
48. Selective Service System—Director
49. Smithsonian Institution/John F. Kennedy Center for the Performing Arts—Chairperson
50. Smithsonian Institution/National Gallery of Art—President
51. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Director
52. Trade and Development Agency—Director
53. U.S. Holocaust Memorial Museum—Chairperson
54. U.S. Institute of Peace—Chairperson
55. Vietnam Education Foundation—Chairperson

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47990; File No. PCAOB–2003–03]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules Relating to Registration System

June 5, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (''Act''), notice is hereby given that on May 8, 2003, the Public Company Accounting Oversight Board (''Board'' or ''PCAOB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rules described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

The Board proposes to adopt a registration system for public accounting firms to implement section 102 of the Act. The proposed registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300, plus definitions that would appear in Rule 1001) and a form (PCAOB Form 1). The text of the proposed rules is available for inspection at the Office of the Secretary, the PCAOB, the Commission's Public Reference Room, and on the Board's Internet Web site at *http://www.pcaobus.org/pcaob_rulemaking.htm.*

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

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

1. Purpose

Section 102 of the Act prohibits accounting firms that are not registered with the Board from preparing or issuing audit reports on issuers, as that term is defined in the Act and the Board's rules, or from participating in these activities. The Act provides that firms must register during the 180-day period following the Commission's determination that the Board has the capacity to carry out the requirements of Title I of the Act and to enforce compliance therewith.[1] The Commission made this determination on April 25, 2003. In order to permit public accounting firms to comply with this requirement, the Board has adopted proposed rules to implement a registration system. The registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300, plus definitions that would appear in Rule 1001) and a form (PCAOB Form 1). Each of the rules and each part of the form are discussed below.

[1] *See* sections 101(d) and 102(a) of the Act.

Rule 1001—Definitions of Terms Employed in Rules

Rule 1001 contains definitions of terms used in the Board's rules. Certain of the definitions are taken, or closely track, those found in section 2 of the Act.[2] Other definitions are based on those used in the Commission's rules.

Accountant

Although used in the Act, the term ''accountant'' is not defined in the Act. As used in the Act, the term refers to a natural person, as opposed to a legal entity.[3] This concept of ''accountant'' is different from the Commission's definition of accountant under Regulation S–X, which includes legal entities, such as a registered public accounting firm.[4] Therefore, to reflect the context in which the term ''accountant'' is used in the Act, and to distinguish the Board's definition from that in Regulation S–X, the Board is adopting a definition of ''accountant'' in Rule 1001(a)(ii) that is limited to natural persons.[5]

The definition covers three types of natural persons: (i) Those who are certified public accountants, (ii) those who hold a college, university, or higher professional degree in accounting, or a license or certification authorizing him or her to engage in the business of auditing or accounting, and (iii) those who hold a college, university, or higher professional degree in a field, other than accounting, and who participate in audits. The definition also specifies that the term does not include persons engaged only in ministerial or clerical tasks.

The Board's definition is intended to include all natural persons, who have the requisite licensing, certification, training, and/or experience, whether obtained in the U.S. or a non-U.S jurisdiction, to be considered an accountant. In its proposing release, the Board put forth a similar definition. Commenters raised several concerns with the proposed definition. First, several commenters suggested that the proposed definition was overbroad and asked the Board to limit its application to only certified public accountants, or, at least, to clarify that it does not apply to persons with college degrees that perform only clerical or ministerial tasks on an audit. After considering these comments, the Board decided to revise the definition to clarify that the term does not capture persons engaged only in clerical or ministerial tasks. The Board did not, however, adopt the suggestions to limit the definition to only certified public accountants because such a definition would be significantly narrower than the common meaning of the term and because the Board understands that accountants who are not certified public accountants often participate in the preparation or issuance of audit reports. In addition, at least one non-U.S. commenter suggested that the proposed definition's use of the term ''undergraduate degree'' would not be meaningful as applied to non-U.S. accountants. Accordingly, at this commenter's suggestion, the Board has decided to change this part of the definition to refer to a ''college, university, or higher professional degree.''

Associated Entity

Rule 1001(a)(iv) defines ''associated entity,'' as ''with respect to a public accounting firm (i) any entity that directly, indirectly, or through one or more intermediaries, controls or is controlled by, or is under common control with, such public accounting firm; or (ii) any ''associated entity,'' as used in Rule 2–01(f)(2) of Regulation S–X, 17 CFR 210.2–10(f)(2), that would be considered part of that firm for purposes of the Commission's auditor independence rules.'' This definition of ''associated entity'' is meant to give the term the same meaning as in the Commission's auditor independence rules.[6]

A few commenters suggested that the Board create its own definition of this term, rather than relying on the meaning of the term in the Commission's rules. One of these commenters suggested that the Board define the term as those firms with which the applicant ''holds itself out as being associated.'' The Board has decided not to adopt this suggestion because the suggested definition is narrower than the Commission's interpretation of the term, in some contexts, and does not seem more definite than the SEC's interpretation.

Audit

In general, Rule 1001(a)(v) defines ''audit'' as an examination of an issuer's financial statements by an independent public accounting firm in accordance with the rules of the Board or the Commission for purposes of expressing an opinion on such statements. For the period preceding the adoption of the Board's applicable rules under section 103 of the Act, however, the term covers an examination of an issuer's financial statements by an independent public accounting firm in accordance with generally accepted auditing standards (''GAAS'').[7] The Board has adopted the same meaning for ''audit'' as used in section 2(a)(2) of the Act.

Audit Report

Rule 1001(a)(vi) defines ''audit report'' to mean ''a document or other record (1) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report or other document; or (ii) asserts no such opinion can be expressed.'' The Board has adopted the same meaning for audit as used in section 2(a)(4) of the Act.

Two commenters suggested that the term could be confusing to applicants and, if applied in certain contexts, could be overbroad. The Board has decided not to change the definition of this term since the term is defined in the Act. If specific issues arise in administering the definition in the context of the Board's registration rules or otherwise, the Board will consider issuing guidance on the definition.

Audit Services

Rule 1001(a)(vii)(1) defines ''audit services'' as ''professional services

[2] Certain definitions in the Board's rules that are taken verbatim from the statute or that are self-evident are not discussed below.

[3] For example, section 102(b)(2)(E) of the Act requires disclosure of a list of ''all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person * * *.''

[4] Under Rule 2–01(f)(1) of Regulation S–X, accountant means a ''registered public accounting firm, certified public accountant or public accountant performing services in connection with an engagement for which independence is required.'' Rule 2–01(f)(1) provides further that ''references to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.'' *See* Rule 2–01(f)(1) of Regulation S–X, 17 CFR 210.2–01(f)(1).

[5] The definitions in proposed Rule 1001 are marked with a letter and a Roman numeral. The letter matches the first letter of the word or phrase being defined and the Roman numeral serves to distinguish the definition from other defined words or phrases beginning with the same letter. This system has been adopted so that the definitions within Rule 1001 will remain in rough alphabetical order.

[6] *See* Rule 2–01(f)(2) of Regulation S–X, 17 CFR 210.2–01(f)(2); *see also* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919, at notes 490 and 491 (November 21, 2000).

[7] Because GAAS and Commission rules require interim reviews of issuers' financial statements by independent public accountants, the term audit includes work performed in the context of such reviews. *See* American Institute of Certified Public Accountants (''AICPA'') Statement on Auditing Standards (''SAS'') 100 and Rule 10–01 of Regulation S–X, 17 CFR 210.10–01; *see also* section 2(a)(8) of the Act (implicitly stating that these reviews are audit services, by excluding from the definition of ''non-audit services'' services provided to an issuer ''in connection with an audit or review of the financial statements of an issuer'').

rendered for the audit of an issuer's annual financial statements and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports.'' This definition of ''audit services'' is intended to capture the same category of services for which fees were required to be disclosed as ''audit fees'' pursuant to the Commission's 2000 proxy disclosure rules.[8]

Several commenters suggested that the Board change the definition of ''audit services'' to conform to the category of fees disclosed as ''audit fees'' under the SEC's recently revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. As noted below in the discussion of Part II of the Form, the Board has decided not to change this definition at this time. However, the Board has decided to add paragraph (2) to this rule, which provides that, effective after December 15, 2003, the term ''audit services'' will mean ''professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.'' This definition in paragraph (2) is intended to conform to the category of fees disclosed as ''audit fees'' under the SEC's recently revised auditor independence rules.

Foreign Public Accounting Firm

Rule 1001(f)(i) defines foreign public accounting firm as a ''public accounting firm that is organized and operates under the laws of a non-U.S. jurisdiction, government or political subdivision thereof.'' This definition, which follows closely the definition of foreign public accounting firm in section 106(d) of the Act, is intended to clarify that the term covers accounting firms that are organized and operate in any jurisdiction outside of the United States.[9]

Issuer

Rule 1001(i)(iii) defines the term ''issuer'' to include any public company, regardless of the jurisdiction of its organization or operation, that is required to file reports with the Commission or that has filed a registration statement for a public offering of securities. This definition is the same as the definition of the term ''issuer'' in section 2(a)(7) of the Act.

Non-Audit Services

Rule 1001(n)(ii)(1) defines ''non-audit services'' to mean services related to financial information systems design and implementation as defined in Rule 2–01(c)(4)(ii) of Regulation S–X, 17 CFR 2–01(c)(4)(ii), and all other services, other than audit services or other accounting services. This definition will be effective through December 15, 2003. Paragraph (2) of the rule provides that effective after December 15, 2003, ''non-audit services'' will mean ''all other services other than audit services, other accounting services, and tax services.'' The definition in paragraph (2) is designed to be consistent with the category of services disclosed as ''all other fees'' under the Commission's revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. This definition is further addressed as part of the discussion of Part II of the Form below.

Other Accounting Services

Rule 1001(o)(i)(1) defines ''other accounting services'' as services that are normally provided by the public accounting firm that audits the issuer's financial statements in connection with statutory and regulatory filings or engagements and assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than ''audit services.'' The Board has modeled its definition of ''other accounting services'' on concepts used in the Commission's recent revision of its auditor independence disclosure rules.[10] The term is meant to capture two categories of services: (1) Services the fees for which are to be disclosed as ''audit fees'' under the Commission's revised rules, but that were not previously disclosed as ''audit fees,'' and (2) services the fees for which are to be disclosed as ''audit-related fees'' under the Commission's revised rules.

The first category generally consists of those services that, while not captured as ''audit services'' under the Board's rules, are performed to comply with GAAS. As explained in the Commission's adopting release, certain services, such as tax services and accounting consultations, may not be billed as audit services, but are necessary to comply with GAAS.[11] This category would also include ''services that normally would be provided by the accountant in connection with statutory and regulatory filings or engagements'' and ''services that only the independent accountant reasonably can provide, such as comfort letters, statutory audits, attest services, consents and assistance with review of documents filed with the Commission.''[12]

The term is also meant to capture services the fees for which are to be disclosed as ''audit-related fees'' under the Commission's revised auditor independence disclosure rules.[13] In general, these are fees for ''assurance and related services (*e.g.*, due diligence services) that traditionally are performed by the independent accountant.'' More specifically, as noted in the Commission's adopting release, these services would include, among others, ''employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, internal control reviews, attest services that are not required by statute or regulation and consultation concerning financial accounting and reporting standards.''[14]

In addition, paragraph (2) of the rule provides that, effective after December 15, 2003, the term ''other accounting services'' will mean assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services. The Board intends that this definition in paragraph (2) be consistent with the category of services disclosed as ''audit-related fees'' under the Commission's revised auditor independence rules. This definition is discussed further below in connection with the discussion of Part II of the Form.

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[8] *See* Schedule 14A, Item 9(e)(1), 17 CFR 240.14a–101; *see also* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919 (November 21, 2000).

[9] Section 106(d) of the Act defines foreign public accounting firm as a ''public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.''

[10] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003).

[11] *Id.* At 39.

[12] *Id.*

[13] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003). *See also* Schedule 14A, Item 9(e)(2), 17 CFR 240.14a–101 (as amended, January 28, 2003).

[14] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003).

Person Associated With A Public Accounting Firm (and Related Terms)

The Board is adopting the same meaning for ''person associated with a public accounting firm'' as used in section 2(a)(9) of the Act, with a few, technical modifications. Commenters raised a number of concerns about the proposed definition. A number of commenters suggested that the definition should be limited to only a public accounting firm's employees, or at least should leave out certain independent contractors. While the Board does not believe that all independent contractors should be excepted from the definition, the Board has revised the definition to clarify that the term does not include persons whom the applicant reasonably believes are persons primarily associated with another registered public accounting firm. In addition, the Board has clarified that the definition does not cover persons engaged in only clerical or ministerial tasks. Finally, the word ''other'' has been eliminated before the terms ''professional employee'' and ''independent contractor'' to clarify that an employment or an independent contractor relationship with a public accounting firm is not required for a person to be covered by the definition. Commenters' concerns about this definition were related to their concerns about the scope of Parts V and VIII of the Form. As discussed below, Part V, and, for foreign public accounting firms, Part VIII of the Form are being modified in light of commenters' concerns.

Play a Substantial Role in the Preparation or Furnishing of an Audit Report

Rule 1001(p)(ii) defines the phrase ''play a substantial role in the preparation or furnishing of an audit report'' to mean ''(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report with respect to any issuer, or (2) to perform the majority of audit procedures with respect to a subsidiary or component of any issuer the assets or revenues of which constitute 20 percent or more of the consolidated assets or revenues of such issuer necessary for the principal accountant to issue an audit report'' on the issuer.

The first prong of this definition is based on language in section 106(b)(1) of the Act.[15] Note 1 to Rule 1001(p)(ii) explains that the term ''material services'' as used in this definition means services for which the engagement hours or fees constitute 20 percent or more of the total engagement hours or fees, respectively, provided by the principal accountant in connection with the issuance of all or part of its audit report with respect to any issuer.[16]

The second prong of this definition is based on a similar standard used in the Commission's auditor independence rules related to partner rotation.[17] As Note 2 to the rule indicates, the phrase ''subsidiary or component'' is meant to include any subsidiary, division, branch, office or other component of an issuer, regardless of its form of organization and/or control relationship with the issuer.

For both the definition of material services as well as the second prong of the overall definition, the Board believes that a quantitative, as opposed to a qualitative, test imposes less of a burden on firms in determining whether or not they fall into this category. The Board has included a threshold of 20 percent, since this threshold is consistent with accounting literature on ''significance'' tests.[18] Several commenters indicated their agreement with the 20 percent threshold.

Commenters raised several concerns about this proposed definition. One commenter expressed concern that the use of the phrase ''material services'' in the first prong could be read to include non-audit services, such as internal audit services, provided to non-audit clients when those services are relied upon by an auditor in issuing its audit report. Several accounting firms indicated that the first prong of the proposed definition would be difficult for non-affiliated foreign public accounting firms to comply with, since they would need access to the total engagement hours and fees, and therefore favored elimination of the first prong. Other commenters, however, raised concerns that the second prong of the definition might capture firms that perform relatively minor services such as routine observations of inventory test counts for a subsidiary or component of an issuer the assets or revenues of which constitute 20 percent or more of the consolidated assets or revenues of the issuer. Finally, commenters raised practical concerns about when and how the assets and revenues tests of the second prong of the definition should be administered.

After carefully considering the comments it received, the Board has decided to keep both prongs of the definition, but to modify both prongs slightly and to clarify the second prong's application. Specifically, the Board has decided to add a sentence to Note 1 to the rule to clarify that ''material services'' does not include non-audit services provided to a non-audit client. Second, to avoid capturing routine procedures on a significant subsidiary as part of an audit, the second prong has been limited to performing ''the majority of audit procedures * * * necessary for the principal accountant to issue an audit report on the issuer.'' Finally, the Board has addressed commenters' concerns about the implementation of the second prong by adding Note 3 to the rule, which clarifies that the 20 percent determination should be made at the beginning of the issuer's fiscal year using prior year information and should be made only once during the issuer's fiscal year.

Public Accounting Firm

Rule 1001(p)(iii) defines ''public accounting firm'' to mean a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports. The Board has adopted the same meaning of public accounting firm as used in section 2(a)(11)(A) of the Act. However, this definition is intended to include only legal entities, and not natural persons. An individual accountant that prepares or issues an audit report in his or her name would be a ''proprietorship'' and

[15] Section 106(b)(1) provides that foreign public accounting firms shall be deemed to have consented to produce audit workpapers and to be subject to the jurisdiction of the U.S. courts for purposes of enforcement of any request for such workpapers if the firm issues an opinion or ''otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in the audit report.''

[16] One commenter expressed concern that this test would be applied on an aggregated basis. This test would be administered on a firm-by-firm basis. In other words, if a public accounting firm does work for the principal accountant and individually does not meet the 20 percent of engagement hours or fees tests, the firm would not need to register solely because its work, when aggregated with other firms working on the same audit, would meet the 20 percent threshold.

[17] The Commission's adopting release provides that ''the lead partner on subsidiaries of issuers whose assets or revenues constitute 20% or more of the consolidated assets or revenues are included within the definition of 'audit partner.''' *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003).

[18] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003), note 139 (citing APB Opinion No. 18, ''The Equity Method of Accounting for Investments in Common Stock,'' and ARB No. 43, Chapter 7, ''Capital Accounts.'').

therefore fall under this definition. Under section 2(a)(11)(B) of the Act, the Board has the authority to expand this definition and designate by rule ''any associated person of any entity'' described in section 2(a)(11)(A) as a ''public accounting firm.'' The Board has not chosen to exercise this authority at this time.

State

Rule 1001(s)(iii) would define ''State'' to mean any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States. The Board has adopted the same definition of state as used in section 2(a)(16) of the Act. The idea of including this definition, and the definition itself, was suggested by a commenter.

Tax Services

Rule 1001(t)(i) defines ''tax services'' as ''professional services rendered for tax compliance, tax advice, and tax planning.'' This definition is based on, and meant to include the same group of services the fees for which would be disclosed as ''tax fees'' under the Commission's recently revised auditor independence disclosure rules.'' [19] More specifically, as set forth in the Commission's adopting release, ''tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment planning-services'' and ''[t]ax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities.'' [20] This definition is discussed further below in connection with the discussion of Part II of the Form.

Rule 2100—Registration Requirements for Public Accounting Firms

Rule 2100(a) requires any public accounting firm that prepares or issues audit reports with respect to any issuer to register with the Board. In addition, Rule 2100(b) requires the registration of any public accounting firm that ''plays a substantial role in the preparation or furnishing of an audit report'' with respect to any issuer. These registration requirements implement section 102(a) of the Act, which provides that ''it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.''

By introducing the ''substantial role'' test (defined through the quantitative test in Rule 1001(p)(ii) as described above), the rule clarifies the phrase ''participate in the preparation or issuance of, any audit report with respect to any issuer'' used in section 102(a) of the Act. In so doing, the Board intends to create a bright-line test to make it easier for firms and others to determine which firms are required to register with the Board. Stated differently, a firm that does not prepare or issue audit reports with respect to any issuer, but that does ''participate'' in the preparation of such reports, is only required to register if that participation amounts to a ''substantial role,'' as defined in Rule 1001(p)(ii).

Rule 2100 does not exempt non-U.S. public accounting firms from registration. Therefore, a public accounting firm that is organized or that operates outside the United States must register if it prepares or issues an audit report on any issuer. In addition, such firms that play a substantial role in the preparation or furnishing of an audit report on any issuer must also register, even if the firm does not itself issue the audit report. Consistent with the Act, a Note to the rule provides that registration with the Board will not by itself provide a basis for subjecting a foreign public accounting firm to the jurisdiction of the U.S. federal or state courts, other than with respect to controversies between such firms and the Board.

Under Rule 2100, individual accountants that are associated with public accounting firms are not required to register. As noted above, the definition of the term ''public accounting firm'' includes proprietorships, and an individual accountant that prepares or issues, in his or her own name, an audit report on an issuer would be viewed as a sole proprietor and required to register.[21] Individual accountants that are associated with public accounting firms, however, are not required to register.

Under the Act, the registration requirement will be effective 180 days after the date on which the Commission makes its determination under section 101(d) of the Act that the Board is capable of carrying out its responsibilities under the Act. Since this determination was made on April 25, 2003, the rule will specify that domestic public accounting firms that wish to participate in or contribute to the preparation of audit reports must register by October 22, 2003. The Board has also decided to allow foreign public accounting firms an additional 180 days to register. Accordingly, the rule will provide that the mandatory registration date for these firms is April 19, 2004.

Several commenters suggested that the Board's proposed rules were unclear as to whether they required the registration of firms that do not plan to participate in audits of issuers after October 22, 2003, but that have issued audit reports for issuers covering periods prior to the mandatory registration date. These commenters noted that such a firm may be asked to issue a consent with respect to the use of its opinion for the prior period. To address this concern, the Board has added a note to the rule that provides that the issuance of a consent to include an audit report for a prior period by a public accounting firm, that does not currently have and does not expect to have an engagement with any issuer to prepare or issue, or to play a substantial role in the preparation or furnishing of an audit report with respect to any issuer, will not by itself require a public accounting firm to register under Rule 2100.

Rule 2101—Application for Registration

Rule 2101 requires public accounting firms applying for registration with the Board to complete and file an application for registration on Form 1. This rule is consistent with section 102(b) of the Act, which provides that ''a public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.''

Rule 2101 further requires that, unless the Board directs otherwise, applications for registration and any exhibits to such applications must be filed electronically with the Board through the Board's Web-based registration system. The online registration mechanism is currently being developed and will be available in sufficient time for public accounting firms to register.

In addition, several commenters suggested that the Board should provide a procedure for applicants to withdraw their applications. In response to these comments, the Board has added a sentence to Rule 2101 providing that an applicant may withdraw its application for registration by written notice to the Board at any time before the approval or disapproval of the application. The Board will consider rules relating to the withdrawal from registration of

[19] *See* Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33–8183 (January 28, 2003), as amended by Release No. 33–8183A (March 26, 2003) (footnotes omitted).

[20] *Id.*

[21] *See* Rule 1001(p)(iii).

registered public accounting firms at a later date.

Rule 2102—Date of Receipt

Rule 2102 defines the date of receipt of an application for registration as, unless the Board directs otherwise, the later of (a) the date on which the registration fee has been paid, or (b) the date on which the application is submitted to the Board through its Web-based registration system. Although the Board had initially planned to have its registration system scan applications for completeness before accepting them, this step has been eliminated for administrative reasons. Applications will not be deemed received, however, until the required registration fee has been paid.

Rule 2103—Registration Fee

Rule 2103 requires that each public accounting firm applying for registration with the Board pay a non-refundable registration fee. This rule is consistent with section 102(f) of the Act, which provides that ''[t]he Board shall assess and collect a registration fee * * * from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications * * *.''

The Board will publicly announce the registration fee amount and the payment procedure before the registration system is operational. The Board contemplates that the amount of an applicant's fee will be determined by formula and that fees will vary with the size of the applicant and the number of its issuer audit clients. Once the registration system is operational, the Board will, from time to time, announce (most likely by posting on its Web site or by a similar form of dissemination) the current registration fee for applicants. Several commenters made comments about the amount the Board should seek to recover in registration fees and the criteria the Board should use in allocating fees to applicants. The Board will consider these comments in connection with its setting of the registration fee.

Rule 2104—Signatures

Rule 2104 requires each person signing the application for registration (including any consents) to manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing of the application for registration. Such a document is required to be signed before the application is electronically filed with the Board through the Board's Web-based system. Further, consistent with the Act's provision on the retention of audit workpapers,[22] filers are required to retain the manually signed documents for seven years. In addition, under the rules, the Board or its staff may request a copy of any manually signed document retained pursuant to Rule 2104. The Board's rule tracks the Commission's requirement on signatures for electronic filings in Regulation S–T.[23]

Rule 2105—Conflicting Non-U.S. Laws

Rule 2105 provides that an applicant may withhold information from its application for registration when submission of the information to the Board would cause the applicant to violate non-U.S. laws. A number of commenters raised a concern that submitting information in connection with an application for registration could cause an applicant to have to choose between obeying the laws of a non-U.S. jurisdiction and completing the application. The Board has decided to allow applicants to withhold such information from an application for registration.

The rule further provides, however, that an applicant that claims that submitting information as part of its application would cause it to violate non-U.S. laws must identify, in accordance with the instructions on Form 1, the information that it claims would cause it to violate non-U.S. laws if submitted,[24] and include as exhibits to Form 1: (i) A copy of the relevant portion of the conflicting non-U.S. law; (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict. Like all other parts of the application, these exhibits must be submitted in English.

While the Board expects that this rule will mainly be used by non-U.S. applicants, the rule would also allow a U.S. applicant to withhold information that would cause it to violate non-U.S. laws if submitted to the Board. It should be noted that, for purposes of this rule, the term ''non-U.S. law'' does not include laws of any state, territory, or political subdivision of the United States.

Rule 2106—Action on Applications for Registration

Rule 2106 governs the Board's approval process. In general, under this rule, unless the applicant consents otherwise, the Board is required to take action on an application for registration not later than 45 days after the date of receipt of the application. Rule 2102 defines the date of receipt. Such action may consist of approval, issuance of a written notice of a hearing specifying the proposed grounds for disapproval, or a request for additional information. Rule 2106 is consistent with section 102(c)(1) of the Act, which provides that ''[t]he Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, a prospective registrant.'' An applicant that does not elect to treat a notice of hearing as a notice of disapproval will be deemed to have waived the provisions in section (b) of this rule and in section 102(c)(1) that require the Board to act on applications within 45 days.

Specifically, Rule 2106(a) provides that after reviewing the application for registration, and any additional information provided by the applicant or obtained by the Board, the Board will determine whether to approve the application. The Board will approve an application for registration if it determines that registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. If the Board is unable to determine that this standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings, to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds

[22] *See* section 103(a)(2)(A)(i); *see also* Commission Final Rule: Retention of Records Relevant to Audits and Reviews, Release No. 33–8180 (January 24, 2003) (requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements).

[23] *See* Rule 302(b) of Regulation S–T, 17 CFR 232.302(b).

[24] The Board's Web-based registration system will include an option, next to each Item on the Form, for the applicant to indicate that it is withholding information based on a conflicting non-U.S. law.

for disapproval and may, at the applicant's election, be treated as a written notice of disapproval for purposes of section 102(c) of the Act.

If the Board requests additional information, a new 45-day review period will begin when the requested information is received. The Board may request additional information when an applicant has failed to complete fully Form 1, or when the information is otherwise necessary in order to make a determination on the application.[25] Rule 2106(c) provides that the Board will take action on such supplemented applications as soon as practicable, and not later than 45 days after receipt of the supplemented application.[26] If the applicant declines to provide the requested information, or fails to do so within a reasonable amount of time, the Board may deem the application incomplete (and disapprove it on that basis, pursuant to Rule 2106(b)(2)), may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.

Commenters raised several concerns with Rule 2106 as proposed by the Board. Some commenters suggested that the Board's standard for approval was too subjective or, at least, that the Board should provide more guidance on how it will be applied by the Board. Section 102 of the Act does not provide an explicit standard for the Board's determination to approve or disapprove an application for registration. At the same time, the Act clearly contemplates that the Board will apply some standard to applications for registration before deciding whether to approve or disapprove a completed application.[27] The standard in Rule 2106(a) is based on the Board's mandate under section 101(a) of the Act. The Board considered providing more specific criteria, but has decided that additional criteria would be inappropriate in light of the varied circumstances of public accounting firms that likely will be applying for registration. For instance, the Board considered providing that the failure of an applicant or its associated accountants to have all licenses and registrations required by governmental and professional organizations would be a basis for disapproval. In response to the Board's proposal to require applicants to represent that they have all such licenses, a number of commenters gave reasons why they could not provide such a representation. In addition, the Board considered providing that certain criminal and/or civil governmental actions would be a basis for disapproval. Actions against an accountant that might justify disapproval of the application of a sole proprietor might not warrant disapproval of the application of a large public accounting firm if the accountant was one of many employees of the firm, however. Accordingly, the Board has determined to retain the current standard and make an evaluation based on the facts and circumstances of whether each application meets the criteria in Rule 2106(a).

Several commenters suggested that applicants should have ''due process'' procedures through which they could seek and obtain review of a disapproval of their application within the Board. The Board has addressed these comments by changing the rule to provide that, if the Board is unable to determine that the statutory standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings,[28] to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval. Because the statute provides for the Board to make these decisions within 45 days and also provides for appeal to the Commission, the applicant may, at its election, treat the notice as a written notice of disapproval for purposes of section 102(c) of the Act. Under sections 102(c)(2) and 107(c) of the Act, a written notice of disapproval may be appealed to the Commission. Therefore, an election to treat a hearing notice as a disapproval will afford applicants an immediate opportunity to seek Commission review.

Rule 2300—Public Availability of Information Submitted to the Board: Confidential Treatment Requests

Rule 2300(a) provides that applications for registration will be publicly available as soon as practicable after the Board approves or disapproves the application. This is consistent with section 102(e) of the Act, which provides that applications for registration ''or such portions of such applications * * * as may be designated under the rules of the Board'' must be available for public inspection.

In order to prevent the disclosure of confidential information,[29] Rule 2300 also sets forth a procedure by which applicants can request confidential treatment of any information submitted to the Board in connection with their applications for registration. Under Rule 2300(b), an applicant for registration may request confidential treatment of any portion of an application that either (i) contains information reasonably identified by the public accounting firm as proprietary information, or (ii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

Rule 2300(c)(2) requires that confidential treatment requests contain a detailed explanation of the reasons that, based on the facts and circumstances of the particular case, the information for which confidentiality is sought meets the requirements in Rule 2300(b). Rule 2300(f) states that unless the applicant seeking confidential treatment consents otherwise, confidential treatment requests themselves will be afforded confidential treatment without the need for a request for confidential treatment. Rule 2300(d) provides that pending a determination by the Board as to whether to grant the request for confidential treatment, the information in question will not be made available to the public. Rule 2300(e) states that if the Board determines to deny a request, the applicant requesting confidential treatment will be notified of the Board's decision in writing and of the date on which the information in question will be made public.

Under Rule 2300(g), the information as to which the Board grants confidential treatment under Rule 2300 will not be made public. The Board anticipates that a notation in the application that is made publicly available will appear in the place of the information for which confidential treatment was granted. However, the granting of confidential treatment will not limit the Board's ability to provide this information to the Commission or to comply with any subpoena issued by

[25] Accordingly, the Board may request additional information regarding any of the applicant's responses contained in Form 1, as well as additional matters that have come to the Board's attention and that are relevant to the Board's decision on an application.

[26] This sentence was added to the Rule at the suggestion of a commenter that was concerned that the Board might take the full 45-day period notwithstanding that only relatively minimal supplemental information was involved.

[27] *See* section 102(c) of the Act.

[28] These rules will be the subject of a future Board rulemaking.

[29] Section 102(e) also states that the public availability of registration applications is subject to ''applicable laws relating to the confidentiality of proprietary, personal, or other information'' and directs the Board to ''protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.''

a court or other body of competent jurisdiction, nor will it prevent the Board from making use of this information in connection with the execution of its responsibilities under the Act. For example, the information may be used in the Board's inspection program and investigations, as well as in any resulting proceedings, subject to the applicant's right to seek a protective order in such a proceeding. In the event the Board receives a subpoena, the Board will notify the applicant of such subpoena to allow the applicant an opportunity to object to the subpoena. Finally, Rule 2300(h) delegates the Board's functions under this Rule to the Director of Registration and Inspection.

Commenters made several suggestions to improve the Board's proposed confidentiality rule. One commenter suggested the Board delegate the function of determining these requests and allow for appeal to the Board. Rule 2300(h) responds to this suggestion. Several commenters noted that the proposed rule did not specify when applications would be made available publicly and suggested that that should not take place until the applications had been approved or disapproved. Rule 2300(a) has been modified to reflect that applications will not be made available publicly until after the Board has approved or disapproved them. Commenters also suggested that the Board should provide notice to an applicant upon receiving a third-party subpoena seeking access to information the Board has granted confidential treatment and oppose such subpoenas. Rule 2300(g) now provides for such notice. While the Board does not believe it would be appropriate to provide in its rules that it will object to all such subpoenas, the Board will respond to such subpoenas in a manner consistent with its responsibilities under the Act, including its responsibility to protect proprietary information under section 102(e) of the Act. The confidential treatment requester will, of course, be free to protect its interests by seeking to participate in the proceeding from which the subpoena arose.

Form 1

The proposed rules also consist of instructions to PCAOB Form 1, which is the form to be used by public accounting firms to register with the Board. The Board plans to develop a Web-based form that will be available only electronically.

Form 1 consists of general instructions and nine parts, subdivided into various items requiring the disclosure of particular information concerning the applicant and its associated accountants, and the applicant's audit clients. The information these items call for is, in general, required by section 102(b) of the Act. To the extent that Form 1 calls for information in addition to that specified in section 102(b), the additional information is closely related to the statutory minimum requirements, and is, in the Board's judgment, reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application. The general instructions and each of the parts of the Form is explained in more detail below.

General Instructions

The general instructions to the Form contain basic information about the application and the application process. In general, these instructions are self-explanatory. General instructions 7, 9 and 10 were added in response to comments received on the Board's proposal.

Many non-U.S. commenters suggested that the disclosure of certain information required by the Form, as originally proposed, would violate non-U.S. laws, particularly related to confidentiality, data protection and privacy. In response to these comments, the Board added General Instruction 7, which allows an applicant to withhold information from its application where disclosure of the information would cause the applicant to violate non-U.S. laws. General Instruction 7 specifies that an applicant claiming that submitting information would cause it to violate non-U.S. laws must so indicate by making a notation under the relevant item number of the Web-based form, and furnish as exhibits: (i) A copy of the relevant portion of the conflicting non-U.S. law, (ii) a legal opinion supporting the applicant's position, and (iii) an explanation of the applicant's efforts to seek consents or waivers, if applicable, and a representation that the applicant was unable to obtain such consents to eliminate the conflict.

In addition, some commenters were concerned that it may be difficult to ensure that application information is current when submitted in light of the fact that, particularly for larger public accounting firms, it may take significant amounts of time to compile the information necessary to apply for registration. To address this concern, the Board has added General Instruction 9 to provide that where the Form seeks current information, applicants may submit the information as of a date not earlier than 90 days prior to submission of the application and that such information will be deemed current for purposes of the Form. General Instruction 10 specifies that information submitted as part of Form 1, including any exhibits to the Form, must be in English.

Part I—Identity of the Applicant

Part I of the Form calls for information about the identity of the applicant. This Part is generally intended to elicit basic information about the applicant and its operations and to facilitate the Board's interaction with the applicant. The seven specific items in this part require information about the applicant's name and identification number, contact information, primary contact with the Board, form of organization, offices, associated entities engaged in the practice of public accounting, and professional licenses or certifications.

In Item 1.1, applicants are required to state the legal name of the applicant and, if different, the name or names under which the applicant currently, or in the past five years, issues or has issued audit reports. This Item has been changed in two respects from the Board's proposal. First, this Item as proposed required applicants that have such a number to disclose their federal employer identification number (or comparable non-U.S. identifier), and, in the case of a sole proprietor, the applicant's social security number. In response to commenters' concerns about disclosure of confidential personal identifiers, the Board has eliminated the requirement for applicants to provide identifying numbers in response to this Item. Second, at least one commenter suggested that the Board clarify which predecessor entities constitute the applicant for purposes of the disclosure of names under which the applicant has issued audit reports in the last five years. The Board has sought to clarify this by modifying Item 1.1 to apply only to those predecessors for which the applicant is the successor in interest with respect to the entity's liabilities.

Items 1.2 and 1.3 ask for basic contact information from the applicant. These Items are unchanged from the Board's proposal, except that the Board has added a requirement to Item 1.2 that applicants state their Web site address, if available.

Item 1.4 asks for the applicant's legal form of organization and the jurisdiction under the law of which the applicant is organized or exists. Under the Board's registration system, organizations, and not natural persons, are required to apply for registration. Accordingly, among the examples given of legal forms of organizations are ''proprietorship'' and ''partnership.'' This Item

contemplates that natural persons practicing accounting under their own name and that are not organized as a legal entity will apply as a ''proprietorship.'' Likewise, groups of natural persons practicing accounting that are not organized as another legal entity should apply as a ''partnership,'' whether a partnership has been legally formed or not.

Item 1.5 requires applicants with more than one office to furnish, as an exhibit, the physical address (and, if different, mailing address) of each of the applicant's offices. Item 1.6 requires applicants to list the name and address of their ''associated entities'' that engage in the practice of public accounting or preparing or issuing audit reports or comparable reports prepared for clients that are not issuers. The term ''associated entities'' is defined in the Board's rules in a manner consistent with the term's use in the Commission's auditor independence rules.[30]

One commenter suggested that Item 1.5 be limited to offices that issue audit reports, as that term is defined in the Act and the Board's rules. In addition, several commenters suggested that Item 1.6 be limited to only associated entities that issue audit reports or that the term ''associated entities'' be defined differently or limited to entities within one particular country. After considering these comments, the Board has decided to leave these Items as proposed. The Board chose the term ''associated entities'' to capture certain entities that are related to the applicant, but that are not necessarily in a control relationship with the applicant. The term is presumably one public accounting firms are familiar with because of its use in the Commission's auditor independence rules. The instruction makes clear that individual accountants associated with the applicant should not be listed in responding to this Item. The Board believes that obtaining information on all the applicant's offices and those associated entities of the applicant that engage in the practice of public accounting or preparing or issuing audit reports, or comparable reports prepared for clients that are not issuers, strikes the appropriate balance between the Board's need for information about the applicant's operations and the need to avoid overburdening applicants for registration.

Item 1.7 requires applicants to list every license or certification number issued to the applicant authorizing it to engage in the business of auditing or accounting, and the name of the issuing authority. This Item does not require applicants to list the license numbers of individual associated accountants within the firm (these are required by Item 7.1), nor does it require applicants to furnish information on business licenses required of entities engaged in businesses other than accounting or auditing.

As proposed, Item 1.8 would have required applicants to state if the firm and all individual accountants associated with the firm who participate in or contribute to the preparation of audit reports have all required licenses and certifications. This Item was intended to ensure that public accounting firms applying for registration have the requisite governmental and professional licenses and certifications to audit issuers. Although one commenter supported and suggested expanding this Item, a number of both large and small public accounting firms suggested that, for various reasons, they could not affirmatively answer this question despite their good faith efforts to ensure that the firm and all its associated accountants maintained all required licenses. In light of these concerns, and because information on the applicant's and its associated accountants' licenses or certifications is still required through Items 1.7 and 7.1, the Board has decided to eliminate Item 1.8.

Part II—Listing of Applicant's Public Company Audit Clients and Related Fees

As required by Section 102(b)(2)(A) and (B) of the Act, Part II of the Form requires disclosure of the names of all issuers for which the applicant has prepared or issued audit reports during the previous calendar year, and for which the applicant expects to prepare or issue audit reports during the current calendar year, and the annual fees received by the applicant from these issuers for audit services, other accounting services, and non-audit services. Part II implements this directive through four specific items.

The first three items require disclosures about the applicant's issuer audit clients, including their names, identifying information, and disclosures about the fees billed the issuer by the applicant. The contours of the required fee disclosures are specified through definitions of the terms ''audit services,'' ''other accounting services,'' and ''non-audit services.''[31]

To capture different time periods, these disclosures are divided into three items. Item 2.1 covers issuers for which the applicant prepared or issued any audit report during the previous calendar year. Item 2.2 covers issuers for which the applicant prepared or issued any audit report during the current calendar year. Item 2.3 covers issuers for which the applicant expects to prepare or issue any audit report during the current calendar year. Items 2.1 and 2.2 require the same information: the issuer's name, business address, the date of the audit report, and the total amount of fees billed for audit services, other accounting services, and non-audit services. Because Item 2.3 refers to a future period, it only asks for the issuer's name and business address. A Note to Items 2.3 and 2.4 clarifies when an applicant can ''expect to prepare or issue'' an audit report for an issuer.

Finally, Item 2.4 seeks information from applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report during the current calendar year. Specifically, this Item seeks information about the issuers for which these applicants played, or expect to play, a substantial role in the preparation of an audit report during the preceding or current calendar year. For these issuers, the applicant must disclose the issuer's name, business address, the name of the public accounting firm that issued, or is expected to issue, the audit report, the date (or expected date) of the audit report, and the type of substantial role played by the applicant with respect to the audit report.

Commenters expressed a number of practical concerns about compiling the necessary information to respond to Part II of the Form as proposed. In particular, a number of commenters suggested that the fee disclosures track the categories used in the SEC's revised auditor independence disclosure rules and pointed out that a number of issuers that will be required to disclose fees in those categories have not previously been required to publicly report these fees.

In response to these comments, the Board has modified the definitions of ''audit services,'' ''other accounting services,'' and ''non-audit services'' to make clear that, once the revised SEC rules are effective, the Board intends to use these categories for the fee

[30] *See* Rule 2–01(f)(2) of Regulation S–X, 17 CFR 210.2–01(f)(2).

[31] A Note to Items 2.1 and 2.2 explains that, consistent with the Commission's proxy disclosure rules, only fees billed by the principal accountant need be disclosed in response to this item. The Note also explains how disclosures are to be made for issuers that are investment companies. The treatment is based on and is consistent with the Commission's disclosure rules.

disclosures required by Part II of the Form.

The Board understands that fee information in these categories has not been collected historically and that public accounting firms are in the process of putting in place systems to track information in these categories. Nonetheless, section 102(b)(2)(B) of the Act specifically requires applications for registration to include disclosure of fees for ''audit services,'' ''other accounting services'' and ''non-audit services.'' Accordingly, until such time as the SEC's revised rules are effective, the Board has, to the extent permissible under the Act, used categories from the existing SEC proxy disclosure rules that were adopted in November 2000 for the disclosures required by this Part of the Form.

Specifically, until December 15, 2003, the term ''audit services'' will be defined to mean the same category of services for which fees are required to be disclosed as ''audit fees'' pursuant to the Commission's 2000 proxy disclosure rules.[32] Section 102(b)(2)(B) of the Act specifically requires applicants to disclose fees for ''other accounting services,'' which are not required to be disclosed under the existing proxy disclosure rules. Accordingly, the Board has defined ''other accounting services'' by reference to concepts from the SEC's revised auditor independence disclosure rules. As explained in greater detail above in connection with the discussion of the definition of ''other accounting services,'' until December 15, 2003, this term will include two categories of services: (1) services the fees for which are to be disclosed as ''audit fees'' under the Commission's revised rules, but that were not previously disclosed as ''audit fees,'' and (2) services the fees for which are to be disclosed as ''audit-related fees'' under the Commission's revised rules.

While fee disclosures are not currently being made in these categories, these categories of fees have been defined with some precision through the SEC's rulemaking process. In addition, some issuers and public accounting firms may be in the process of developing systems to track fees in these categories since disclosures of these amounts will be required under the SEC's revised rules, effective for filings after December 15, 2003.

Under the existing proxy disclosure rules, fees must also be disclosed for financial information systems design and implementation, as defined in Rule 2–01(c)(4)(ii) of Regulation S–X, 17 CFR 2–01(c)(4)(ii), and all other services (*i.e.*, services the fees for which are not disclosed as audit fees or financial information systems design and implementation fees). Until December 15, 2003, the term ''non-audit services'' will be defined to include these two categories of services. After December 15, 2003, applicants will be required to disclose fees for the category of services the fees for which are disclosed as ''all other fees'' under the Commission's revised auditor independence rules.

The Board understands that not all issuers are subject to these requirements and that companies subject to the requirements currently are not required to disclose fees for ''other accounting services,'' as specifically required by section 102(b)(2)(B) of the Act. To address commenters' concerns about the difficulty of accurately compiling this information in these situations, the Board added a Note to Items 2.1 and 2.2 that provides that, to the extent these fee amounts have not previously been disclosed or otherwise known by the applicant, estimated amounts may be used in responding to these Items of the Form. The Board does not intend to penalize applicants that use good faith efforts to estimate the fees for ''other accounting services'' during this time. Consistent with these changes, applicants will not be separately required to disclose fees for ''tax services,'' as had been proposed. The Board may choose, once the SEC's revised rules are effective, to require disclosure of ''tax services'' as part of registered public accounting firms' annual reports. The contents of these reports will be the subject of a future Board rulemaking.

In response to other comments received, the Board has simplified and clarified Part II of the Form in several other respects. First, the Board has eliminated the requirement to provide the issuer's standard industry code (''SIC''). Second, the Board has slightly modified the wording of Items 2.1 through 2.3 to make clear that the disclosure requirements pertain to audit reports *dated* during the relevant time period. Third, the Board has added language to the Notes to Items 2.2 and 2.3 to further clarify when applicants can ''expect to prepare or issue'' an audit report for an issuer. Specifically, those Notes now provide that an applicant may presume that it is expected to prepare or issue an audit report for an issuer (i) if it has been engaged to do so, or (ii) if it issued an audit report during the preceding calendar year for an issuer, absent an indication from the issuer that it no longer intends to engage the applicant.

Fourth, in response to some commenters' concerns about the burden of making the necessary determinations to comply with Item 2.4, the Board has limited this Item to those applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report dated during the current calendar year. In other words, as the Note to this Item explains, applicants that disclose the name of an issuer in response to any of Items 2.1–2.3 need not respond to this Item. Finally, the requirement in Item 2.4 to explain the applicant's role in the audit has been modified to require only identification of the type of substantial role played by the applicant with respect to the audit report. To enable applicants to comply with this instruction, it is contemplated that the Web-based Form will contain a ''pull-down menu'' with a list of types of substantial roles, including an option to check ''other.''

The Board will consider issuing additional guidance on the fee disclosures required by Part II of the Form as the date for registration to begin nears.

Part III—Applicant's Financial Information

Section 102(b)(2)(C) of the Act provides that the Board may require applicants to submit ''such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request.'' Consistent with this provision of the Act, the Board proposed that applicants disclose fees received by the applicant during its most recently completed fiscal year for: audit services, other accounting services, tax services, and all other products and services, whether the fees were received from ''issuers'' or from their other clients.

A number of commenters stated that they are not currently tracking revenues in these categories for all their clients and that compiling this information in this form would be impractical or at least very burdensome. In light of these comments, the Board has decided not to require this information as part of public accounting firms' registration applications at this time. The Board does, however, intend to require applicants to submit information in these categories as part of their annual reports with the Board under section 102(d) of the Act. Although the contents of the annual and periodic reports will be the subject of a future Board rulemaking, the Board encourages

[32] *See* Schedule 14A, Item 9(e)(1), 17 CFR 240.14a–101; *see also* Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33–7919 (November 21, 2000).

public accounting firms planning to register with the Board to begin collecting fee information in these four categories for all their clients in order to be able to report revenue in this format on an ongoing basis in the future.

Part IV—Statement of Applicant's Quality Control Policies

As required by section 102(b)(2)(D) of the Act, Part IV requires the applicant to provide, as an exhibit, a narrative, summary description of its quality control policies for its accounting and auditing practices, including procedures to monitor compliance with independence requirements. GAAS requires accounting firms to have quality controls for their audit practices.[33]

A few commenters suggested that this Part of the Form should be limited to a representation about the firm's quality control policies complying with applicable standards. The Board does not believe that this approach would be consistent with the statutory directive. Several other commenters sought clarification of the parameters of the description called for by this Part of the Form. As explained in the proposing release, the description should be in a clear, concise, and understandable format and should convey the scope and the key elements of the applicant's quality controls for its accounting and auditing practice. A description that addresses all of the elements of quality control covered by the professional quality control standards the firm is subject to will be sufficient. Technical descriptions and detailed explanations of procedures are not required. Absent unusual circumstances, the Board does not contemplate granting confidential treatment requests for this Item.

Part V—Listing of Certain Proceedings Involving the Applicant

As required by section 102(b)(2)(F) of the Act, Part V calls for information about criminal, civil, or administrative or disciplinary proceedings against the applicant or its associated persons. While the Act only requires applicants to submit information about pending proceedings related to audit reports, the Form requires information about certain additional proceedings that may reflect on the applicant's fitness for registration, even though the proceedings may no longer be pending or do not relate to audit reports.

As proposed, this Part of the Form was divided into six specific items that sought disclosure of different types of proceedings involving different persons for different periods of time. Many commenters expressed concerns about both the scope and the complexity of the disclosures required of applicants by this Part of the Form.[34] Accordingly, the Board has sought both to simplify and to narrow its request for information in this Part of the Form, while still preserving the information necessary to decide whether to approve or disapprove registration applications.

Specifically, this Part now contains three Items. Item 5.1 would, in general, require applicants to disclose whether the applicant or any associated person of the applicant is currently a defendant or respondent (or was a defendant or respondent in a proceeding that resulted in an adverse finding against the applicant or person during the previous five years) in three types of proceedings:

1. Any pending criminal proceeding;
2. Any pending civil (or alternative dispute resolution) proceeding initiated by a governmental entity arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer; and
3. Any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer.

The third part of this Item further specifies what types of proceedings qualify as ''administrative or disciplinary proceedings'' and provides that investigations that have not resulted in the commencement of a proceeding need not be included. At least one commenter specifically suggested that, if the Board required disclosure of more than pending proceedings, the look-back period should be limited to five years since this period is consistent with the disclosure requirements for past proceedings against officers and directors of public companies.[35]

Item 5.2 would require applicants to disclose pending civil proceedings (or ADR proceedings) against the applicant or its associated persons initiated by a private (*i.e.*, non-governmental) entity that involve conduct in connection with an audit report or a comparable report prepared for a client that is not an issuer. This Item is largely required by section 102(b)(2)(F) of the Act. For each proceeding listed in response to Items 5.1 and 5.2, applicants are asked to provide basic information about the proceeding, the parties, the allegations, and the proceeding's outcome.

The phrase ''a comparable report prepared for a client that is not an issuer,'' as used in these Items, is meant to capture reports of audits performed for clients that are not issuers. Notes to Items 5.1 and 5.2 provide that, for these Items, foreign public accounting firm applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least 10 hours of audit services for any issuer during the last calendar year. This is the same group of persons within foreign public accounting firms that must be listed in response to Part VII of the Form and for which consents must be obtained under Part VIII of the Form.

Finally, Item 5.3, permits, but does not require, applicants to include an exhibit describing any proceeding listed in response to this Part and giving the reasons that, in the applicant's view, such proceeding should not be a basis for the denial of its application for registration. The failure to file such an exhibit with respect to a particular proceeding will not raise any inference concerning the applicant's view of the impact of that proceeding on its application. The Board will consider any information provided pursuant to this Item in its approval process.

Part VI—Listing of Filings Disclosing Accounting Disagreements with Public Company Audit Clients

As required by section 102(b)(2)(G) of the Act, Part VI requires applicants to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in Commission filings. For each such instance in the preceding or current calendar year, the applicant is required to disclose the name of the issuer, the name and date of the filing, and to submit, as exhibits, copies of the identified filings. Disagreements under this Part are specified by reference to the provisions of Regulation S–K that require such disclosures.

To clarify an issue raised by a few commenters, an applicant is only required to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in such issuers' Commission filings. Therefore, if an issuer did not disclose a disagreement in a

[33] *See* SAS No. 25; AU § 161; *see also* Statements on Quality Control Standards (''SQCS'') No. 2; AICPA SEC Practice Section (''SECPS'') Membership Requirements, Appendix K, SECPS sec. 1000.45.

[34] In particular, a number of non-U.S. accounting firms and professional associations expressed concern that proposed Item 5.5 would require applicants to familiarize themselves with, and analogize to, a number of provisions of the U.S. Code. This Item has been eliminated from the Form.

[35] Item 401 of Regulation S–K. 17 CFR 229.401(f).

Commission filing or if such disclosure is not required by a Commission filing,[36] the applicant of that issuer audit client need not disclose such disagreement in Form 1.

Several commenters suggested that the Board obtain information required by Part VI from the Commission's Edgar system or require applicants to provide only a hyperlink to or a Central Index Key (''CIK'') number for a particular filing, as opposed to providing copies of the actual filings. While the Board recognizes that the information requested in this Item is or will be publicly available through Edgar, section 101(b)(2)(G) of the Act specifically requires that an applicant submit ''as part of its application for registration * * * copies of periodic or annual disclosure filed by an issuer with the Commission * * *.'' Moreover, this information is not organized by the public accounting firms involved in the disclosed disagreements in the Commission's Edgar system.

Part VII—Roster of Associated Accountants

As required by section 102(b)(2)(E) of the Act, Part VII requires applicants to submit information about the accountants associated with the firm who participate in or contribute to the preparation of audit reports. The scope of this requirement is different for foreign firms than for domestic firms. Domestic applicants must list all accountants who are ''persons associated with the applicant'' and provided at least 10 hours of audit services for any issuer during the last calendar year. Foreign public accounting firms applying for registration must list all accountants who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least 10 hours of audit services for any issuer during the last calendar year.

For each accountant listed, applicants must provide the person's name and all license or certification numbers (and name of issuing authority) authorizing the person to engage in the business of auditing or accounting.

In addition, both domestic and non-U.S. applicants are required to disclose the total numbers of accountants and CPAs (or accountants with comparable licenses from non-U.S. jurisdictions) employed with the applicant, and the total number of personnel employed by the applicant.

[36] For instance, currently annual reports for foreign private issuers on Forms 20–F and 40–F do not require this type of disclosure.

Many commenters indicated that the disclosure required by Items 7.1 and 7.2, as originally proposed, was administratively burdensome and suggested that the Board narrow the scope of the roster and clarify which accountants would be covered by the roster. To address these concerns, the Board has limited the roster reporting requirements for domestic applicants to accountants who are ''persons associated with the applicant'' and provided at least 10 hours of audit services for any issuer during the last calendar year, and the requirements for non-U.S. applicants to partners or managers who provided at least 10 hours of audit services for any issuer during the last calendar year.[37] In addition, as noted above, by excluding from its definition of the term ''accountant'' persons who are engaged in only clerical or ministerial tasks, the Board has further limited the disclosure required in Part VII of the Form, as originally proposed.

Further, in light of privacy and confidentiality concerns expressed by commenters, the Board has also eliminated the requirement to disclose the social security number (or comparable non-U.S. identifier) of each accountant listed on the roster.

Also, at least one commenter requested clarification of the time frame for reporting the information required by Part VII. To address this concern, the Board has added an instruction to the Form that specifies that applicants may submit information as of a date not earlier than 90 days prior to the submission of the application and that such information will be deemed current for purposes of the Form.

Part VIII—Consents of Applicant

As required by section 102(b)(3) of the Act, Part VIII of the Form requires applicants to furnish, as an exhibit to their applications, consents related to the applicant's and its associated persons' cooperation and compliance with any request for testimony or the production of documents made by the Board. Note 1 to the instruction makes clear that the consent and the language in the instruction (except for insertion of the applicant's name) must be verbatim. The note also specifies that the consents from the applicant's associated persons required by paragraph (b) of the Item must be secured by the applicant no later than 45 days after submitting the application or, for persons who become associated persons of the firm subsequent to the submission of the application, at the time of the person's association with the firm. The consents must be signed in accordance with Rule 2104, which, among other things, requires the manually signed version of the statement to be retained for seven years.

Many commenters indicated that compliance with Part VIII, as originally proposed, would cause an applicant to violate certain non-U.S. laws. In response to this concern, the Board has added Rule 2105 and corresponding instructions in the Form, which allow an applicant to withhold information from its application for registration, including the firm and associated person consents required by Part VIII, where disclosure of the information would cause the applicant to violate non-U.S. laws.

Further, to accommodate privacy restrictions related to employment in certain non-U.S. jurisdictions, the Board has added Note 3 to this Item, which narrows the scope of ''associated persons'' from whom non-U.S. applicants are required to secure consents. As revised, for non-U.S. applicants, the term ''associated persons'' as used in this item covers only those accountants who are partners or managers and who provided at least 10 hours of audit services for any issuer during the last calendar year.

In addition, some commenters noted that Part VIII, as originally proposed, did not specify the language to be used in the consents that the applicant is required to secure from its associated persons. In response to this comment, the Board has added Note 2 to this item, which sets forth the exact language to be used in the associated persons' consents. Moreover, in response to the suggestion that the Board extend the 45-day deadline for securing consents from associated persons in order to ease the administrative burden for larger firms, the Board has clarified that applicants must secure such consents not later than 45 days after submitting their applications. In other words, an applicant does not have to wait until its application is submitted to the Board to secure such consents, but can begin obtaining these consents as soon as possible. Further, many commenters objected to the blanket consent used in Part VIII and suggested that the Board amend its proposal to include a reservation in the consent form, to only require applicants to use their best efforts to secure the associated person consents, to clarify that the consent would only apply prospectively to

[37] The Board has used the term ''manager'' in Parts V, VII and VIII of the Form because of the term's use in, and familiarity to, the accounting profession. The term is intended to capture the highest level of supervisory position below the partner level of the firm.

independent contractors, and/or to limit the consents to cover only reasonable, and not simply any, requests by the Board. Section 102(b)(3) of the Act,[38] however, specifies the scope and contents of the consents, and the Board therefore has decided not to modify this item to include these suggested qualifications.[39] Some commenters expressed concern about the amount of work involved in securing, gathering and maintaining written consents from each of their associated persons in accordance with Rule 2104. While the Board is requiring that the applicant's consent and the associated persons' consents be manually signed and that such manually signed documents be retained for seven years in accordance with Rule 2104, the Board leaves it to the individual applicants to determine other details as to how such consents will be obtained and maintained internally.

Part IX—Signature of Applicant

Part IX requires an authorized partner or officer of the applicant to sign the application in accordance with Rule 2104 and to certify the application's completeness and accuracy. Incomplete and inaccurate applications are subject to possible disapproval under Rule 2106(b)(2).

Part X—Exhibits

Part X lists the exhibits that must accompany the application and includes instructions on the format for exhibits with multiple pages. The nature of each exhibit is described in the corresponding items, Rule 2105 or Rule 2300.

2. Statutory Basis

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

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Under the proposed rules, all public accounting firms must register with the Board if they wish to prepare or issue audit reports on issuers, as that term is defined in the Act and the Board's rules, or to play a substantial role in the preparation or issuance of such reports. In general, the information required to complete the Board's registration application is specifically required to be a part of those applications by section 102(b) of the Act. To the extent that Form 1 calls for information in addition to that specified in section 102(b), the additional information is closely related to the statutory minimum requirements, and is, in the Board's judgment, either necessary to facilitate the Board's responsibilities or reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application.

Moreover, to the extent permissible under the Act and consistent with the Board's responsibilities, the Board has sought to base the contents of the application on information public accounting firms currently collect, in part to avoid imposing any undue burden on applicants that could have a disproportionate effect on smaller public accounting firms. In addition, the proposed rules provide a mechanism for applicants to seek confidential treatment of any proprietary information included in their application that should not be publicly available. The Board has also allowed public accounting firms that do not currently prepare or issue audit reports, or play a substantial role in the preparation or issuance of audit reports, but that wish to enter this business, to register with the Board. Further, the Board has announced that registration fees will vary based on the size of the applicant and the number of its issuer audit clients.

Several commenters suggested that requiring foreign public accounting firms to register with the Board could discourage smaller foreign public accounting firms, and foreign public accounting firms that are not affiliated with large international networks of firms, from auditing issuers. The Board has given careful consideration to the impact of its registration rules on non-U.S. firms and has taken a number of steps to minimize any such effect. In particular, as described in Section II.A above, the Board has crafted certain changes to its original proposal to minimize, where permissible under the statute and consistent with the Board's responsibilities, the burdens on foreign public accounting firms applying for registration. Given these modifications, the Board believes that the cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms,[40] and therefore would not have a significant impact on competition. Moreover, the Board believes that the 180-day deferral of registration for non-U.S. firms should also minimize the administrative burden for smaller non-U.S. firms, also diminishing any anti-competitive effect.

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

The Board released its registration system proposal for public comment on March 7, 2003. The Board received 46 written comment letters relating to its proposal. In addition, on March 31, 2003, the Board convened a public roundtable to discuss special issues raised by registration and oversight of non-U.S. firms, at which 14 representatives of foreign governments, non-U.S. public accounting firms and professional organizations, and U.S. institutional investors participated.[41]

The Board has carefully considered all comments it has received. In response to the written comments received and remarks made at the roundtable, the Board has clarified and modified certain aspects of its proposed

[38] Section 102(b)(3) specifically requires that ''each application * * * include * * * a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board * * * and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm.''

[39] While commenters did not identify any state laws that conflict with the required consents, one commenter suggested that the Board make explicit that the Board's rules, as approved by the Commission, requiring the consents would preempt any contrary state law. The Board's rules implement Congress' determination in the Act that applicants for registration must agree to ''secure and enforce [such] consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with the firm.'' Accordingly, any otherwise applicable state or local law that conflicts with this requirement or stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress would be preempted. *See Crosby* v. *National Foreign Trade Council,* 530 U.S. 363, 372–73 (2000); *City of New York* v. *FCC,* 486 U.S. 57, 64 (1988).

[40] In general, under the Board's registration system, non-affiliated foreign public accounting firms will be required to respond to the same information requests as affiliated foreign public accounting firms applying for registration. Because much of the information requested in Form 1 is focused on the applicant's practice of auditing ''issuers,'' as that term is defined in the Act and the Board's rules, foreign public accounting firms with more issuer audit clients will necessarily be requested to provide more information to apply for registration than foreign public accounting firms with smaller practices auditing issuers.

[41] The following governments, firms and organizations participated in the public roundtable meeting: European Commission; U.K. Department of Trade and Industry; Embassy of Switzerland; Embassy of Australia; Financial Services Agency (Japan); Canadian Public Accountability Board; Wirtschaftspruferkammer (German Chamber of Accountants); Fédération des Experts Comptables (FEE); Ernst & Young (Brussels, Belgium); PricewaterhouseCoopers (Toronto, Canada); Deloitte Touche Tohmatsu (Santiago, Chile); KPMG (London); Pennsylvania Public Employees' Retirement System; and the State of Wisconsin Investment Board.

rules and form instructions. The changes made to the proposed rules and form instructions in response to these comments are summarized in Section II.A.1. above.

In addition, under section 106(c) of the Act, the Board and the Commission each have the authority to ''exempt any foreign public accounting firm'' from any provision of the Act as ''necessary or appropriate in the public interest or for the protection of investors.'' The Board received numerous comments in letters from public accounting firms, foreign governments and foreign professional accounting associations, requesting such exemptions from the Board's registration requirements, as well as its inspections and disciplinary programs.[42]

Some commenters expressed concerns about registration of non-U.S. public accounting firms, including that the Board's registration of non-U.S. public accounting firms (1) would be duplicative of existing or planned home-country auditor oversight programs, (2) would require information, the disclosure of which would violate foreign laws on confidentiality, data protection and privacy, (3) would require information that does not have clear equivalents in non-U.S. jurisdictions, (4) would require accumulation of information not already compiled and not readily available, and (5) would lessen competition among public accounting firms by discouraging some firms from registering.

In response to the concern that registration of non-U.S. public accounting firms would be duplicative of existing or planned auditor oversight programs, as an initial step, the Board sought, as part of its roundtable meeting, to gather information about existing or planned oversight bodies outside the United States. The Board has also commenced dialogue with non-U.S. oversight bodies in order to achieve its objectives generally, as well as to try to find ways to reduce administrative burdens and to provide for coordination in areas where there is a common programmatic interest, such as annual reporting, inspection and discipline.

Many commenters suggested that registration of non-U.S. firms would require information, the disclosure of which would violate non-U.S. laws, particularly those related to confidentiality, data protection and privacy. In response to this concern, the Board added Rule 2105 and corresponding instructions in Form 1, which allow applicants to withhold information from its application for registration where disclosure of the information would cause the applicant to violate non-U.S. laws. Also, in order to allow firms time to give full consideration to the potential conflict of law issues, the Board has afforded non-U.S. firms an additional 180 days to register.

Furthermore, in light of concerns with respect to conflicts with confidentiality, data protection, and privacy laws, the Board has eliminated or narrowed the scope of information required by Form 1, as originally proposed. Specifically, any requirements to provide Social Security numbers, taxpayer numbers, and comparable non-U.S. tax identifiers have been eliminated. In part to address concerns with respect to the confidentiality of information on criminal, civil and administrative proceedings in Part V, the Board has significantly narrowed the disclosure required for non-U.S. applicants. Also, the list of accountants associated with a non-U.S. firm has been narrowed. In particular, as revised, Form 1 requires non-U.S. accounting firms to list only those accountants who are proprietors, partners, principals, shareholders, officers or managers of the applicant and who each provide at least 10 hours of audit services for any issuer during the last calendar year. Finally, to accommodate privacy restrictions related to employment in certain non-U.S. jurisdictions, the scope of ''associated persons'' from whom the applicant is required to secure consents has been narrowed to cover only those accountants identified on the list of accountants. As discussed above, to the extent that a non-U.S. law would prohibit disclosure of information that is still required, new Rule 2105 permits a firm to withhold the information and submit instead (i) a copy of the conflicting non-U.S. law, in English, (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law, and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

The Board has eliminated or modified certain disclosure requirements where determining a non-U.S. equivalent may be particularly burdensome, in an effort to address concerns that registration would require information that does not have clear equivalents in non-U.S. jurisdictions. For example, in response to a comment that the term ''undergraduate degree'' was not meaningful in a non-U.S. context, the Board revised the educational reference in its originally proposed definition of accountant to ''a college, university or higher professional degree.'' The Board has also eliminated the requirement from its original proposal to disclose a ''violation of a substantially equivalent non-U.S. statute'' to certain provisions of the United States Code.

In response to concerns that registration of non-U.S. firms would require accumulation of information not already compiled and not readily available, the Board has allowed an additional 180 days for firms to compile information and to obtain any necessary consents or waivers from associated persons to provide the information requested by the form. Further, the Board has significantly modified and in some cases eliminated disclosure requirements, the information for which commenters noted, would be burdensome to gather. For example, Part III of Form 1, which as proposed required disclosure of information on firm revenues, has been eliminated. Moreover, with respect to Part II in Form 1, the Board has modified the disclosure categories for audit, non-audit, and other accounting services to track more closely those used by the Commission. As a practical matter, at the time when non-U.S. firms are required to be registered with the Board (*i.e.*, by April 19, 2004), the disclosure categories in effect will be those used in the Commission's recently revised auditor independence disclosure rules, with which foreign private issuers will be required to comply for periodic annual reports filed after December 15, 2003.

In addition, the Board has tried to facilitate the reporting in Part II by allowing applicants to use estimates to the extent that such information has not been previously disclosed or is not known. Finally, in an effort to minimize the administrative burden of compiling information for the registration process, the requirements in Form 1 to provide accountant names and license numbers, consents to cooperate with Board inspections and investigations, and information about certain legal proceedings, as applied to non-U.S. firms, have been significantly narrowed to include only partners and managers who participate in or contribute to the preparation of audit reports for issuers.

[42] The Board also received comment letters against such exemptions, for example on the grounds that ''[i]ncluding foreign auditors under the purview of the new Public Company Accounting Oversight Board would, thus, add a much-needed element of auditor oversight for firms reviewing corporations trading in U.S. markets.'' *See* Letter from Senator Carl Levin dated March 21, 2003 (in PCAOB Docket No. 1 public file).

Several commenters raised concerns that registration of non-U.S. firms would lessen competition among public accounting firms by discouraging some firms from registering. As described above, the Board has eliminated and modified many of the disclosure requirements originally proposed. Given these modifications, the Board believes that the cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms and therefore would not have a significant impact on competition. Moreover, the Board believes that the 180-day deferral of registration for non-U.S. firms should also minimize the administrative burden for smaller non-U.S. firms, also diminishing any anti-competitive effect.

While the Board believes that it must require registration of non-U.S. firms, it also recognizes that it must be flexible about how registration operates in the case of those firms and that it may not be practical to treat foreign accounting firms as if they were, for purposes of the Board's regulation, in all respects the same as U.S.-based firms. The Board is prepared to work with its foreign counterparts to find ways to accomplish the goals of the Act without subjecting foreign firms to unnecessary burdens or conflicting requirements. Where possible, the Board will seek to build compliance with its requirements on compliance with foreign regulatory regimes. The proposed 180-day deferral of foreign firm registration will afford the Board the opportunity to explore ways of accomplishing that goal with non-U.S. accounting oversight bodies.

In addition, the nature of the oversight to be exercised over registered foreign public accounting firms is a matter the Board has yet to resolve. The Board is aware that several countries have adopted or proposed corporate reforms that include new regulatory oversight of the auditing profession, and many countries have already adopted or planned programs to register, inspect and discipline accounting firms that prepare and issue audit reports for filing in those respective jurisdictions. The Board expects that the various reforms being considered in other jurisdictions will continue to improve the quality of audit reports prepared by firms worldwide. In this regard, the Board has already commenced dialogue with other oversight bodies outside the United States in order to achieve its objectives generally, as well as to try to find ways to reduce administrative burdens and to provide for coordination in areas where there is a common programmatic interest, such as annual reporting, inspection, and discipline.

III. Date of Effectiveness of the Proposed Rules 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 rules; or

(B) Institute proceedings to determine whether the proposed rules 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 or as necessary or appropriate in the public interest or for the protection of investors. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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 inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB–2003–03 and should be submitted by July 2, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47974; File No. SR–Amex–2003–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the Suspension of Transaction Charges for Certain iShares Funds

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

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

The Amex proposes to extend until June 30, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader, and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund and the iShares Lehman 7–10 year Treasury Bond Fund. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

Amex Equity Fee Schedule

I. Transaction Charges

No change.

II. Regulatory Fee

No Change.

Notes:

1. and 2. No change.

3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.