



PCAOB Release No. 2003-016  
September 29, 2003  
Page 2

Pursuant to Section 102 of the Act, the Board has previously adopted rules governing the process by which public accounting firms register with the Board.<sup>1/</sup> The Board is now adopting a rule to govern the process by which registered firms may withdraw from registration. Under the rule, a registered firm may seek to withdraw at any time by filing Form 1-WD. Withdrawal, however, is not automatic. The Board may order that withdrawal be delayed while the Board carries out a relevant inspection, investigation, or disciplinary proceeding. The Board may delay a requested withdrawal for up to eighteen months, and that period shall automatically be extended to cover any period necessary to complete a disciplinary proceeding commenced before the end of the eighteen month period.

The mere filing of a completed Form 1-WD would, however, have the almost immediate effect of minimizing most burdens and costs associated with registration. In addition, while the request for leave to withdraw is pending, the firm may not engage in the preparation or issuance of, or play a substantial role in preparing or furnishing, an audit report for a U.S. public company,<sup>2/</sup> other than to issue a consent to the use of an audit report for a prior period. The rule also provides that a firm that has filed a Form 1-WD may not publicly hold itself out as registered with the Board without specifying that its registration status is "registered – withdrawal request pending."

To implement its mechanism for registration withdrawal, the Board has adopted one rule (PCAOB Rule 2107) and a form (PCAOB Form 1-WD). The text of the rule, the instructions to the form, and a detailed discussion of the rule and the requirements of the form are appendices 1, 2, and 3 hereto. Section A of this release provides a general overview of the rule and form. Section B of this release describes the changes made to the rule and form in response to public comments.

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<sup>1/</sup> See Registration System for Public Accounting Firms, PCAOB Release No. 2003-007 (May 6, 2003).

<sup>2/</sup> This release uses the term "U.S. public companies" as shorthand for the companies that are "issuers" under the Act and the Board's rules. This includes domestic public companies, whether listed on an exchange or not, and foreign private issuers that have either registered, or are in the process of registering, a class of securities with the Commission or are otherwise subject to Commission reporting requirements.

A. Overview of the Rule Relating to Withdrawal from Registration

Under Rule 2107, a registered public accounting firm may at any time submit to the Board a request for leave to withdraw its registration. A request to withdraw must be submitted on Form 1-WD. The filing of the Form 1-WD will have the effect of acting as a notice of withdrawal, with withdrawal becoming effective on the 61st day after the request is filed, unless the Board orders that withdrawal be delayed, or unless a Board disciplinary proceeding is pending against the firm or any of its associated persons.

The rule imposes an eighteen-month limitation on the length of time that the Board may delay a firm's withdrawal unless a disciplinary proceeding has been commenced and is pending at the end of the specified period. If such a proceeding is pending, whether before a hearing officer, the Board, or the Commission or a court reviewing a Board sanction, then the period of delay of the withdrawal would automatically extend until completion of all such proceedings and reviews, including on and after any remand to the Board.

Form 1-WD is relatively short and simple. It requires basic identifying information, a description of any known ongoing regulatory or law enforcement investigations or proceedings involving the firm or any of its associated persons, and a certification that the firm is not participating in any audit (as defined in Board Rule 1001(a)(v)) and will not participate in any audit while the Form 1-WD is pending. The content of a filed Form 1-WD will be nonpublic, except that the Board will publicly disclose the fact that a firm has filed a Form 1-WD.

While the Board may delay a firm's withdrawal, beginning on the fifth day following the filing of a Form 1-WD, certain burdens of being a registered firm will be significantly reduced. First, any annual fee assessed after that date with respect to the firm shall be zero. Second, the firm may satisfy the annual reporting requirement by submitting a report stating that a completed Form 1-WD has been filed and is pending.<sup>3/</sup> Third, the Board may, in its discretion, forego any regular inspection of the firm that

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<sup>3/</sup> Section 102(d) of the Act imposes certain reporting requirements on registered public accounting firms. The Board anticipates adopting rules relating to such reporting.

PCAOB Release No. 2003-016  
September 29, 2003  
Page 4

would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b).<sup>4/</sup> The rule will provide a special registration designation for such firms: "registered – withdrawal request pending." In order to minimize the risk that such a firm might, intentionally or unintentionally, create the public impression that it is subject to the same regulatory processes as other registered firms, the rule prohibits a firm that has filed a Form 1-WD from publicly representing its registration status without specifying that that status is "registered – withdrawal request pending."

The rule provides that, beginning on the date of Board receipt of the Form 1-WD, the firm may not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report for a U.S. public company, other than to issue a consent to the use of an audit report for a prior period, unless the firm first withdraws the Form 1-WD.<sup>5/</sup> Finally, if a firm files a Form 1-WD that, through misstatement or omission, misleads the Board as to a material point, and the Board later discovers the misstatement or omission, the Board could, under the rule, void the withdrawal of the firm's registration for three years after the firm's registration is deemed withdrawn.

The Board's rules adopted today are substantially similar to the rules proposed by the Board on July 28, 2003. The operation of those rules was summarized in more detail in PCAOB Release No. 2003-014 (July 28, 2003).

## B. Public Comment Process and Board Responses

The Board proposed a rule and form on registration withdrawal, and released them for public comment, on July 28, 2003. The Board received 3 written comment letters.<sup>6/</sup> In response to these comments, the Board's final rules both clarify and modify

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<sup>4/</sup> Any regular inspection that was commenced sooner than the fifth day after the filing of Form 1-WD could continue to completion. The Board would also retain the option of ordering a special inspection.

<sup>5/</sup> A firm that has filed a Form 1-WD may, subject to certain conditions being met, withdraw the form at any time up until the time that its registration is deemed withdrawn.

<sup>6/</sup> The Board's responses to the comments are discussed in more detail in the section-by-section analysis in Appendix B. The comment letters are available on

PCAOB Release No. 2003-016  
September 29, 2003  
Page 5

several aspects of the proposal. Specifically, the Board has revised the original proposal by –

- Limiting to three years the period of time in which the Board may void a withdrawal for material inaccuracies or omissions in the withdrawal filing;
- Limiting to 18 months the maximum period for which the Board could delay a firm's withdrawal in the absence of a pending disciplinary proceeding; and
- Adding a new part IV to the instructions to Form 1-WD that allows a firm to describe a reason that it seeks to withdraw.

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On the 29th day of September, in the year 2003, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour  
Acting Secretary

September 29, 2003

APPENDICES –

1. Rule Relating to Withdrawal from Registration
2. Form 1-WD
3. Section-by-Section Analysis of Rule and Form 1-WD

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the Board's Web site – [www.pcaobus.org](http://www.pcaobus.org) – and will be attached to the Board's Form 19b-4, to be filed with the Commission.

**Appendix 1 – Rule Relating to Withdrawal from Registration**

**RULES OF THE BOARD**

**SECTION 2. REGISTRATION AND REPORTING**

**Part 1 – Registration of Public Accounting Firms**

**Rule 2107. Withdrawal from Registration**

**(a) Request for Leave to Withdraw**

Subject to the limitation described in paragraph (e), a registered public accounting firm's registration with the Board shall be deemed withdrawn if the firm requests leave to withdraw by filing a completed Form 1-WD and

- (1) the Board grants leave to withdraw, or
- (2) the Board does not, within 60 days of receipt of the request, order that withdrawal of the firm's registration be delayed.

**(b) Form 1-WD**

(1) A request for leave to withdraw shall be filed on Form 1-WD in accordance with the instructions contained therein. A completed Form 1-WD shall include, among other things, a statement signed by an authorized partner or officer of the firm certifying that the firm is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

(2) The contents of a completed Form 1-WD shall be non-public. The Board shall publicly disclose the identity of any firm as to which a request for leave to withdraw is pending and the date that the Board received a completed Form 1-WD.

**(c) Effect of Filing**

(1) Beginning on the date of Board receipt of a completed Form 1-WD, the firm that filed the Form 1-WD shall not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report, other than to

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 1 – Rule Relating to Withdrawal from Registration  
Page A1-2

issue a consent to the use of an audit report for a prior period, unless it first withdraws its Form 1-WD.

(2) Beginning on the fifth day following the Board's receipt of a completed Form 1-WD, and continuing for as long as the Form 1-WD is pending –

(i) the firm may satisfy the annual reporting requirement by submitting a report stating that a completed Form 1-WD has been filed and is pending;

(ii) any annual fee assessed shall be zero;

(iii) the Board shall have the discretion to forego any regular inspection that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b); and

(iv) the firm's registration status shall be designated as "registered – withdrawal request pending," and the firm shall not publicly represent its registration status without specifying it as "registered – withdrawal request pending."

**(d) Board Action**

Within 60 days of Board receipt of a completed Form 1-WD, the Board may order that withdrawal of registration be delayed for a period of up to eighteen months from the date of such receipt if the Board determines that such withdrawal would be inconsistent with the Board's responsibilities under the Act, including its responsibilities to conduct –

(1) inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers; or

(2) investigations or disciplinary proceedings with respect to any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of the Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.

**(e) Automatic Delay of Withdrawal for Pending Disciplinary Proceedings**

If, on the 60th day after the Board's receipt of a Form 1-WD or at the conclusion of any period for which the Board has ordered that withdrawal be delayed, there is pending any Board disciplinary proceeding against the firm that filed the Form 1-WD or against any associated person of that firm, or there is pending any Commission or court review of a Board sanction against such firm or person, the requested withdrawal from registration shall not take effect before the completion of all such disciplinary proceedings and reviews, unless the Board orders otherwise.

**(f) Withdrawal of Form 1-WD**

A registered public accounting firm that has submitted a Form 1-WD may withdraw the form at any time by filing with the Board a written notice of intent to withdraw the Form 1-WD along with any annual fee and annual report that the firm would have been required to submit during the period that the Form 1-WD was pending if not for the provisions of paragraph (c)(2).

**(g) Withdrawal Voided for Material Inaccuracies or Omissions**

If the Board determines, within three years after the date a firm's registration is deemed withdrawn, that there are reasonable grounds to believe that a firm that has withdrawn from registration filed with the Board a Form 1-WD that was materially incomplete or materially inaccurate on the date of filing, such firm's registration shall be reinstated, effective retroactively to the date the registration was deemed withdrawn.

## **Appendix 2 – Form 1-WD**

### **FORM 1-WD – REQUEST FOR LEAVE TO WITHDRAW FROM REGISTRATION**

#### **GENERAL INSTRUCTIONS**

1. The definitions in the *Board's* rules apply to this form. Italicized terms in the instructions to this form are defined in the *Board's* rules. See Rule 1001.
2. Any *registered public accounting firm* seeking to withdraw from registration with the *Board* must file this form with the *Board*.
3. In addition to these instructions, the *Board's* Rule 2107 governs applications for leave to withdraw from registration. Please read Rule 2107 and the instructions carefully before completing this form.
4. Unless otherwise directed by the *Board*, a *registered public accounting firm* seeking to withdraw from registration must submit this form to the *Board* electronically by completing the Web-based version of Form 1-WD. The date of such submission shall be deemed the date of *Board* receipt of the Form. The registered public accounting firm must also submit an original hard copy of the form with manual signatures in Item 3.1 and Item 5.1, with such signatures dated not later than the date of electronic submission.
5. Pursuant to Rule 2107, any Form 1-WD filed with the *Board* shall be non-public. A registered public accounting firm may submit with Form 1-WD a request for *Board* notification in the event that the *Board* is requested by subpoena or other legal process to disclose the Form 1-WD. The *Board* will make reasonable attempts to honor any such request, although the *Board* will make public the fact that the firm has requested to withdraw from registration.
6. Information submitted as part of this form must be in the English language.

#### **PART I – IDENTITY OF THE REGISTERED PUBLIC ACCOUNTING FIRM**

##### Item 1.1 Name of the Firm Requesting Leave to Withdraw

State the legal name of the firm requesting leave to withdraw; if different, also state the name or names under which the firm (or any predecessor) issues *audit reports*, or has issued any *audit report* during the period of the firm's registration with the *Board*.

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 2 – Instructions to Form 1-WD  
Page A2-2

#### Item 1.2 Firm Contact Information

State the physical address (and, if different, mailing address) of the firm's headquarters office. State the telephone number and facsimile number of the firm's headquarters office.

#### Item 1.3 Primary Contact and Signatories

State the name, title, physical business address (and, if different, business mailing address), telephone number, facsimile number, and e-mail address of a partner or authorized officer of the firm who will serve as the firm's primary contact with the *Board* regarding this application. Provide the same information for every person whose signature appears in Part III or Part V of the form, if any of those persons are different from the primary contact.

### **PART II – DESCRIPTION OF ONGOING REGULATORY OR LAW ENFORCEMENT PROCEEDINGS**

#### Item 2.1 Description of Ongoing Regulatory or Law Enforcement Proceedings

Identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part (1) conduct of the firm or (2) *audit*-related conduct of any of the firm's associated persons. For each such proceeding, state –

- a. The identity of the federal, state, or local authority conducting the proceeding;
- b. The caption or other identifying information of the proceeding;
- c. The date that the firm or a partner or officer of the firm first became aware of the proceeding;
- d. The firm's understanding of the current status of the proceeding; and

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 2 – Instructions to Form 1-WD  
Page A2-3

e. The conduct of the firm and the firm's associated persons that the proceeding addresses.

### **PART III – CERTIFICATION OF NONPARTICIPATION IN AUDITS**

#### Item 3.1 Statement of Nonparticipation in *Audits*

Furnish a statement, dated and signed on behalf of the firm by an authorized partner or officer of the firm, in the following form –

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

Note: Other than the insertion of the name of the firm the statement must be in the exact words contained in this instruction.

### **Part IV – REASONS FOR SEEKING LEAVE TO WITHDRAW (Optional)**

#### Item 4.1 Description of Reasons for Seeking Leave to Withdraw

Describe, if you choose to do so, the reason or reasons that the firm seeks leave to withdraw from registration.

### **PART V – SIGNATURE OF FIRM SEEKING LEAVE TO WITHDRAW**

#### Item 5.1 Signature of Authorized Partner or Officer

The request for leave to withdraw from registration must be signed on behalf of the firm by an authorized partner or officer of the firm. The signer must certify that he or she has reviewed the application; that the application is, based on the signer's knowledge, complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the firm. The signature must be accompanied by the title of the signer and the date of the signature.

**Appendix 3 – Section-by-Section Analysis of  
Rule Relating to Withdrawal from Registration and Form 1-WD**

The Board is adopting a rule (PCAOB Rule 2107) and a form (PCAOB Form 1-WD) relating to the process of withdrawal from registration. The rule and the form are discussed below.

**Rule Relating to Withdrawal from Registration**

**Rule 2107 – Withdrawal from Registration**

Rule 2107 consists of six paragraphs. Paragraph (a), "Request for Leave to Withdraw," describes in the most fundamental terms what must happen for a firm to withdraw from registration. To seek to withdraw, a firm must file with the Board a completed Form 1-WD requesting leave to withdraw. The requested withdrawal may take effect either through Board action (if the Board expressly grants leave to withdraw) or through Board inaction (if the Board does not, within 60 days of receipt of the Form 1-WD, order that withdrawal be delayed).

Because paragraph (a) is subject to the limitation in paragraph (e), however, withdrawal will not take effect through Board inaction if the firm that filed the Form 1-WD, or any associated person of that firm, is a party to a disciplinary proceeding pending before the Board, or to any Commission or court review of a Board disciplinary sanction. In that circumstance, paragraph (e) operates automatically to delay withdrawal of the firm's registration until full and final completion of all such proceedings.

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-2

One commenter suggested that the relevant time period in paragraph (a) be shortened from 60 to 45 days. The commenter also asked the Board to clarify that the number of days in this part of the rule are calendar days, not business days. After considering this comment, the Board has decided to leave this period at 60 calendar days.<sup>1/</sup> Sixty days corresponds to the analogous time period that the SEC uses for broker-dealers that seek to withdraw from registration,<sup>2/</sup> and the Board and its staff will need a sufficient period of time to consider carefully -- including, in appropriate circumstances, conducting a special inspection of the firm -- before ordering a delay of withdrawal.

Paragraph (b) concerns Form 1-WD. Paragraph (b)(1) provides that Form 1-WD must be filed in accordance with the instructions. Paragraph (b)(1) also provides that a completed Form 1-WD must include a specific statement, signed by an authorized partner or officer of the firm, certifying that the firm is not performing, and will not perform, certain functions with respect to audits. Specifically, the certifying person must state that the firm "is not currently, and will not during the pendency of its request for

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<sup>1/</sup> Under PCAOB Rule 1002, adopted by the Board today and described in PCAOB Release No. 2003-015 (September 29, 2003), prescribed periods in the Board's rules of 7 or fewer days mean business days, and longer periods mean calendar days. While the Board's time computation rule was proposed to apply only to adjudications, the Board has decided to adopt it as a general rule, applicable to all Board-prescribed time periods.

<sup>2/</sup> See 17 C.F.R. § 240.15b6-1(b).

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-3

leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period." Under the rule, a Form 1-WD that lacked this certification would not be complete and would not be sufficient to start the withdrawal process.

Paragraph (b)(2) addresses what aspects of a firm's request for leave to withdraw will be public. Under the rule, the Board would publicly disclose the identity of any firm that filed a completed Form 1-WD and would disclose the date of the Board's receipt of that form. The completed Form 1-WD, however, would be non-public and would be kept confidential by the Board. Aside from basic identifying information and the certification of nonparticipation in audits, a completed Form 1-WD will contain only a description of any known ongoing regulatory or law enforcement investigations or proceedings involving the firm or any of its associated persons. The Board does not believe there is any reason to require firms to make such information public in order to seek withdrawal from registration. Moreover, making such information public could hinder ongoing law enforcement efforts.

One commenter suggested that any information that the Board makes publicly available about a firm should cease to be publicly available at some point after withdrawal. The commenter suggested three years, which the commenter noted is

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-4

consistent with the AICPA SEC Practice Section practice, and which allows the information to remain public for as long as financial statements the firm has audited might still be included in an issuer's filings. While the Board does not believe the rule needs to address this issue, the Board plans to adopt a practice of eliminating online access to a firm's application and annual reports three years after withdrawal.

Paragraph (c) describes the effect of filing a Form 1-WD beyond just triggering Board consideration of whether to delay withdrawal. Paragraph (c)(1) provides that, beginning on the date of Board receipt of the Form 1-WD, the firm may not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report with respect to an issuer, other than to issue a consent to the use of an audit report for a prior period, unless the firm first withdraws the Form 1-WD. The Board believes this provision is necessary in order to avoid the risk that the Board would grant a pending request for leave to withdraw at a time when the firm is in fact engaged in conduct for which registration is required. A firm may, however, withdraw a pending Form 1-WD pursuant to paragraph (f) and thereby free itself to engage again in audit work for which registration is required.

The Board recognizes that a firm that files a Form 1-WD, and is therefore prohibited from engaging in work for which registration is required, is in a fundamentally different position from other registered firms as long as the Form 1-WD is pending. In

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-5

light of that fact, paragraph (c)(2) would minimize various burdens and costs of registration beginning after a brief five-day delay for administrative and processing purposes. Beginning on the fifth day after Board receipt of a completed Form 1-WD,<sup>3/</sup> the firm's registration-related burdens would be minimized in three ways throughout the period in which the request for leave to withdraw is pending. First, the rule will allow the firm to satisfy the annual reporting requirement by submitting a report merely stating that a completed Form 1-WD has been filed and is pending. Second, any annual fee assessed after that date against the firm shall be zero. Third, the Board could, in its discretion, forego any regular inspection of the firm that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b).<sup>4/</sup>

One commenter suggested that the rule provide that regular inspections be suspended entirely while a request for withdrawal is pending, beginning on the date the request to withdraw is received. While the Board's rule does not require the Board to proceed with a regular inspection, the Board believes that it should retain the discretion

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<sup>3/</sup> One commenter questioned the five-day delay under paragraph (c) of the rule and suggested that the effect of filing a Form 1-WD should be immediate. The five-day period provides the Board and its staff with a minimal period to verify by manual review that the submitted form is in fact a completed form and therefore entitles the filer to the effects in the paragraph of the rule. As reflected above, under Rule 1002, the five-day period in this rule will mean five business days.

<sup>4/</sup> Any regular inspection that was commenced sooner than the fifth day after the Board receipt of Form 1-WD could continue to completion. The Board would also retain the option of ordering a special inspection.

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-6

to do a regular inspection, if one is warranted. Given the Board's inherently limited resources, the Board does not anticipate performing regular inspections of firms with withdrawal requests pending, absent unusual circumstances.<sup>5/</sup>

The Board also believes, however, that a firm that has filed a Form 1-WD and is therefore not subject to regular inspection, should not publicly characterize its registration status with the Board in a way that might, intentionally or unintentionally, create the impression that it is subject to the same regulatory processes as other registered firms. For that reason, paragraph (c)(2) provides a special registration designation for such a firm – "registered – withdrawal request pending" – and prohibits such a firm from publicly representing its registration status without specifying that status as "registered – withdrawal request pending."

Five distinct events could terminate the period in which the provisions of paragraph (c)(2) would apply. First, the Board could affirmatively grant leave to withdraw at any time. Second, 60 days could elapse from Board receipt of the Form 1-WD without the Board taking any action, in which case, unless paragraph (e) applies,

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<sup>5/</sup> Likewise, the Board does not believe it needs to revise its rules to grant the Board discretion to forego a regular inspection immediately upon filing of a Form 1-WD. If a withdrawing firm files its Form 1-WD within five days of the commencement of a scheduled regular inspection, the Board, as a practical matter, has the discretion to delay any inspection that would otherwise begin in the five-day period after the Form 1-WD was filed, and then to forego the inspection altogether on the fifth day, if no inspection is warranted.

the firm's registration would be withdrawn. Third, the firm could withdraw the Form 1-WD pursuant to paragraph (f), in which case the firm would resume normal registration status, not subject to the special conditions of paragraph (c)(2). Fourth, the firm could be subject to a disciplinary proceeding during the period covered by paragraph (c)(2), and a Board order in that proceeding could revoke the firm's registration. Fifth, a period for which the Board ordered withdrawal delayed pursuant to paragraph (d) (whether or not extended by a disciplinary proceeding) could end, in which case, if the firm's registration had not been revoked in a disciplinary proceeding, the registration would be withdrawn.

Paragraph (d) provides that the Board may order that withdrawal of a firm's registration be delayed for a period of up to eighteen months from the date of the Board's receipt of a completed Form 1-WD. Under paragraph (d), the Board could order such a delay only if it acted within 60 days of receipt of the completed Form 1-WD and only if it determined that allowing withdrawal before the Board completed certain processes would be inconsistent with the Board's inspection, investigative, or disciplinary responsibilities under the Act.

There are legitimate reasons, in the public interest and for the protection of investors, that the Board may choose to delay a firm's withdrawal in certain circumstances. For example, if a firm views itself as being at risk of an imminent Board

sanction, such as revocation of its registration, the firm might seek to avoid the taint of that sanction by seeking to withdraw before revocation occurs. A firm might seek to withdraw to avoid an imminent inspection covering a period with respect to which the firm has some concerns about its conduct. A firm might seek to withdraw rather than cooperate, or require its associated persons to cooperate, with a Board investigation. These examples – which are only examples and not a limitation on the Board's discretion – illustrate the need for the Board to exercise judgment in determining whether to allow prompt withdrawal or whether to delay withdrawal to allow the Board to carry out its inspection, investigative, or disciplinary responsibilities under the Act.

Paragraph (d) imposes an eighteen-month limitation on the length of time that the Board may delay a firm's withdrawal. That provision, however, is subject to an exception in paragraph (e) if the Board has commenced a disciplinary action against the firm or one of its associated persons before the end of the period for which the Board ordered that withdrawal be delayed.

Several commenters asked for clarification of the reasons the Board might delay withdrawal. One commenter suggested that the rule should make clear what factors the Board will consider in determining whether to delay withdrawal. Another commenter suggested that withdrawal should not be delayed because of matters relating to an associated person if that associated person is itself another registered firm or is

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-9

primarily associated with another registered firm. After considering these comments, the Board has decided not to seek to add to, or create exceptions to, the general standard in the rule. While the circumstance cited by the commenter would certainly be relevant to the Board's determination, in light of the varied circumstances that may warrant a delay in withdrawal, the general standard should preserve flexibility for the Board to delay withdrawal in circumstances where withdrawal would be inconsistent with the Board's statutory mandate.

One commenter indicated that they believed the two-year period provided for in the Board's proposed rules was too long and suggested that the Board shorten the period to six months, unless the Board has initiated an investigation or a disciplinary proceeding. Under the Board's rules, however, the Board will make an initial determination within 60 days of whether a delay in withdrawal is required. The time period in paragraph (d) provides a maximum amount of time withdrawal can be delayed after this period without the Board initiating a disciplinary proceeding against the firm or one of its associated persons. The Board has, however, decided to shorten this period to eighteen months in the interests of seeking to assure withdrawing firms that their withdrawal will take no longer than absolutely necessary.

Paragraph (e) would operate to delay withdrawal of registration automatically in certain circumstances without the Board having to issue an order. The only condition

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-10

that gives rise to an automatic delay under paragraph (e) is a pending disciplinary proceeding (including pending Commission or court review of a Board disciplinary sanction) against the firm or an associated person of the firm. There are, however, two distinct points in time when that condition, if it exists, would trigger the automatic delay in paragraph (e). First, if a disciplinary proceeding is pending on the 60th day after Board receipt of the Form 1-WD, withdrawal is automatically delayed. Second, if the Board has ordered withdrawal delayed pursuant to paragraph (d) at a time when no disciplinary proceeding was pending, but such a proceeding is pending at the end of the period prescribed in the Board's order delaying withdrawal, withdrawal is automatically delayed beyond the end of that prescribed period.

If an automatic delay were triggered under paragraph (e), it would continue in effect until all relevant disciplinary proceedings (including any proceedings against the firm and any and all proceedings against associated persons of the firm) were finally concluded, unless the Board orders otherwise. The automatic delay would continue not only through the period of any final Board action, but also through any review of the Board's action by the Commission or the courts, and through any Board action on remand and any review of that Board action.

Paragraph (f) provides that a registered public accounting firm may withdraw a Form 1-WD at any time. To effect withdrawal of the form, the firm must submit a written

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-11

notice of withdrawal accompanied by (1) any annual fee that would have been due while the form was pending, if not for the operation of paragraph (c)(2), and (2) a complete version of any annual report that would have been due while the form was pending, if not for the operation of paragraph (c)(2).

Paragraph (g) provides that if a firm files a Form 1-WD that, through misstatement or omission, misleads the Board as to a material point, and the Board discovers the misstatement or omission within three years after the firm's registration was deemed withdrawn,<sup>6/</sup> the Board can void the withdrawal of the firm's registration. For example, if a firm failed to identify in its Form 1-WD certain law enforcement investigations that are required to be disclosed on the form, the Board could void the withdrawal, reinstate the firm's registration, and conduct any appropriate investigation just as it could have done if the firm had never withdrawn. The ability to void a withdrawal for filing a materially misleading Form 1-WD is a necessary component of the withdrawal process, since the Board's decision about withdrawal depends in part upon whether the circumstances call for the Board to conduct investigative or other steps in the public interest or for the protection of investors. Under the rule, if the Board voids a withdrawal, the firm's registration shall be reinstated retroactive to the date the registration was deemed withdrawn.

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<sup>6/</sup> The three-year limitation on this provision was added at the suggestion of a commenter.

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-12

One commenter asked the Board to address the process for re-registration after withdrawal, and suggested the Board consider a more streamlined procedure than the initial registration. In light of the varied circumstances in which firms may withdraw from registration, the Board believes that firms that have withdrawn should submit the same registration application as any other firm seeking to register.

Finally, one commenter expressed disagreement with the statement in "Frequently Asked Questions Regarding Registration with the Board," (July 18, 2003) that the Board might consider requiring the deregistration of firms that, for an extended period, have no audit clients and do not engage in any other activity requiring registration. This commenter asked the Board to explain more about when firms could expect such de-registration, what the process would be, and whether firms could challenge it. While the Board recognizes the commenter's concern, this release is not the appropriate place to address this issue further. Rule 2107 is solely about voluntary withdrawals from registration; any procedure for an involuntary de-registration would be the subject of a separate rulemaking.

### **Form 1-WD**

The rule also consists of instructions to PCAOB Form 1-WD, which is the form to be used by registered public accounting firms to request leave to withdraw from

registration. Form 1-WD consists of general instructions and five parts. Each of the parts of the form is explained in more detail below.

### **Part I – Identity of the Registered Public Accounting Firm**

Part I of the Form requires basic identifying information. For item 1.1, the firm must state its legal name and any other names under which the firm or any predecessor of the firm issues audit reports or has issued audit reports during the period of the firm's registration. Item 1.2 requires the firm to provide the physical address (and, if different, the mailing address), telephone number, and facsimile number of the firm's headquarters office. Item 1.3 requires the firm to identify a partner or other authorized officer of the firm who will serve as the firm's primary contact with the Board concerning the request to withdraw registration. For that person, and for any other person whose signature appears in Part III or Part IV of the form, item 1.3 requires the firm to provide a name, title, physical business address (and, if different, a business mailing address), telephone number, facsimile number, and e-mail address.

### **Part II – Description of Ongoing Regulatory or Law Enforcement Proceedings**

Item 2.1 of the form requires the firm to identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part any conduct of the firm or any audit-related conduct of the

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-14

firm's associated persons. The firm must identify the authority conducting the proceeding, supply a caption or other identifying information for the proceeding, state the date that the firm or a partner or officer of the firm first became aware of the proceeding, describe the firm's understanding of the current status of the proceeding, and describe the conduct of the firm and the firm's associated persons that the proceeding addresses.

One commenter suggested the information required in Part II should parallel the information required of a registering firm on Form 1. Because of the different purposes of the two forms, however, some of the information required in Form 1 (such as convictions or other completed proceedings) may not be relevant to withdrawal. Conversely, the information required by Form 1 would not include certain information that is relevant to withdrawal, such as information on ongoing investigations of the firm and its associated persons.

The same commenter also suggested limiting the information required on Form 1-WD to only information on proceedings involving the firm, rather than also including proceedings relating to an associated person. As to associated persons, however, Form 1-WD seeks only information on proceedings that involve audit-related conduct of any of the firm's associated persons. Such proceedings are likely to be relevant to the

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-15

Board's consideration of the firm's withdrawal request, and the Board has therefore decided to retain this part of the form.

This same commenter also suggested that a firm should be required to report only those matters that it has not previously disclosed either in its registration application in or in its annual or other periodic reporting.<sup>7/</sup> The Board agrees that a withdrawing firm should not have to repeat information it has previously furnished the Board. Accordingly, when appropriate, a firm may answer Part II of Form 1-WD with respect to a proceeding that the firm has previously reported by identifying the proceeding as still ongoing, incorporating previously reported information by reference, and providing the firm's current understanding of the proceeding's status.

Finally, the same commenter suggested that the Board eliminate parts (c) - (e) of item 2.1 because those same items were not part of Form 1, or, in the alternative, clarify or modify those parts of item 2.1 in certain respects. The Board does not believe these paragraphs should be deleted. As noted above, Form 1-WD serves different purposes from those served by Form 1 and, accordingly, different information is required. As to item 2.1(c), the commenter suggested using the date the firm was officially notified of the proceeding, rather than when the firm or a partner or officer of the firm first "became aware" of the proceeding. In some cases, however, a firm may be aware of an ongoing

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<sup>7/</sup> The Board has not yet adopted rules requiring annual or periodic reporting, although it anticipates doing so in the future.

PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-16

investigation, because one of its partners or officers is aware, and may not yet have been officially notified of the proceeding. Moreover, because this item is limited to partners and officers of the firm, the Board does not believe it will be burdensome.

The commenter also sought clarification of whether item 2.1(d), requesting the firm's understanding of the current status of the proceeding, seeks a short answer or a detailed description. The Board does not seek detailed descriptions under this item. A short description of the status of the proceeding (e.g., under investigation, case pending, etc.) is sufficient. Finally, the commenter asked for clarification of the level of detail sought in item 2.1(e). In responding to item 2.1(e), a general description of the case will be sufficient.

### **Part III – Certification of Nonparticipation in Audits**

Item 3.1 requires a representation by an authorized partner or officer of the firm, on behalf of the firm, in the following form (substituting only the name of the firm where indicated in brackets) –

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

As required by General Instruction number 4, a paper original of the form bearing a manual signature as to Item 3.1 must be submitted as well as the electronic submission

of the form. The manual signature must be dated not later than the date of the electronic submission.

**Part IV – Reasons for Seeking Leave to Withdraw (Optional)**

Item 4.1 allows the withdrawing firm to describe the reason or reasons the firm seeks leave to withdraw from registration. The item is optional; a withdrawing firm can decide whether or not to provide the information in this item. As suggested by a commenter, Item 4.1 has been added because it is conceivable that some explanations could in fact help to expedite the Board's decision process on withdrawal requests.

**Part V – Signature of Firm Seeking Leave to Withdraw**

Item 5.1 requires that the form be manually signed on behalf of the firm by an authorized partner or officer of the firm who certifies that he or she has reviewed the application and that, based on his or her knowledge, the application is complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the firm. Item 5.1 also requires that the signature be dated and accompanied by the title of the signer. As required by General Instruction number 4, a paper original of the form bearing a manual signature as to Item 5.1 must be submitted



PCAOB Release No. 2003-016  
September 29, 2003  
Appendix 3 – Section-by-Section Analysis  
Page A3-18

as well as the electronic submission of the form. The manual signature must be dated not later than the date of the electronic submission.