

File No. PCAOB-2008-05
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SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form 19b-4

Proposed Rule Change

By

Public Company Accounting Oversight Board

SEC Mail
Mail Processing
Section

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Washington, DC
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In accordance with Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of the Proposed Rule

(a) Pursuant to the provisions of Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") is filing with the Securities and Exchange Commission ("SEC" or "Commission") proposed rules consisting of two new rules (PCAOB Rules 2108 and 2109) concerning succeeding to the registration status of a predecessor firm and instructions for one form (Form 4). The proposed rules are attached as Exhibit A.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Board

(a) The Board approved the proposed rules, and authorized them for filing with the SEC, at an open meeting on July 29, 2008. No other action by the Board is necessary for the filing of the proposed rule change.

(b) Questions regarding this rule filing may be directed to Michael Stevenson, Deputy General Counsel (202-207-9054; stevensonm@pcaobus.org).

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

(a) Purpose

Under Section 102(a) of the Sarbanes-Oxley Act of 2002 and PCAOB Rule 2100, a public accounting firm must be registered with the PCAOB in order to prepare or issue audit reports for public companies or to play a substantial role in the preparation or furnishing of such audit reports. To become registered, a public accounting firm files an application for registration on PCAOB Form 1, which the Board may approve or

disapprove. The proposed rules identify the circumstances in which a firm may succeed to the registration status of a predecessor registered firm, without filing a new Form 1, and provide a mechanism for the firm to do so.

(b) Statutory Basis

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

4. 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. The proposed rules provide a registration succession mechanism that firms may elect to use but are not required to use.

5. Board's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

The Board released the rules and form instructions for public comment on May 23, 2006. See Exhibit 2(a)A. The Board received five written comment letters. See Exhibits 2(a)B and 2(a)C.

The Board has carefully considered all comments it has received. In response to the written comments received, the Board has clarified and modified certain aspects of the proposed rules and form instructions. The Board's response to the comments it received and the changes made to the rules and form instructions in response to these comments are summarized in Exhibit 3 to this filing.

6. Extension of Time Period for Commission Action

The Board does not consent to an extension of the time period specified in Section 19(b)(2) of the Securities Exchange Act of 1934.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) of the Securities Exchange Act

Not applicable.

8. Proposed Rules Based on Rules of Another Board or of the Commission

Not applicable.

9. Exhibits

Exhibit A – Text of Proposed Rules

Exhibit 1 – Form of Notice of Proposed Rule for Publication in the Federal Register.

Exhibit 2(a)(A) – PCAOB Release No. 2006-005 (May 23, 2006)

Exhibit 2(a)(B) – Alphabetical List of Comments

Exhibit 2(a)(C) – Comment Letters Received on Proposed Rules in PCAOB Release No. 2006-005

Exhibit 3 – PCAOB Release No. 2008-005 (July 29, 2008)

10. Signatures

Pursuant to the requirements of the Act and the Securities Exchange Act of 1934, as amended, the Board has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Public Company Accounting Oversight Board

By:


J. Gordon Seymour
General Counsel
and Secretary

August 4, 2008

Exhibit A – Text of Proposed Rules and Form Instructions

The Board has amended its rules by adding Rules 2108-2109 and adding instructions for a new form, Form 4. The new Rules and form instructions are set out below. Language added by these amendments is underlined. Other text that remains unchanged is indicated by " * * * " in the text below.

RULES OF THE BOARD

* * *

SECTION 2. REGISTRATION AND REPORTING Part 1 – Registration of Public Accounting Firms

* * *

2108. Succeeding to the Registration Status of a Predecessor

(a) In the event that a registered public accounting firm changes its form of organization or changes the jurisdiction under the law of which it is organized, in circumstances that do not involve an acquisition or combination as described in paragraph (b) of this Rule, the entity in its new form shall succeed to the registration status of the predecessor if the new entity is a public accounting firm and files a Form 4 in accordance with Rule 2109.

(b) In the event that a registered public accounting firm is acquired by an entity that is not a registered public accounting firm, or combines with any other entity or entities to form a new legal entity –

(1) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to each subpart of Item 3.2.e of that Form 4 is "no," that entity shall succeed to the registration status of the registered firm;

(2) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to any subpart of Item 3.2.e of that Form 4 is other than "no," that entity shall not succeed to the registration status of the registered firm; provided, however, that if that entity represents on Form 4 that it has filed, or that it intends to file within 45 days of the effective date of the acquisition or combination, an application for registration on Form 1, then –

(i) subject to the qualifications in subparagraphs (ii), (iii), and (iv), that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will

cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of the acquisition or combination as reported on Form 4;

(ii) subject to the qualifications in subparagraphs (iii) and (iv), if the acquisition or combination took effect before the effective date of this rule, that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of this rule;

(iii) if the Board requests additional information from the entity pursuant to Rule 2106(c) with less than 60 days remaining in the original transitional period, the entity's temporary succession to registration status shall continue to the date that is 60 days after the date of the Board's request; and

(iv) if, after the original transition period has been extended pursuant to subparagraph (iii), the Board makes any further requests for additional information from the entity pursuant to Rule 2106(c), the Board may in its discretion extend the temporary succession to registration status for such finite period as the Board shall specify.

(c) Subject to paragraph (d) of this rule, a public accounting firm that results from events described in paragraphs (a) or (b) of this rule shall not, in the absence of compliance with the provisions of Rule 2109, succeed to the registration status of a predecessor registered public accounting firm.

(d) Notwithstanding paragraph (c) of this rule, if a public accounting firm's failure to comply with the provisions of Rule 2109 is solely a failure concerning the timeliness of the submission, the firm may request leave to file Form 4 out of time by indicating and supporting that request in accordance with the instructions to the form. The Board will evaluate any such request in light of the relevant facts and circumstances and the public interest and may, in its discretion, grant or deny the request. If the Board grants leave to file the form out of time, the Form 4 shall be deemed filed and the provisions of paragraphs (a) and (b) shall apply as if the Form 4 had been timely filed. A Form 4 that has been submitted out of time may be withdrawn by the firm at any time before the Board has approved or disapproved the request for leave to file out of time.

2109. Procedure for Succeeding to the Registration Status of a Predecessor

(a) A public accounting firm seeking to succeed to the registration status of a predecessor registered public accounting firm pursuant to the provisions of Rule 2108 must do so by filing a Form 4 –

(1) no later than the 14th day after the change or business combination takes effect, if the change or business combination takes effect on or after **[insert effective date of this rule]**; or

(2) no later than **[insert date 14 days after effective date of this rule]**, if the change or business combination took effect before **[insert effective date of this rule]**.

(b) A public accounting firm filing a Form 4 must do so by filing the Form 4 in accordance with the instructions to that form. Unless directed otherwise by the Board, a public accounting firm filing a Form 4 must file the Form 4 and exhibits thereto electronically with the Board through the Board's Web-based system.

(c) A Form 4 shall be deemed to be filed on the date that the public accounting firm submits a Form 4 in accordance with Rule 2109(b) that includes the signed certification required in Part V of Form 4, *provided, however*, that any report so submitted after the applicable deadline as prescribed in paragraph (a) of this rule, shall not be deemed filed unless and until the Board, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

(d) The provisions of Rule 2204 concerning signatures, shall apply to each signature required by Form 4 as if it were a signature to a report on Form 3. Rule 2205 concerning amendments, and Rule 2207 concerning assertions of conflicts with non-U.S. laws, shall apply to any submission on Form 4 as if the submission were a report on Form 3.

FORM 4 – SUCCEEDING TO REGISTRATION STATUS OF PREDECESSOR

GENERAL INSTRUCTIONS

1. Purpose of this Form. Effective **[insert effective date of Rule 2109]**, this Form must be used to submit information, representations, and affirmations to the *Board*, pursuant to Rule 2109, by a *public accounting firm* that seeks to succeed to the registration status of a predecessor firm in circumstances described in Rule 2108.
2. Defined Terms. 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*. In addition, as used in the instructions to this Form, the term "the Firm" means the *public accounting firm* that is submitting this Form to the *Board*, and the term "the predecessor firm" means the *registered public accounting firm* identified in Item 1.1.a of the Form.
3. Submission of this Form. Unless otherwise directed by the *Board*, the Firm must submit this Form, and all exhibits to this Form, to the *Board* electronically by completing the Web-based version of this Form available on the *Board's Website*. The Firm must use the predecessor firm's user ID and password to access the system and submit the Form. In the event of a transaction involving the combination of multiple *registered public accounting firms*, the Firm must access the system using only the user ID and password of the firm specifically identified in Item 1.1.a, and not those of any other *registered public accounting firm*.
4. When this Form Should be Submitted and When It is Considered Filed. To succeed to the registration status of the predecessor firm pursuant to the provisions of Rule 2108(a) or (b), the Firm must provide the information and representations required by this Form, in accordance with the instructions to this Form, and must file the Form no later than the 14th day after the effective date of the change in form of organization, change in jurisdiction of organization, or business combination. Different timing requirements apply with respect to events that occurred before **[insert effective date of Rule 2109]**. See Rule 2109(a)(2). Form 4 is considered filed when the Firm has submitted to the *Board*, through the *Board's* Web-based reporting system, a Form 4 that includes the signed certification required in Part V of Form 4, *provided, however*, that any Form 4 so submitted after the applicable filing deadline shall not be deemed filed unless and until the *Board*, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

5. Seeking Leave To File this Form Out of Time. To request leave to file Form 4 out of time, pursuant to the provisions of Rule 2108(d), the Firm must file the request on Form 4 and must attach as Exhibit 99.5 a detailed statement describing why, despite the passage of time since the event described on the Form 4, the *Board* should permit the Firm to succeed to the registration status of the predecessor firm. Any Form 4 that has been submitted out of time, and as to which a *Board* decision on whether to allow the form to be filed is pending, may be withdrawn by accessing the pending submission in the *Board's* Web-based system and selecting the "Withdraw" option.
6. Completing the Form. The Firm must complete Parts I, II, IV and V of this Form. Part III should be completed to the extent applicable, as described more fully in the instructions to Part II of the Form.
7. Amendments to this Form. Amendments shall not be submitted to update information into a Form 4 that was correct at the time the Form was submitted, but only to correct information that was incorrect at the time the Form was submitted or to provide information that was omitted from the Form and was required to be provided at the time the Form was submitted. When submitting a Form 4 to amend an earlier submitted Form 4, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 4 all information, affirmations, and certifications that were required to be included in the original Form 4. The Firm may access the originally filed Form 4 through the *Board's* Web-based system and make the appropriate amendments without needing to re-enter all other information. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2205 concerning amendments apply to any submission on this Form as if the submission were a report on Form 3.)

Note: The *Board* will designate an amendment to a report on Form 4 as a report on "Form 4/A."

Note: Any change to a Form 4 that was originally submitted out of time, and as to which a *Board* decision on whether to allow the form to be filed is pending, shall not be treated as an amendment. To make a change to any such pending Form 4 submission, the Firm must access the pending submission in the *Board's* Web-based system, select the "Withdraw and Replace" option, and submit a new completed Form 4 in place of the previously pending submission. The certification required in Part V of the new submission must be executed specifically for the replacement version of the Form and dated accordingly.

8. Rules Governing this Form. In addition to these instructions, the *rules* contained in Part 2 of Section 2 of the *Board's* rules govern this Form. Please read these *rules* and the instructions carefully before completing this Form.

9. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Exhibit 99.3 or Exhibit 99.5 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. If the Firm requests confidential treatment, it must identify the information in Exhibit 99.3 or Exhibit 99.5 that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, an exhibit that complies with the requirements of Rule 2300(c)(2). The *Board* will determine whether to grant confidential treatment requests on a case-by-case basis. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of that failure.
10. Assertions of Conflicts with Non-U.S. Law. If the Firm is a *foreign registered public accounting firm*, the Firm may, unless otherwise directed by the *Board* pursuant to Rule 2207(e), decline to provide the affirmation required by Item 4.1 of this Form and any answer required by Item 3.2.e of this Form if doing so would constitute a violation of non-U.S. law by the Firm and the Firm proceeds in accordance with Rule 2207. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2207 apply to any submission on this Form as if the submission were a report on Form 3.) If the firm withholds the affirmation or answer, the Firm must indicate, in accordance with the instructions in the relevant Part of the Form, that it has done so.
11. Language. Information submitted as part of this Form, including any exhibit to this Form, must be in the English language.

PART I – IDENTITY OF THE FIRM AND CONTACT PERSONS

Item 1.1 Names of Firm and Predecessor *Registered Public Accounting Firm*

a. State the legal name of the *registered public accounting firm* to whose registration status the Firm seeks to succeed.

Note: The name provided in Item 1.1.a should be the legal name of the *registered public accounting firm* as last reported to the *Board* on Form 1 or Form 3. This is the firm referred to in this Form as "the predecessor firm." In accessing and submitting this Form through the *Board's* Web-based system, the Firm must use the predecessor firm's user ID and password.

b. State the legal name of the Firm filing this Form.

Note: The name provided in Item 1.1.b will be the name under which the Firm is registered with the *Board* if this Form is filed in accordance with Rule 2109.

c. If different than the name provided in Item 1.1.b, state the name or names under which the Firm issues or intends to issue *audit reports*.

Item 1.2 Contact Information of the Firm

a. State the physical address (and, if different, mailing address) of the Firm's headquarters office.

b. State the telephone number and facsimile number of the Firm 's headquarters office. If available, state the Website address of the Firm.

Item 1.3 Primary Contact and Signatory

a. State the name, business title, physical business address (and, if different, business mailing address), business telephone number, business facsimile number, and business e-mail address of a partner or authorized officer of the Firm who will serve as the Firm's primary contact with the *Board*, including for purposes of this Form 4, any annual reports filed on Form 2, and any special reports filed on Form 3.

PART II – GENERAL INFORMATION CONCERNING THE FILING OF THIS FORM

Item 2.1 Reason for Filing this Form

Indicate, by checking the box for either Item a or Item b below, the reason the Firm is filing this Form. Then proceed to the Parts and Items of this Form indicated parenthetically for the relevant item and provide the information described there. Provide responses only to those Parts and Items of the Form specifically indicated for

the event or events that the Firm identifies in this Part II as the reason for filing this Form. (For example, if the Form is being submitted because the Firm has changed its form of organization, check the box for Item 2.1.a, and complete only Item 3.1 and Parts IV and V of the Form. Complete Item 2.2 or Item 2.3 if applicable.)

a. There has been a change in the Firm's form of organization, or the Firm has changed the jurisdiction under the law of which it is organized. (Complete Item 3.1, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

b. There has been an acquisition of a *registered public accounting firm* by an entity that was not a registered public accounting firm at the time of the acquisition, or a *registered public accounting firm* has combined with another entity or other entities to form a new legal entity. (Complete Item 3.2, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

Item 2.2 Request for Leave To File this Form Out of Time

If this Form is not submitted in accordance with Rule 2109(b) on or before the filing deadline set by Rule 2109(a), the Firm may request leave to file this Form 4 out of time by checking the box for this Item, completing this Form 4 as is otherwise required, and providing, as Exhibit 99.5 to this Form, a description of the reason(s) the Form was not timely filed and a statement of the grounds on which the Firm asserts that the *Board* should grant leave to file the Form out of time.

Note: Requests for leave to file Form 4 out of time are not automatically granted. See Rule 2108(d).

Item 2.3 Amendments

If this is an amendment to a Form 4 previously filed with the *Board* –

a. Indicate, by checking the box corresponding to this item, that this is an amendment.

b. Identify the specific Item numbers of this Form (other than this Item 2.3) as to which the Firm's response has changed from that provided in the most recent Form 4 or amended Form 4 filed by the Firm with respect to the event reported on this Form.

PART III – CHANGES IN THE FIRM

Item 3.1 Changes in Form of Organization or in Relevant Jurisdiction

If this Form 4 is being submitted in connection with a change in the Firm's form of organization or a change in the jurisdiction under the law of which the Firm is organized

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- a. State the Firm's current (i.e., after the change in legal form or jurisdiction) legal form of organization;
- b. Identify the jurisdiction under the law of which the Firm is organized currently (i.e., after the change in legal form or jurisdiction); and
- c. State the date that the change took effect.
- d. Affirm that, after the change reported or described in this Item 3.1, the Firm is a public accounting firm under substantially the same ownership as the predecessor firm.

Note: Neither the Act nor Board rules include any provision by which a registered public accounting firm may, in effect, transfer its Board registration to another entity. Rule 2108(a), in conjunction with this Form, allows the succession of registration status in circumstances in which a registered public accounting firm changes its legal form of organization while remaining under substantially the same ownership. For purposes of this Item, the Firm is considered to be under substantially the same ownership as the predecessor firm if a majority of the persons who held an equity ownership interest in the predecessor also constitute a majority of the persons who hold an equity ownership interest in the Firm.

- e. If, in connection with the change described in this Item 3.1, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the Board by the predecessor firm, provide as to each such license –
 1. the name of the issuing state, agency, board, or other authority;
 2. the number of the license or certification;
 3. the date the license or certification took effect.
- f. If, in connection with the change described in this Item 3.1, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license –
 1. the name of the issuing state, agency, board, or other authority;
 2. the number of the license or certification; and

3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

Item 3.2 Acquisitions of, or Combinations Involving, A Registered Public Accounting Firm

a. If this Form 4 is being submitted in connection with a transaction concerning which a person who holds an equity ownership interest in the Firm, or is employed by the Firm, can certify the points set out in Item 3.2.b. and Exhibit 99.4, –

1. Provide the name of each entity, other than the predecessor firm, that was involved in the transaction and that was a registered public accounting firm immediately before the transaction, and as to each such entity –

(i) affirm that the entity has filed with the Board a request for leave to withdraw from registration on Form 1-WD; and

(ii) state the date that the entity filed Form 1-WD;

2. Provide the name of each entity, including any acquiror, that was involved in the transaction and that was not a registered public accounting firm immediately before the transaction;

3. Provide the date that the transaction took effect; and

4. Provide a brief description of the nature of the transaction.

b. Provide as Exhibit 99.4 to this Form, a statement in the form set out below, signed by a person who, immediately before the transaction, was an officer of, or held an equity ownership interest in, the predecessor firm and who now either holds an equity ownership interest in, or is employed by, the Firm. The statement must be submitted on behalf of the Firm. Exhibit 99.4 must include a signature that appears in typed form in the electronic submission and a corresponding manual signature retained by the Firm in accordance with Rule 2109(d). The signature must be accompanied by the signer's current title, the signer's title immediately before the event described in Item 3.2.a, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address. Other than the insertion of the relevant names, Exhibit 99.4 must be in the exact following words –

On behalf of [name of the Firm], I certify that (1) I was an officer of, or held an equity ownership interest in, [name of predecessor firm] immediately before the transaction described in Item 3.2.a of the Form 4 to which this exhibit is attached; (2) immediately before that transaction [name of predecessor firm] was a registered public accounting firm; (3) as part of that transaction, a majority of the persons who held equity ownership interests in [name of predecessor firm] obtained equity ownership interests in, or

became employed by, [name of the Firm]; (4) [name of predecessor firm] intended that [name of the Firm] succeed to the Board registration status of [name of predecessor firm] to the extent permitted by the Board's rules; and (5) [name of predecessor firm] is no longer a public accounting firm.

c. If, in connection with the transaction described in Item 3.2.a, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the Board by the predecessor firm, provide, as to each such license –

1. the name of the issuing state, agency, board or other authority;
2. the number of the license or certification; and
3. the date the license or certification took effect.

d. If, in connection with the transaction described in Item 3.2.a, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license –

1. the name of the issuing state, agency, board, or other authority;
2. the number of the license or certification; and
3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

e. Provide a "yes" or "no" answer to each of the following questions –

1. Is there identified in Item 3.2.a.2 any entity that, if it were filing an application for registration on Form 1 on the date of the certification in Part V of this Form, would have to provide an affirmative response to Item 5.1.a of Form 1 in order to file a complete and truthful Form 1?

Note: In considering whether an affirmative response would be required to Item 5.1.a of Form 1, the Firm should take into account the guidance provided by question number 33 in Frequently Asked Questions Regarding Registration with the Board, PCAOB Release No. 2003-011A (Nov. 13, 2003).

2. Is there identified in Item 3.2.a.2 any entity that (i) issued an audit report with respect to an issuer on or after October 22, 2003 (or, if the entity is a non-U.S. entity,

July 19, 2004), while not registered with the Board, and (ii) has never had an application for registration on Form 1 approved by the Board?

3. Is the Firm operating without holding any license or certification issued by a state, agency, board, or other authority authorizing the Firm to engage in the business of auditing or accounting?

Note: If the Firm answers "yes" to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law prohibits it from providing an answer, the Firm cannot succeed outright to the registration of the predecessor. If this Form 4 is submitted in accordance with Rule 2109, however, the Firm will temporarily succeed to the registration of the predecessor for a transitional period as described in Rule 2108(b)(2) as long as the Firm makes the representation required in Item 3.2.f below. If the Firm answers "yes" to any question in Item 3.2.e or asserts as to any of those questions that non U.S. law prohibits it from providing an answer but fails to make the representation required in Item 3.2.f, this Form 4 will not be accepted for filing and the Firm will not succeed to the predecessor's registration even on a temporary basis. See Rule 2108(b)(2).

f. If the Firm answered "yes" to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law prohibits it from providing an answer, affirm, by checking the box corresponding to the appropriate item, that one of the following statements is true –

1. The Firm has filed an application for registration on Form 1 on or after the date provided in Item 3.2.a.3.

2. The Firm intends to file an application for Registration on Form 1 no later than 45 days after the date provided in Item 3.2.a.3.

PART IV – CONTINUING OBLIGATIONS

Item 4.1 Continuing Consent to Cooperate

Affirm that –

a. The Firm consents to cooperate in and comply with any request for testimony or the production of documents made by the Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002;

b. The Firm has secured from each of its associated persons, and agrees to enforce as a condition of each such person's continued employment by or other association with the Firm, a consent indicating that the associated person consents to cooperate in and comply with any request for testimony or the production of documents made by the Board in furtherance of its authority under the Sarbanes-Oxley Act of 2002, and that the

associated person understands and agrees that such consent is a condition of his or her continued employment by or other association with the Firm; and

c. The Firm understands and agrees that cooperation and compliance, as described in Item 4.1.a., and the securing and enforcing of consents from its associated persons as described in Item 4.1.b., is a condition to the continuing effectiveness of the registration of the Firm with the Board.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any associated person that is a registered public accounting firm.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any associated person that is a foreign public accounting firm in circumstances where that associated person asserts that non-U.S. law prohibits it from providing the consent, so long as the Firm possesses in its files documents relating to the associated person's assertion about non-U.S. law that would be sufficient to satisfy the requirements of subparagraphs (2) through (4) of Rule 2207(c) if that associated person were a registered public accounting firm filing a Form 2 and withholding this affirmation. This exception to the affirmation in Item 4.1.b. does not relieve the Firm of its obligation to enforce cooperation and compliance with Board demands by any such associated person as a condition of continued association with the Firm.

Note: If the Firm is a foreign registered public accounting firm, the affirmations in Item 4.1 that relate to associated persons shall be understood to encompass every accountant who is a proprietor, partner, principal, shareholder, officer, or manager of the Firm and who provided at least ten hours of audit services for any issuer during the reporting period.

Item 4.2 Continuing Responsibility to the Board for Previous Conduct

Affirm that, for purposes of the Board's authority with respect to registered public accounting firms, including but not limited to the authority to require reporting of information and the authority to impose disciplinary sanctions, the Firm either has retained or assumes responsibility for the conduct of any predecessor registered public accounting firm before the change or business combination reported on this Form took effect.

Note: As used in Item 4.2 the term "predecessor registered public accounting firm," means (1) in circumstances not involving a transaction described in Item 3.2, the predecessor firm and (2) in circumstances involving a transaction described in Item 3.2, each registered public accounting firm that was involved in the business combination.

Note: The continuing responsibility in Item 4.2 includes, among other things, responsibility for reporting information on Form 2 and events on Form 3. Thus, for example, if a registered public accounting firm experienced a Form 3 reportable event before the event that is the subject of this Form, the Firm, as successor, has the obligation to report that event on Form 3, and bears responsibility for any failure by any predecessor to have filed a timely Form 3 to report the matter.

Note: The Board's rules do not require that any entity retain or assume responsibility as set forth above. In the absence of an affirmation that it retains or assumes responsibility for such conduct at least for purposes of the Board's authority, however, an entity cannot succeed to the Board registration status of any predecessor entity. See Rule 2108.

PART V – CERTIFICATION OF THE FIRM

Item 5.1 Signature of Partner or Authorized Officer

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2109(d), both a signature that appears in typed form within the electronic submission and a corresponding manual signature retained by the Firm. The signer must certify that –

- a. the signer is authorized to sign this Form on behalf of the Firm;
- b. the signer has reviewed this Form;
- c. based on the signer's knowledge, this Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and
- d. either –
 1. based on the signer's knowledge, the Firm has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, with respect to the event or events being described on this Form, or
 2. based on the signer's knowledge –
 - (A) the Firm is a foreign public accounting firm and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form other than an affirmation required by Item 4.1 and/or an answer to Item 3.2.e.; and

(B) the Firm asserts that it is prohibited by non-U.S. law from providing any such withheld affirmation or response to the Board on this Form and, with respect to each such withheld affirmation or response, the Firm has made the efforts described in PCAOB Rule 2207(b) and has in its files the materials described in PCAOB Rule 2207(c).

The signature must be accompanied by the signer's title, the capacity in which the signer signed the Form, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address.

PART VI – EXHIBITS

To the extent applicable under the foregoing instructions, each report must be accompanied by the following exhibits:

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.3 Materials Required by Rule 2207(c)(2)–(4) – *Submit Only as an Exhibit to an Amended Form 4 in Response to a Request Made Pursuant to Rule 2207(d)*

Exhibit 99.4 Acknowledgment Concerning Registration Status in Certain Transactions

Exhibit 99.5 Statement in Support of Request for Leave To File Form 4 Out of Time.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. PCAOB-2008-05)

[Date]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on
Succeeding to the Registration Status of a Predecessor Firm

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on August 4, 2008, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule changes 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 rule from interested persons.

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

On July 29, 2008, the Board adopted rules and a form related to succeeding to the registration status of a predecessor firm. New PCAOB Rules 2108-2109 and the instructions to a new form, Form 4, are set out below.

SECTION 2. REGISTRATION AND REPORTING

Part 1 – Registration of Public Accounting Firms

* * *

2108. Succeeding to the Registration Status of a Predecessor

(a) In the event that a registered public accounting firm changes its form of organization or changes the jurisdiction under the law of which it is organized, in circumstances that do not involve an acquisition or combination as described in

paragraph (b) of this Rule, the entity in its new form shall succeed to the registration status of the predecessor if the new entity is a public accounting firm and files a Form 4 in accordance with Rule 2109.

(b) In the event that a registered public accounting firm is acquired by an entity that is not a registered public accounting firm, or combines with any other entity or entities to form a new legal entity –

(1) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to each subpart of Item 3.2.e of that Form 4 is "no," that entity shall succeed to the registration status of the registered firm;

(2) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to any subpart of Item 3.2.e of that Form 4 is other than "no," that entity shall not succeed to the registration status of the registered firm; provided, however, that if that entity represents on Form 4 that it has filed, or that it intends to file within 45 days of the effective date of the acquisition or combination, an application for registration on Form 1, then –

(i) subject to the qualifications in subparagraphs (ii), (iii), and (iv), that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after

the effective date of the acquisition or combination as reported on Form 4;

(ii) subject to the qualifications in subparagraphs (iii) and (iv), if the acquisition or combination took effect before the effective date of this rule, that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of this rule;

(iii) if the Board requests additional information from the entity pursuant to Rule 2106(c) with less than 60 days remaining in the original transitional period, the entity's temporary succession to registration status shall continue to the date that is 60 days after the date of the Board's request; and

(iv) if, after the original transition period has been extended pursuant to subparagraph (iii), the Board makes any further requests for additional information from the entity pursuant to Rule 2106(c), the Board may in its discretion extend the temporary succession to registration status for such finite period as the Board shall specify.

(c) Subject to paragraph (d) of this rule, a public accounting firm that results from events described in paragraphs (a) or (b) of this rule shall not, in the absence of

compliance with the provisions of Rule 2109, succeed to the registration status of a predecessor registered public accounting firm.

(d) Notwithstanding paragraph (c) of this rule, if a public accounting firm's failure to comply with the provisions of Rule 2109 is solely a failure concerning the timeliness of the submission, the firm may request leave to file Form 4 out of time by indicating and supporting that request in accordance with the instructions to the form. The Board will evaluate any such request in light of the relevant facts and circumstances and the public interest and may, in its discretion, grant or deny the request. If the Board grants leave to file the form out of time, the Form 4 shall be deemed filed and the provisions of paragraphs (a) and (b) shall apply as if the Form 4 had been timely filed. A Form 4 that has been submitted out of time may be withdrawn by the firm at any time before the Board has approved or disapproved the request for leave to file out of time.

2109. Procedure for Succeeding to the Registration Status of a Predecessor

(a) A public accounting firm seeking to succeed to the registration status of a predecessor registered public accounting firm pursuant to the provisions of Rule 2108 must do so by filing a Form 4 –

(1) no later than the 14th day after the change or business combination takes effect, if the change or business combination takes effect on or after [insert effective date of this rule]; or

(2) no later than [insert date 14 days after effective date of this rule], if the change or business combination took effect before [insert effective date of this rule].

(b) A public accounting firm filing a Form 4 must do so by filing the Form 4 in accordance with the instructions to that form. Unless directed otherwise by the Board, a public accounting firm filing a Form 4 must file the Form 4 and exhibits thereto electronically with the Board through the Board's Web-based system.

(c) A Form 4 shall be deemed to be filed on the date that the public accounting firm submits a Form 4 in accordance with Rule 2109(b) that includes the signed certification required in Part V of Form 4, *provided, however*, that any report so submitted after the applicable deadline as prescribed in paragraph (a) of this rule, shall not be deemed filed unless and until the Board, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

(d) The provisions of Rule 2204 concerning signatures, shall apply to each signature required by Form 4 as if it were a signature to a report on Form 3. Rule 2205 concerning amendments, and Rule 2207 concerning assertions of conflicts with non-U.S. laws, shall apply to any submission on Form 4 as if the submission were a report on Form 3.

FORM 4 – SUCCEEDING TO REGISTRATION STATUS OF PREDECESSOR

GENERAL INSTRUCTIONS

1. Purpose of this Form. Effective [insert effective date of Rule 2109], this Form must be used to submit information, representations, and affirmations to the *Board*, pursuant to Rule 2109, by a *public accounting firm* that seeks to succeed to the registration status of a predecessor firm in circumstances described in Rule 2108.

2. Defined Terms. 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*. In addition, as used in the instructions to this Form, the term "the Firm" means the *public accounting firm* that is submitting this Form to the *Board*, and the term "the predecessor firm" means the *registered public accounting firm* identified in Item 1.1.a of the Form.
3. Submission of this Form. Unless otherwise directed by the *Board*, the Firm must submit this Form, and all exhibits to this Form, to the *Board* electronically by completing the Web-based version of this Form available on the *Board's* Website. The Firm must use the predecessor firm's user ID and password to access the system and submit the Form. In the event of a transaction involving the combination of multiple *registered public accounting firms*, the Firm must access the system using only the user ID and password of the firm specifically identified in Item 1.1.a, and not those of any other *registered public accounting firm*.
4. When this Form Should be Submitted and When It is Considered Filed. To succeed to the registration status of the predecessor firm pursuant to the provisions of Rule 2108(a) or (b), the Firm must provide the information and representations required by this Form, in accordance with the instructions to this Form, and must file the Form no later than the 14th day after the effective date of the change in form of organization, change in jurisdiction of organization, or business combination. Different timing requirements apply with respect to events that occurred before [insert effective date of Rule 2109]. See Rule 2109(a)(2).

Form 4 is considered filed when the Firm has submitted to the *Board*, through the *Board's* Web-based reporting system, a Form 4 that includes the signed certification required in Part V of Form 4, *provided, however*, that any Form 4 so submitted after the applicable filing deadline shall not be deemed filed unless and until the *Board*, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

5. Seeking Leave To File this Form Out of Time. To request leave to file Form 4 out of time, pursuant to the provisions of Rule 2108(d), the Firm must file the request on Form 4 and must attach as Exhibit 99.5 a detailed statement describing why, despite the passage of time since the event described on the Form 4, the *Board* should permit the Firm to succeed to the registration status of the predecessor firm. Any Form 4 that has been submitted out of time, and as to which a *Board* decision on whether to allow the form to be filed is pending, may be withdrawn by accessing the pending submission in the *Board's* Web-based system and selecting the "Withdraw" option.
6. Completing the Form. The Firm must complete Parts I, II, IV and V of this Form. Part III should be completed to the extent applicable, as described more fully in the instructions to Part II of the Form.
7. Amendments to this Form. Amendments shall not be submitted to update information into a Form 4 that was correct at the time the Form was submitted, but only to correct information that was incorrect at the time the Form was submitted or to provide information that was omitted from the Form and was required to be provided at the time the Form was submitted. When submitting a

Form 4 to amend an earlier submitted Form 4, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 4 all information, affirmations, and certifications that were required to be included in the original Form 4. The Firm may access the originally filed Form 4 through the *Board's* Web-based system and make the appropriate amendments without needing to re-enter all other information. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2205 concerning amendments apply to any submission on this Form as if the submission were a report on Form 3.)

Note: The *Board* will designate an amendment to a report on Form 4 as a report on "Form 4/A."

Note: Any change to a Form 4 that was originally submitted out of time, and as to which a *Board* decision on whether to allow the form to be filed is pending, shall not be treated as an amendment. To make a change to any such pending Form 4 submission, the Firm must access the pending submission in the *Board's* Web-based system, select the "Withdraw and Replace" option, and submit a new completed Form 4 in place of the previously pending submission. The certification required in Part V of the new submission must be executed specifically for the replacement version of the Form and dated accordingly.

8. Rules Governing this Form. In addition to these instructions, the *rules* contained in Part 2 of Section 2 of the *Board's rules* govern this Form. Please read these *rules* and the instructions carefully before completing this Form.

9. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Exhibit 99.3 or Exhibit 99.5 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. If the Firm requests confidential treatment, it must identify the information in Exhibit 99.3 or Exhibit 99.5 that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, an exhibit that complies with the requirements of Rule 2300(c)(2). The *Board* will determine whether to grant confidential treatment requests on a case-by-case basis. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of that failure.
10. Assertions of Conflicts with Non-U.S. Law. If the Firm is a *foreign registered public accounting firm*, the Firm may, unless otherwise directed by the *Board* pursuant to Rule 2207(e), decline to provide the affirmation required by Item 4.1 of this Form and any answer required by Item 3.2.e of this Form if doing so would constitute a violation of non-U.S. law by the Firm and the Firm proceeds in accordance with Rule 2207. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2207 apply to any submission on this Form as if the submission were a report on Form 3.) If the firm withholds the affirmation or answer, the Firm must

indicate, in accordance with the instructions in the relevant Part of the Form, that it has done so.

11. Language. Information submitted as part of this Form, including any exhibit to this Form, must be in the English language.

PART I – IDENTITY OF THE FIRM AND CONTACT PERSONS

Item 1.1 Names of Firm and Predecessor *Registered Public Accounting Firm*

- a. State the legal name of the *registered public accounting firm* to whose registration status the Firm seeks to succeed.

Note: The name provided in Item 1.1.a should be the legal name of the *registered public accounting firm* as last reported to the *Board* on Form 1 or Form 3.

This is the firm referred to in this Form as "the predecessor firm." In accessing and submitting this Form through the *Board's* Web-based system, the Firm must use the predecessor firm's user ID and password.

- b. State the legal name of the Firm filing this Form.

Note: The name provided in Item 1.1.b will be the name under which the Firm is registered with the *Board* if this Form is filed in accordance with Rule 2109.

- c. If different than the name provided in Item 1.1.b, state the name or names under which the Firm issues or intends to issue *audit reports*.

Item 1.2 Contact Information of the Firm

- a. State the physical address (and, if different, mailing address) of the Firm's headquarters office.

- b. State the telephone number and facsimile number of the Firm 's headquarters office.

If available, state the Website address of the Firm.

Item 1.3 Primary Contact and Signatory

a. State the name, business title, physical business address (and, if different, business mailing address), business telephone number, business facsimile number, and business e-mail address of a partner or authorized officer of the Firm who will serve as the Firm's primary contact with the *Board*, including for purposes of this Form 4, any annual reports filed on Form 2, and any special reports filed on Form 3.

PART II – GENERAL INFORMATION CONCERNING THE FILING OF THIS FORM

Item 2.1 Reason for Filing this Form

Indicate, by checking the box for either Item a or Item b below, the reason the Firm is filing this Form. Then proceed to the Parts and Items of this Form indicated parenthetically for the relevant item and provide the information described there.

Provide responses only to those Parts and Items of the Form specifically indicated for the event or events that the Firm identifies in this Part II as the reason for filing this Form. (For example, if the Form is being submitted because the Firm has changed its form of organization, check the box for Item 2.1.a, and complete only Item 3.1 and Parts IV and V of the Form. Complete Item 2.2 or Item 2.3 if applicable.)

a. There has been a change in the Firm's form of organization, or the Firm has changed the jurisdiction under the law of which it is organized. (Complete Item 3.1, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

b. There has been an acquisition of a *registered public accounting firm* by an entity that was not a registered public accounting firm at the time of the acquisition, or a *registered public accounting firm* has combined with another entity or other entities to form a new

legal entity. (Complete Item 3.2, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

Item 2.2 Request for Leave To File this Form Out of Time

If this Form is not submitted in accordance with Rule 2109(b) on or before the filing deadline set by Rule 2109(a), the Firm may request leave to file this Form 4 out of time by checking the box for this Item, completing this Form 4 as is otherwise required, and providing, as Exhibit 99.5 to this Form, a description of the reason(s) the Form was not timely filed and a statement of the grounds on which the Firm asserts that the *Board* should grant leave to file the Form out of time.

Note: Requests for leave to file Form 4 out of time are not automatically granted.

See Rule 2108(d).

Item 2.3 Amendments

If this is an amendment to a Form 4 previously filed with the *Board* –

- a. Indicate, by checking the box corresponding to this item, that this is an amendment.
- b. Identify the specific Item numbers of this Form (other than this Item 2.3) as to which the Firm's response has changed from that provided in the most recent Form 4 or amended Form 4 filed by the Firm with respect to the event reported on this Form.

PART III – CHANGES IN THE FIRM

Item 3.1 Changes in Form of Organization or in Relevant Jurisdiction

If this Form 4 is being submitted in connection with a change in the Firm's form of organization or a change in the jurisdiction under the law of which the Firm is organized

–

- a. State the Firm's current (i.e., after the change in legal form or jurisdiction) legal form of organization;
- b. Identify the jurisdiction under the law of which the Firm is organized currently (i.e., after the change in legal form or jurisdiction); and
- c. State the date that the change took effect.
- d. Affirm that, after the change reported or described in this Item 3.1, the Firm is a *public accounting firm* under substantially the same ownership as the predecessor firm.

Note: Neither the Act nor *Board rules* include any provision by which a *registered public accounting firm* may, in effect, transfer its *Board* registration to another entity. Rule 2108(a), in conjunction with this Form, allows the succession of registration status in circumstances in which a *registered public accounting firm* changes its legal form of organization while remaining under substantially the same ownership. For purposes of this Item, the Firm is considered to be under substantially the same ownership as the predecessor firm if a majority of the persons who held an equity ownership interest in the predecessor also constitute a majority of the persons who hold an equity ownership interest in the Firm.

- e. If, in connection with the change described in this Item 3.1, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the *Board* by the predecessor firm, provide as to each such license –
 1. the name of the issuing *state*, agency, board, or other authority;
 2. the number of the license or certification;

3. the date the license or certification took effect.

f. If, in connection with the change described in this Item 3.1, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license –

1. the name of the issuing *state*, agency, board, or other authority;
2. the number of the license or certification; and
3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

Item 3.2 *Acquisitions of, or Combinations Involving, A Registered Public Accounting Firm*

a. If this Form 4 is being submitted in connection with a transaction concerning which a person who holds an equity ownership interest in the Firm, or is employed by the Firm, can certify the points set out in Item 3.2.b. and Exhibit 99.4, –

1. Provide the name of each entity, other than the predecessor firm, that was involved in the transaction and that was a *registered public accounting firm* immediately before the transaction, and as to each such entity –
 - (i) affirm that the entity has filed with the *Board* a request for leave to withdraw from registration on Form 1-WD; and
 - (ii) state the date that the entity filed Form 1-WD;

2. Provide the name of each entity, including any acquiror, that was involved in the transaction and that was not a *registered public accounting firm* immediately before the transaction;
 3. Provide the date that the transaction took effect; and
 4. Provide a brief description of the nature of the transaction.
- b. Provide as Exhibit 99.4 to this Form, a statement in the form set out below, signed by a person who, immediately before the transaction, was an officer of, or held an equity ownership interest in, the predecessor firm and who now either holds an equity ownership interest in, or is employed by, the Firm. The statement must be submitted on behalf of the Firm. Exhibit 99.4 must include a signature that appears in typed form in the electronic submission and a corresponding manual signature retained by the Firm in accordance with Rule 2109(d). The signature must be accompanied by the signer's current title, the signer's title immediately before the event described in Item 3.2.a, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address. Other than the insertion of the relevant names, Exhibit 99.4 must be in the exact following words –
- On behalf of [name of the Firm], I certify that (1) I was an officer of, or held an equity ownership interest in, [name of predecessor firm] immediately before the transaction described in Item 3.2.a of the Form 4 to which this exhibit is attached; (2) immediately before that transaction [name of predecessor firm] was a *registered public accounting firm*; (3) as part of that transaction, a majority of the persons who held equity ownership interests in [name of predecessor firm] obtained equity ownership interests in, or became employed by, [name of the Firm]; (4) [name of predecessor firm] intended that

[name of the Firm] succeed to the *Board* registration status of [name of predecessor firm] to the extent permitted by the *Board's* rules; and (5) [name of predecessor firm] is no longer a *public accounting firm*.

c. If, in connection with the transaction described in Item 3.2.a, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the *Board* by the predecessor firm, provide, as to each such license –

1. the name of the issuing *state*, agency, board or other authority;
2. the number of the license or certification; and
3. the date the license or certification took effect.

d. If, in connection with the transaction described in Item 3.2.a, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license –

1. the name of the issuing *state*, agency, board, or other authority;
2. the number of the license or certification; and
3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

e. Provide a "yes" or "no" answer to each of the following questions –

1. Is there identified in Item 3.2.a.2 any entity that, if it were filing an application for registration on Form 1 on the date of the certification in Part V of this Form, would have to provide an affirmative response to Item 5.1.a of Form 1 in order to file a complete and truthful Form 1?

Note: In considering whether an affirmative response would be required to Item 5.1.a of Form 1, the Firm should take into account the guidance provided by question number 33 in Frequently Asked Questions Regarding Registration with the *Board*, PCAOB Release No. 2003-011A (Nov. 13, 2003).

2. Is there identified in Item 3.2.a.2 any entity that (i) issued an *audit report* with respect to an *issuer* on or after October 22, 2003 (or, if the entity is a non-U.S. entity, July 19, 2004), while not registered with the *Board*, and (ii) has never had an application for registration on Form 1 approved by the *Board*?

3. Is the Firm operating without holding any license or certification issued by a *state*, agency, board, or other authority authorizing the Firm to engage in the business of auditing or accounting?

Note: If the Firm answers "yes" to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law prohibits it from providing an answer, the Firm cannot succeed outright to the registration of the predecessor. If this Form 4 is submitted in accordance with Rule 2109, however, the Firm will temporarily succeed to the registration of the predecessor for a transitional period as described in Rule 2108(b)(2) as long as the Firm makes the representation required in Item 3.2.f below. If the Firm answers "yes" to any question in Item

3.2.e or asserts as to any of those questions that non U.S. law prohibits it from providing an answer but fails to make the representation required in Item 3.2.f, this Form 4 will not be accepted for filing and the Firm will not succeed to the predecessor's registration even on a temporary basis. See Rule 2108(b)(2).

f. If the Firm answered "yes" to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law prohibits it from providing an answer, affirm, by checking the box corresponding to the appropriate item, that one of the following statements is true –

1. The Firm has filed an application for registration on Form 1 on or after the date provided in Item 3.2.a.3.

2. The Firm intends to file an application for Registration on Form 1 no later than 45 days after the date provided in Item 3.2.a.3.

PART IV – CONTINUING OBLIGATIONS

Item 4.1 Continuing Consent to Cooperate

Affirm that –

a. The Firm consents to cooperate in and comply with any request for testimony or the production of documents made by the *Board* in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002;

b. The Firm has secured from each of its *associated persons*, and agrees to enforce as a condition of each such person's continued employment by or other association with the Firm, a consent indicating that the *associated person* consents to cooperate in and comply with any request for testimony or the production of documents made by the *Board* in furtherance of its authority under the Sarbanes-Oxley Act of 2002, and that the

associated person understands and agrees that such consent is a condition of his or her continued employment by or other association with the Firm; and

c. The Firm understands and agrees that cooperation and compliance, as described in Item 4.1.a., and the securing and enforcing of consents from its *associated persons* as described in Item 4.1.b., is a condition to the continuing effectiveness of the registration of the Firm with the *Board*.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any *associated person* that is a *registered public accounting firm*.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any *associated person* that is a *foreign public accounting firm* in circumstances where that *associated person* asserts that non-U.S. law prohibits it from providing the consent, so long as the Firm possesses in its files documents relating to the *associated person's* assertion about non-U.S. law that would be sufficient to satisfy the requirements of subparagraphs (2) through (4) of Rule 2207(c) if that *associated person* were a *registered public accounting firm* filing a Form 2 and withholding this affirmation. This exception to the affirmation in Item 4.1.b. does not relieve the Firm of its obligation to enforce cooperation and compliance with *Board* demands by any such *associated person* as a condition of continued association with the Firm.

Note: If the Firm is a *foreign registered public accounting firm*, the affirmations in Item 4.1 that relate to *associated persons* shall be understood to encompass every *accountant* who is a proprietor, partner, principal, shareholder, officer, or manager of the Firm and who provided at least ten hours of *audit services* for any *issuer* during the reporting period.

Item 4.2 Continuing Responsibility to the *Board* for Previous Conduct

Affirm that, for purposes of the *Board's* authority with respect to *registered public accounting firms*, including but not limited to the authority to require reporting of information and the authority to impose disciplinary sanctions, the Firm either has retained or assumes responsibility for the conduct of any predecessor *registered public accounting firm* before the change or business combination reported on this Form took effect.

Note: As used in Item 4.2 the term "*predecessor registered public accounting firm*," means (1) in circumstances not involving a transaction described in Item 3.2, the predecessor firm and (2) in circumstances involving a transaction described in Item 3.2, each *registered public accounting firm* that was involved in the business combination.

Note: The continuing responsibility in Item 4.2 includes, among other things, responsibility for reporting information on Form 2 and events on Form 3. Thus, for example, if a *registered public accounting firm* experienced a Form 3 reportable event before the event that is the subject of this Form, the Firm, as successor, has the obligation to report that event on Form 3, and bears responsibility for any failure by any predecessor to have filed a timely Form 3 to report the matter.

Note: The *Board's rules* do not require that any entity retain or assume responsibility as set forth above. In the absence of an affirmation that it retains or assumes responsibility for such conduct at least for purposes of the *Board's* authority, however, an entity cannot succeed to the *Board* registration status of any predecessor entity. See Rule 2108.

PART V – CERTIFICATION OF THE FIRM

Item 5.1 Signature of Partner or Authorized Officer

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2109(d), both a signature that appears in typed form within the electronic submission and a corresponding manual signature retained by the Firm. The signer must certify that –

- a. the signer is authorized to sign this Form on behalf of the Firm;
- b. the signer has reviewed this Form;
- c. based on the signer's knowledge, this Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and
- d. either –
 1. based on the signer's knowledge, the Firm has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, with respect to the event or events being described on this Form, or
 2. based on the signer's knowledge –

- (A) the Firm is a *foreign public accounting firm* and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form other than an affirmation required by Item 4.1 and/or an answer to Item 3.2.e.; and
- (B) the Firm asserts that it is prohibited by non-U.S. law from providing any such withheld affirmation or response to the Board on this Form and, with respect to each such withheld affirmation or response, the Firm has made the efforts described in PCAOB Rule 2207(b) and has in its files the materials described in PCAOB Rule 2207(c).

The signature must be accompanied by the signer's title, the capacity in which the signer signed the Form, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address.

PART VI – EXHIBITS

To the extent applicable under the foregoing instructions, each report must be accompanied by the following exhibits:

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.3 Materials Required by Rule 2207(c)(2)–(4) – *Submit Only as an Exhibit to an Amended Form 4 in Response to a Request Made Pursuant to Rule 2207(d)*

Exhibit 99.4 Acknowledgment Concerning Registration Status in Certain Transactions

Exhibit 99.5 Statement in Support of Request for Leave To File Form 4 Out of Time.

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

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose Of, and Statutory Basis for, the Proposed Rule

(a) Purpose

Under Section 102(a) of the Sarbanes-Oxley Act of 2002 and PCAOB Rule 2100, a public accounting firm must be registered with the PCAOB in order to prepare or issue audit reports for public companies or to play a substantial role in the preparation or furnishing of such audit reports. To become registered, a public accounting firm files an application for registration on PCAOB Form 1, which the Board may approve or disapprove. The proposed rules identify the circumstances in which a firm may succeed to the registration status of a predecessor registered firm, without filing a new Form 1, and provide a mechanism for the firm to do so.

The rules afford the opportunity for continuity of registration in two general categories of circumstances: (1) changes related to a firm's legal form of organization or the jurisdiction in which it is organized, and (2) transactions in which a registered firm is acquired by an unregistered entity or combines with other entities to form a new legal entity. The events to which the rules apply are events for which a firm plans, not unanticipated events to which a firm reacts. The rules are designed to facilitate a firm's

ability to factor into its planning, and to predict with certainty, whether and how continuity of registration can be maintained.

The rules provide for a form the firm must file (Form 4), set a deadline for filing the form, and require certain information and representations in the form. If the firm files the form within the required timeframe, provides the required representations, and certifies that all required information is included, then continuity of registration is automatic, without the need for separate Board action. The rules and form also build in safeguards to ensure that the Form 1 process is not circumvented in circumstances where that process is more appropriate than Form 4 succession.

To obtain continuing effectiveness of an existing registration, the firm must acknowledge the continuity of, and commit to honor, certain obligations that accompany the registration status. Those obligations fall into two categories: continuing consent to cooperate with the Board and continuing responsibility to the Board for the conduct of predecessor registered firms.

With respect to circumstances in which a registered firm is acquired by an unregistered entity, or when a registered firm combines with other entities to form a new legal entity, the proposed Form 4 requires, among other things, information that determines whether succession to the predecessor's registration is permanent or temporary. Based on this information, succession may be outright and permanent or may only be temporary for a transition period intended to allow to the firm to seek registration through the Form 1 process.

For succession to registration to take effect automatically upon filing under the rules, Form 4 must be filed within 14 days after the effective date of the change in legal

form or other event. The rules make some allowance for late filing. A firm that fails to file Form 4 within the 14-day period may submit a late Form 4 and request that the Board grant leave to file the form out of time. In a late submission, the firm should include as an exhibit to the form a statement in support of its request for leave to file out of time. If the Board grants the request and allows the form to be filed, the firm will succeed to the predecessor's registration.

The proposed rules would take effect 60 days after Securities and Exchange Commission approval.

(b) Statutory Basis

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

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rules provide a registration succession mechanism that firms may elect to use but are not required to use.

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

The Board released the proposed rules and form instructions for public comment in Release No. 2006-005 (May 23, 2006). A copy of Release No. 2006-005 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at www.pcaobus.org. The Board received five written comment letters. The Board has clarified and modified certain aspects of the proposed rules and form instructions in response to the comments it received, as discussed below.

Commenters addressed the Form 4 item that requires a Form 4 filer to affirm that it retains or assumes responsibility for the conduct of predecessor registered firms for purposes of the Board's authority. Commenters expressed concern that the affirmation might erode otherwise valid legal defenses in contexts such as criminal or private civil proceedings, and suggested that the Board should make clear that no such result is intended. The Board reiterates what it said in proposing the requirement for comment: The affirmation of continuing responsibility for a predecessor's conduct is not intended to create any new liability, nor is it intended to affect the legal consequences of the transaction with respect to any person or entity other than the Board. As between the firm and the Board, however, the Board views the affirmation as indispensable if a firm wishes to make use of the Form 4 process. In an effort to reduce the possibility of misunderstanding about the intended scope, the Board has made slight changes to the wording of Item 4.2 – such as changing the heading to specify that the item is about continuing responsibility "to the Board," and removing the broad adjective "legal" in describing the nature of the responsibility being retained or assumed – but the Board is adopting the substance of the requirement essentially as proposed.

One commenter expressed the view that a successor firm should not be precluded from assuming a predecessor firm's registration status just because less than a majority of its predecessor's owners remained with the successor firm. In the Board's view, that suggestion is unworkable for a process intended to provide for automatic succession upon the satisfaction of bright line criteria. Without supplemental information and the intervention of judgment, the Board could not provide for succession

in those circumstances without running a risk that more than one "successor" entity might lay claim to the same predecessor's registration.

One commenter suggested that the Board should define "acquisition" in this context, and raised questions concerning whether, to be an "acquisition" for which Form 4 succession is available, the transaction must involve acquisition of the predecessor firm's assets or a substantial portion thereof. For Form 4 succession to be available, the Board does not require that the transaction include anything other than what is described in the Exhibit 99.4 certification: a majority of the equity owners in a predecessor registered firm have become equity owners or employees of an unregistered firm, and the predecessor registered firm ceases to be a public accounting firm. For clarity on this point, the wording of Item 3.2.a. has been revised to refer to an acquisition of "any portion of" a registered public accounting firm, though Form 4 succession following any such acquisition is available only if all of the Exhibit 99.4 criteria are satisfied.

The Exhibit 99.4 certification also includes a statement that the predecessor registered firm intended for the successor firm to succeed to its registration status. One commenter questioned the appropriateness of allowing a single individual to certify that the predecessor intended such succession, and expressed concern about the Board acting on such a certification by someone who may only have had a marginal role in the predecessor registered firm. As proposed and adopted, however, the required certification would be included in a filing that cannot be made except by the successor firm, which cannot make the filing unless a majority of the predecessor's owners are part of that successor firm. In those circumstances, it is not necessary to more

specifically limit which of the predecessor's former owners or officers must execute the required certification.

In the context of a combination of firms, Form 4 succession is available only if the predecessor registered firm ceases to exist as a public accounting firm. One commenter questioned this requirement and suggested that a firm should be able to spin off its issuer audit business, including its registration status, to another firm and still remain a public accounting firm. The Board is not precluding the possibility that a firm can spin off its issuer audit business and still remain a public accounting firm; rather, the Board is identifying this criterion – whether the predecessor continues to exist as a public accounting firm – as relevant to whether registration status can move to the new firm through the Form 4 process or whether that firm can obtain registration status only through the Form 1 process.

If the predecessor registered firm continues to exist as the same legal entity that registered with the Board and continues to be engaged in the practice of public accounting, then the transaction suggested by the commenter would involve an existing public accounting firm – an entity which can legally be registered – conveying its registration to another public accounting firm, a transaction that the Board views as fundamentally inappropriate. Accordingly, in that circumstance, the firm to which the predecessor's issuer audit practice moved could not use the Form 4 process but would need to apply for registration on Form 1 – which it could do even before the relevant transaction takes effect.

In contrast, if the legal entity that originally registered ceases to exist as a public accounting firm, then it cannot legally be a registered public accounting firm. For that

entity's registration status to move with elements of that entity into another entity, through the Form 4 process, does not raise the same concerns about transferability of registration from one existing public accounting firm to another.

One commenter questioned the requirement to file a Form if a firm involved in the transaction would need to answer "yes" on the Form 1 disciplinary history question if filing a Form 1. The commenter suggested that this requirement could be punitive, especially for large registered firms that combine with smaller firms. Item 3.2.e. of Form 4, however, does not pose any significant risk of that sort. If a large registered firm acquires a smaller unregistered firm, the large registered firm would merely be required to report that in its annual report on Form 2, without resort to the Form 4 process.

Alternatively, if a large registered firm were involved in a transaction that did lead to a Form 4 filing, the disciplinary histories of that firm and its associated persons would be irrelevant to Item 3.2.e. because the large firm was already registered at the time of the transaction. Item 3.2.e. relates only to disciplinary history information of entities (and their associated persons) that were not already registered at the time of the transaction.

Commenters suggested that the proposed 90-day limit on the temporary transition period (for firms that may not succeed permanently to the predecessor's registration) was too short and too inflexible. They noted that the Board has 45 days to act on an application, and also noted that the Board could ask for additional information, thereby restarting the 45-day clock and potentially pushing a registration decision out beyond the 90-day period. One commenter suggested revising the proposal so that the temporary registration status would continue until the Board makes a final decision on the Form 1. Another suggested revising the proposal to give the Board flexibility to

extend the temporary registration status in situations where the Board does not take final action on the Form 1 within the 90 days.

The Board does not believe it would be appropriate to adopt a rule providing for a temporary registration period that continues until the Board acts on the Form 1, since firms could then keep the temporary registration status in place by not filing Form 1 or by delaying a response to a Board request for additional information on the application. The Board, however, sees the value in a measure of flexibility on this point.

Accordingly, in Rule 2108(b)(2), the Board has retained the proposed 90 days as the initial transition period but has also added certain qualifications. If the Board formally requests additional information from the firm with less than 60 days remaining in the initial 90-day period, the temporary registration will continue to the date that is 60 days after the date of the Board's request. The effect will be that a firm has 15 days to respond to the Board's request if the firm wants to stay on track to keep its temporary registration until Board action on the Form 1. If the Board makes follow-up requests for information, the Board has the discretion to extend the temporary registration to a later date. Depending on the circumstances, however, the Board might, in making a follow-up request, conclude that further extension of the temporary registration is unwarranted, and could communicate that to the firm in the second request.

One commenter suggested that the Board should adopt procedures by which a firm that anticipates that a successor will need to file a new Form 1 could review the relevant facts with the Board's staff before the transaction to determine whether the staff sees significant obstacles to approving the successor's application. In the Board's view, however, to the extent it is appropriate for the staff to review information relevant to a

prospective Form 1 filing, the staff may already do so without the need for special procedures.

One commenter addressed the requirement that, in the context of more than two firms combining, any registered firm other than the firm whose registration is intended to continue, must, before Form 4 is filed, file a request to withdraw from registration. The commenter expressed concern that there may be a registration gap for the predecessor firm that files the Form 1-WD prior to the transaction if the withdrawal is granted prior to the close of the transaction. The representation concerning the filing of a 1-WD, however, does not apply to the "predecessor firm," but only to other registered firms, if any, that are merging into the filing entity as part of the transaction. In connection with any Form 4 filing, the firm designated as the "predecessor firm" should not seek leave to withdraw from registration. In addition, in transactions involving additional registered firms, the Form 1-WD filings need not occur far in advance of the Form 4 filing. The Form 4 requirements can be satisfied even if the relevant Form 1-WD filings occur immediately before the Form 4 filing.

One commenter noted that changes in licenses and certifications may occur after the filing of a Form 4 and suggested that the Board should expressly state that such changes may be described in an amendment to Form 4. Because a firm succeeds to registration automatically upon the Form 4 being filed, however, the firm immediately becomes subject to the same annual and special reporting requirements as any other registered firm. Accordingly, a license change that occurs after the filing of the Form 4 should be reported on Form 3 in accordance with Rule 2203.

For succession to registration to take effect automatically upon filing under the rules, Form 4 must be filed within 14 days after the effective date of the change in legal form or other event. Commenters expressed a view that 14 days is too short a period, and suggested that it was insufficient time for non-U.S. firms to evaluate the impact of non-U.S. law in a particular case or to obtain consents, waivers, and legal opinions relating to potential legal conflicts. More generally, one commenter noted that 14 days does not allow sufficient time after the event for a firm to assess its reporting obligations and complete the form. Two commenters suggested expanding the 14-day period to a 45-day period.

The Board has considered these comments but has decided to adopt the 14-day deadline. Given the purpose of the filing – avoiding breaks in registration status – the Board believes that the rule should require filing of the form in as short a period as reasonably possible, so that any questions about the entity's registration status are kept to as narrow a period as possible. In addition, the events giving rise to a Form 4 are events for which firms plan, and such planning can encompass prompt filing of the relatively short and simple Form 4.

Even so, the rules make some allowance for late filing. A firm that fails to file Form 4 within the 14-day period may submit a late Form 4 and request that the Board grant leave to file the form out of time. In a late submission, the firm should include as an exhibit to the form a statement in support of its request for leave to file out of time. If the Board grants the request and allows the form to be filed, the firm will succeed to the predecessor's registration (either outright or for the transitional period described above).

One commenter sought clarification of a firm's registration status during a period in which a Form 4 is pending with a request for leave to file out of time, suggesting that it is unclear whether the firm can issue audit reports while the request is pending. As discussed in the proposing release, a firm submitting a late Form 4 should make no assumption about whether the Board will allow it to be filed. Accordingly, during the period that the request is pending with the Board, a firm should not assume that it is a registered public accounting firm and, therefore, should not assume that it may issue audit reports. The rule's provision for late submissions is not principally intended as an accommodation to firms, but is intended to afford the Board the opportunity to allow Form 4 succession, despite a late filing, when doing so would be consistent with the public interest. Eventual favorable Board action on the request would effectively confer registered status on the firm back to the date of the transaction that is the subject of the Form 4 filing (just as with a timely filed Form 4), but unfavorable Board action would mean that the entity filing the Form 4 was never registered.

One commenter suggested that non-U.S. firms might also sometimes face legal obstacles to answering the Item 3.2.e. yes-no questions that determine whether succession is permanent or temporary. The Board has determined to allow non-U.S. firms to withhold those answers on legal conflict grounds. The consequence of doing so, however, will be the same as if the firm had supplied a "no" answer: the succession afforded by the Form 4 process will only be for a transitional period to allow the firm an opportunity to seek registration through the Form 1 process.

Form 4 limits the categories of information for which a firm can request confidential treatment. Confidential treatment requests that have no genuine basis in

law needlessly distract Board resources and delay the availability of information to the public. In the case of Form 4, the basic, nonpersonal, and nonproprietary nature of the required information leads the Board to foreclose confidential treatment requests for almost all of the items in the form.

The Board encouraged commenters to comment on whether the proposal overlooked actual or realistically foreseeable legal requirements to maintain the confidentiality of information. Commenters who addressed the point did so only in vague terms without providing any specific basis for concluding that the proposal overlooked any potentially applicable protection. One commenter stated generally that certain information required by Form 4 may need to be kept confidential under non-U.S. law or by the terms of an agreement between predecessor and successor entities. The commenter did not identify what information in Form 4 might fall into that category and did not provide an example of the type of non-U.S. law that might protect its confidentiality. Moreover, in the absence of relevant law, an agreement between private parties to keep information confidential does not in itself satisfy the confidential treatment criteria described in Rule 2300(b)(1). The commenter also expressed slightly more focused concern about the protection of "information regarding the acquisition," but did not specify what information, among the very basic acquisition-related information required by Form 4, could be considered confidential or proprietary.

Another commenter raised potential confidentiality concerns about Item 3.2.e.1. As adopted, that Item asks whether the acquisition or combination involves any previously unregistered entity that, if it were filing an application for registration on Form 1, would have to provide an affirmative response to Item 5.1.a, which asks about the

existence of certain specified disciplinary histories. The commenter suggested that indicating whether a firm would have to answer "yes" to that question might lead others to draw unfavorable conclusions that could expose the firm to an increased risk of liability claims. Whether that is true, though, is a separate question from whether that "yes" answer is information that is protected from disclosure by applicable law. The commenter did not suggest how that would be the case. Moreover, as a practical matter, any reader of the Form 4 would recognize that a firm's request for confidential treatment of its answer to Item 3.2.e.1. would mean that its answer was "yes."

In weighing these comments, the Board views as relevant the fact that Form 4 is not a required filing. While the Board does not view its optional nature as justification for dispensing with the possibility of confidential treatment, the Board does not believe that the comments on this point warrant any change from what was proposed.

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

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period as (i) 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 self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change 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 rule is consistent with the

requirements of Title I of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule 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 filing will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB-2008-05 and should be submitted within [] days.

By the Commission.

Secretary

RELEASE**I. Background**

The Board is proposing rules that, in certain circumstances, would allow a registered firm's registration status to continue with an entity that emerges after a merger or other change in the registered firm's legal form. Because a firm's registration is essential to its ability lawfully to audit issuers, and an issuer's compliance with federal law and regulations depends upon its auditor being registered, disruption of a firm's registration should not be taken lightly. The proposed rules would allow a firm to succeed outright to a predecessor's registration in certain circumstances without any disruption in registration status. In other circumstances, the proposed rules would allow for temporary succession for a transitional period of up to 90 days while the firm seeks registration by filing its own application on Form 1.

II. Overview of the Proposed Process

The proposed rules afford the opportunity for continuity in two general categories of circumstances: (1) changes related to a firm's legal form of organization or the jurisdiction in which it is organized, and (2) transactions in which a registered firm is acquired by an unregistered entity or combines with other entities to form a new legal entity. The events to which the proposed rules would apply are events for which a firm plans, not unanticipated events to which a firm reacts. The proposed rules are designed to facilitate a firm's ability to factor into its planning, and to predict with certainty, whether and how continuity of registration can be maintained.

To provide that predictability, the proposed rules provide for a form the firm must file (Form 4), set a deadline for filing the form, and require certain information and representations in the form. If the firm files the form within the required timeframe, provides the required representations, and certifies that all required information is included, then continuity of registration is automatic, without the need for separate Board action.^{1/}

^{1/} Under the proposal, a Form 4 would be treated as "filed" when a signed form, completed in accordance with the form's instructions, is submitted. Upon filing, continuity of registration would occur by operation of the rule. (Subsequent discovery of false representations or certifications in the form would be grounds for disciplinary sanctions, potentially including revocation of registration.) As described in Section V below, a submission that is deficient solely because it is late could, in the discretion of the Board, be accepted for filing.

RELEASE

While the proposed rules and form provide the opportunity for continuity in appropriate circumstances, they also build in safeguards to ensure that an entity does not succeed to an existing registration under circumstances where applying for registration on Form 1 would be more appropriate. The limitations on the use of the Form 4 succession process instead of the Form 1 registration process, and the safeguards built into the proposed form to ensure that the Form 1 process is not inappropriately circumvented, are discussed in Section III below.

Under the proposed rules, to obtain continuing effectiveness of an existing registration, whether for outright succession or for the transitional period not to exceed 90 days, the firm must acknowledge the continuity of, and voluntarily commit to honor, certain obligations that accompany the registration status. Those obligations, described below, fall into two categories: continuing consent to cooperate with the Board and continuing responsibility for the conduct of predecessor registered firms.

Proposed Form 4 requires that the firm affirm its consent to cooperate with the Board and enforce cooperation by the firm's associated persons. Tracking the consent language included in Form 1 (and in proposed Form 2), proposed Form 4 requires the firm (1) to affirm its consent to cooperate with Board requests for testimony or documents, (2) to affirm that it has secured from each of its associated persons the required consents to cooperate with the Board, and (3) to affirm the firm's understanding and agreement that its cooperation and compliance, and the securing and enforcing of consents from its associated persons, is a condition of its continued registration with the Board. Under the proposed rule, subject only to an accommodation for firms that face non-U.S. legal obstacles,^{2/} the firm's affirmation of these points is strictly required, and the Board's system will not accept for filing a Form 4 that does not include it.

^{2/} The proposed rules include accommodations for foreign registered firms that assert that non-U.S. law limits their ability to provide certain affirmations or information required by Form 4. These accommodations are discussed in Section VI below. In addition, a note to the continuing obligations section in Form 4 explains that the affirmation shall not be understood to include an affirmation that the firm has secured consents from associated persons that are unregistered foreign firms that assert that non-U.S. law prohibits them from providing the consent, as long as certain requirements concerning that assertion are satisfied. The point of the note is solely to put a parameter on the affirmation being made. The proposal includes this parameter to facilitate a Form 4 affirmation concerning all other associated person consents, without mirroring the affirmation point in the issues raised by unregistered foreign firms' assertions about non-U.S. restrictions. This parameter on the Form 4 affirmation is not intended to modify a firm's obligation, under Section 102(b)(3)(A) of the Act, to

RELEASE

Proposed Form 4 also requires an affirmation that, for purposes of the Board's authority with respect to registered public accounting firms, including but not limited to the authority to impose disciplinary sanctions, the firm either has retained or willingly assumes legal responsibility for the conduct of any predecessor registered public accounting firm before the transforming event took effect. Where the transforming event is a change in the legal form of organization, or the jurisdiction of organization, of an entity that otherwise remains substantially the same, this affirmation means that the firm accepts continuing responsibility for, and the possibility of sanctions for, its conduct before the event. Where the transforming event is a combination of two or more entities, this affirmation means that the resulting entity accepts responsibility for, and the possibility of sanctions for, the conduct of any of the combining entities that were registered public accounting firms at the time of the combination.

The affirmation of continuing responsibility for a predecessor's conduct is not intended to create any new liability, nor is it intended to affect the legal consequences of the transforming event with respect to any person or entity other than the Board. The affirmation means only that a registered firm cannot succeed to registration through the Form 4 process while effectively cutting off accountability to the Board for its conduct as a registered firm before the transforming event. A firm that is unwilling to provide the affirmation may not avail itself of the Form 4 process for continuing registration. The proposed rule allows for no exceptions. The Board's system will not accept for filing a Form 4 that fails to include this affirmation.

The proposed Form 4 process is not intended to affect the applicability of any aspect of Commission rules or Commission staff guidance. The process would not, for example, have any bearing on whether the firm's transforming event constitutes a change in auditor required to be reported pursuant to Item 4.01 of the Commission's Form 8-K.^{3/} Nor would a firm's Form 4 affirmation of continuing responsibility for a predecessor's conduct have any bearing on how an

secure the required consents, and it is not in any way an exercise of the Board's exemption authority under Section 106(c) of the Act.

^{3/} Guidance issued by the Commission staff provides that a "merger of public accounting firms always results in a change in accountants due to the change in legal entity of the firm that performs the audit. . . . An Item 4.01 Form 8-K must be filed no later than 4 business days after the merger." *See Current Accounting and Disclosure Issues in the Division of Corporation Finance* (December 1, 2005) at 58 (available on the Commission's Web site at www.sec.gov/divisions/corpfin/acctdis120105.pdf).

RELEASE

issuer satisfies its obligation to file with the Commission an audit opinion for a prior period in circumstances where the firm that issued the opinion no longer exists.^{4/} The Form 4 process would not affect any such issues; it would merely allow the new entity to operate as a registered firm, regardless of whatever other regulatory issues are triggered by the transforming event.

III. Circumstances in Which Form 4 Succession Would Be Available

The proposed rules afford the opportunity for continuity of registration in two categories of circumstances. Aspects of each category are described below.

A. Changes in Form of Organization or Jurisdiction of Organization

Under the proposed rules, if a firm changed its legal form of organization, such as changing from a private corporation to a limited liability partnership, the firm could secure its continuing registration status through the Form 4 process and would not need to again seek registration with the Board by filing a Form 1. Similarly, if a firm were to change the jurisdiction under the law of which the firm is organized (i.e., reorganize under the law of a different state, while otherwise remaining substantially the same firm), it could secure its continuing registration status through the Form 4 process.

This Form 4 option is available only in circumstances where the successor firm is under substantially the same ownership as the predecessor firm.^{5/} This Form 4 option is not available to facilitate any transfer of registration status from one firm (such as a firm exiting the business of auditing issuers) to a different firm. Nor is it available when a firm is dissolving, and a minority of the firm's members form a new firm for which they would like to use the old firm's registration.

^{4/} See *id.* ("Should the new firm be willing to assume liability for the old firm's audits, it could issue a new opinion that covers the prior audited periods and provide consents to the use of that opinion.")

^{5/} For purposes of this Form 4 item, the firm in its new form is considered to be under substantially the same ownership as the predecessor if a majority of the predecessor's partners, principals, or shareholders are partners, principals, or shareholders of the firm in its new form and constitute a majority of that firm's partners, principals, or shareholders.

RELEASE**B. Acquisitions of, or Combinations Involving, a Registered Firm**

The proposed rules would allow for continuity of registration in certain circumstances when a registered firm is acquired by an unregistered entity, or when a registered firm combines with other entities to form a new legal entity.^{6/} Under the proposed rules, the firm that results from such a transaction can operate under the predecessor registered firm's registration if certain conditions are satisfied. The Form 4 submitted by the firm must indicate the existence of each condition. In the absence of the necessary representation concerning any of these points, the Board's system will not accept the Form 4 for filing and the registered firm's registration status will not continue with the firm that resulted from the transaction.

First, the firm must include as part of the Form 4 filing a signed statement, by a person who is a member of the new firm and was a member of the predecessor registered firm at the time of the transaction, certifying that the predecessor registered firm intended for its registration to attach to the new entity and that the predecessor registered firm has ceased to exist as a public accounting firm.^{7/} Second, if the combining entities include more than one registered public accounting firm, the firm filing the Form 4 must specify the firm to which it will succeed, and the firm must indicate that any other registered firm among the combining entities has filed PCAOB Form 1-WD seeking permission to withdraw from registration.^{8/}

^{6/} If a registered firm combines with another entity by acquiring the other entity or otherwise merging in a way that the resulting legal entity is the same legal entity that was the registered firm, the firm's registration continues without the need for a Form 4 filing. In the event that a registered firm acquires another firm (whether registered or not), the acquiring firm would be required to report the transaction in Part VIII of its annual report on Form 2, which the Board has proposed in a separate release today. See Proposed Rules on Periodic Reporting by Registered Public Accounting Firms, PCAOB Release No. 2006-004 (May 23, 2006) ("Proposed Reporting Rules").

^{7/} This does not necessarily mean that the predecessor entities must completely cease to exist. The proposal allows for the possibility that a registered firm might somehow combine its public accountancy practice with another firm, and seek continuity of its registration in that other firm, while the legal entity in which that practice was previously housed continues in a line of business other than the practice of public accounting.

^{8/} This requirement facilitates the principally administrative objective of keeping the Board's list of registered firms free of entities that no longer exist

RELEASE

Third, the firm must respond to three yes-or-no questions on Form 4. Assuming that the form is otherwise completed and submitted in accordance with Rule 2109, the answers to these three questions will determine whether the firm succeeds outright to the registration of the predecessor or whether the firm merely receives the benefit of a transitional succession not to exceed 90 days.

Two of the three yes-or-no questions focus on any entity or entities involved in the transaction that were not registered firms immediately before the transaction. Form 4 asks (1) whether any such entity, if it were filing an application for registration on Form 1, would have to provide an affirmative response to the items on Form 1 that ask about the existence of a disciplinary history or the existence of certain civil proceedings, and (2) whether any such entity issued any audit report with respect to an issuer on or after October 22, 2003 (or, if the entity is a non-U.S. entity, July 19, 2004), and has never had an application for registration approved by the Board. The third question asks whether the firm submitting the form is operating without holding any license or certification issued by a state, agency, board, or other authority authorizing the firm to engage in the business of auditing or accounting. If the firm answers yes to any one of these three questions, the firm could not remain registered without filing, and obtaining Board approval of, an application on Form 1. For the sake of continuity for any issuer clients, however, the firm would receive the benefit of a transitional succession to registration for up to 90 days beyond the effective date of the acquisition or combination, so long as the firm represents that it either has filed, or intends to file within 45 days of the effective date of the acquisition or combination, an application for registration on Form 1.

IV. Relationship Between Form 4 and Proposed Reporting Requirements

Transactions with respect to which a firm uses the proposed Form 4 process could involve the successor registered firm emerging with a different name or different professional licenses than the predecessor registered firm. The Board has today separately proposed rules and a form (Form 3) requiring registered firms to report to the Board when certain events occur, including a name change or a change in professional licenses.^{9/}

or no longer practice public accounting. If the Board does not receive notice that a registered firm has merged into another entity or gone out of business, the Board would eventually expend resources following up on the firm's failure to file required annual reports or possibly include the firm in inspection planning for a given year.

^{9/} See Proposed Reporting Rules at A-34, A39-A41.

RELEASE

If a name change or change in professional licenses occurs in connection with an event concerning which a firm files Form 4, the firm need not, and should not, separately report those changes on Form 3, because they should be reported on Form 4. Notes in Parts VII and VIII of proposed Form 3 include a reminder on this point.

V. Timing and Catch-Up Filings

For succession to registration to take effect automatically upon filing under the proposed rules, Form 4 must be filed within 14 days after the effective date of the transforming event. The time allowed is relatively short, but the transforming events to which Form 4 applies are events for which firms plan. As a general matter, it is important to file a Form 4 as early as possible, to minimize any period of public uncertainty about whether the firm has the Board registration status that it must have in order to provide audit services to issuers. If a firm plans to use the Form 4 process in connection with such an event, there is no burden or hardship in requiring the filing of the form close in time to the effective date of the event.

Even so, the proposed rules make some allowance for late filing. Under the proposal, a firm that fails to file Form 4 within the 14-day period may submit a late Form 4 and request that the Board grant leave to file the form out of time. In a late submission, the firm should include as an exhibit to the form a statement in support of its request for leave to file out of time. If the Board grants the request and allows the form to be filed, the firm will succeed to the predecessor's registration (either outright or for the transitional period described above). A firm submitting a late Form 4, however, should make no assumption about whether the Board will allow it to be filed, nor about how soon the Board will address the request. The rule's provision for late submissions is not principally intended as an accommodation to firms, but is intended to afford the Board the opportunity to allow Form 4 succession, despite a late filing, when doing so would serve the public interest, such as when the disruption in registration might interfere with an issuer client's ability to comply with Commission filing requirements.

The proposed rules extend the option of Form 4 continuation of registration to firms that had a change in legal form, or that resulted from an acquisition or combination, in the period between the firm's registration and the effective date of the proposed rules. Some firms have advised the Board of such events as they occurred. Those firms, and others that have undergone such changes without advising the Board, should report the change on Form 4 within 14 days of proposed Rule 2108 taking effect if they wish to take advantage of the

RELEASE

succession option and avoid finding themselves unregistered, by operation of proposed Rule 2108(c), and needing to apply for registration on Form 1.

VI. Amendments, Confidential Treatment, and Conflicts with Non-U.S. Law

Under the proposed rules, the provisions of certain other rules described in the Proposed Reporting Rules release would apply to a filing on Form 4 as if it were a filing on Form 3. Specifically, the provisions of the rules concerning signatures, amendments, and asserted conflicts with non-U.S. law (proposed Rules 2204, 2205, and 2207, respectively) would apply to a Form 4 filing, as would the provisions of Rule 2300 concerning confidential treatment requests.^{10/}

As with the proposal concerning Forms 2 and 3, the proposal concerning Form 4 includes accommodations for non-U.S. firms that may face non-U.S. legal restrictions on providing information or affirmations to the Board. Specifically, if a firm asserts that non-U.S. law prohibits the firm from providing the affirmation in proposed Item 4.1 (concerning the firm's consent to cooperate with the Board and the firm's obligation to secure similar consents from its associated persons), the firm may withhold the affirmation if it certifies that it is doing so on the basis of a non-U.S. legal restriction and that it has complied with proposed Rule 2207 with respect to the asserted conflict. All of the other Form 4 items, however, are very basic, are essential to the Board's ability to implement a process for automatic and predictable continuity of registration, and are not likely to trigger non-U.S. restrictions. Even if some non-U.S. restriction were triggered, no firm is ever required to file a Form 4; Form 4 would be merely an option made available as an accommodation to firms. Accordingly, the form would not allow for the assertion of a conflict on any item other than Item 4.1.

The provisions of Rule 2300 (as proposed to be amended in the Reporting Rules Release) would apply to requests for confidential treatment of specific information supplied on Form 4. Consistent with the approach in the Reporting Rules Release, proposed Form 4 limits the categories of information for which a firm could request confidential treatment. The proposal reflects an effort to identify categories of information as to which there is no realistically foreseeable basis for confidential treatment on the theory that precluding the possibility of confidential treatment requests for those categories will avoid having to delay publication of the information while the Board processes a baseless request.

^{10/} For a general discussion of the proposed rules concerning amendments and asserted conflicts with non-U.S. law, and the proposed amendments to Rule 2300, see Proposed Reporting Rules at 13-23.

RELEASE

The Board does not take lightly the preclusion of confidential treatment requests. Section 102(e) of the Act requires the Board to honor "applicable laws relating to the confidentiality of proprietary, personal, or other information," and also requires that "in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information." In the case of Form 4, however, the very basic, nonpersonal, and nonproprietary nature of the required information leads the Board to propose foreclosing confidential treatment requests for almost all of the items in the form.¹¹ The Board encourages commenters to review the specific items in proposed Form 4 and to comment on whether the proposal overlooks any actual or realistically foreseeable legal requirement to maintain the confidentiality of information.

VII. Effective Date

Proposed Rules 2108 and 2109 and Form 4, if adopted, would take effect on the date that is 14 days after Commission approval. That delay would build in sufficient lead time for firms to become aware of Commission approval of the rules and to begin finalizing any Form 4 submissions that would be due shortly after the rules take effect, such as filings covering events that occurred before the effective date of the rules.^{12/}

^{11/} Proposed Form 4 would allow confidential treatment requests for Exhibit 99.3 and Exhibit 99.5, neither of which would be included routinely with a Form 4 filing. Exhibit 99.3 would be filed only in response to a request made by the Board or the staff, under proposed Rule 2207(d), that the firm submit certain supporting materials in connection with an asserted conflict with non-U.S. law. Exhibit 99.5 would be a firm's statement in support of a request for leave to file Form 4 out of time, and would only be included if the firm filed the form late.

^{12/} The timing of the effective date is proposed in coordination with the timing of effective dates for the proposed rules relating to special reporting, with a focus on the sequencing of any necessary catch-up filings for events that occurred after a firm registered but before these rules take effect. As proposed, any catch-up Form 4 that a firm wished to file would be due within 28 days after Commission approval of the rules, and any catch-up special report on Form 3 that a firm was required to file would be due within 35 days of Commission approval of the rules.

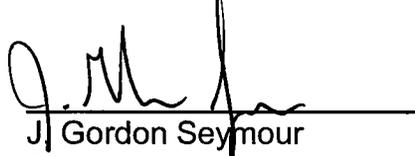
RELEASE**VIII. Opportunity for Public Comment**

Interested persons are encouraged to submit their views to the Board. Written comments should be sent to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments may also be submitted by e-mail to comments@pcaobus.org or through the Board's Web site at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 020 in the subject or reference line and should be received by the Board no later than 5:00 p.m. (EDT) on July 24, 2006.

* * *

On the 23rd day of May, in the year 2006, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.



J. Gordon Seymour
Secretary
May 23, 2006

APPENDICES –

Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm

Proposed Form 4 Instructions

RELEASE

Appendix – Draft Rules and Form on Succeeding to Registration Status

SECTION 2. REGISTRATION AND REPORTING **Part 1 – Registration of Public Accounting Firms**

2108. Succeeding to the Registration Status of a Predecessor

(a) In the event that a registered public accounting firm changes its form of organization or changes the jurisdiction under the law of which it is organized, in circumstances that do not involve an acquisition or combination as described in paragraph (b) of this Rule, the entity in its new form shall succeed to the registration status of the predecessor if the new entity is a public accounting firm and files a Form 4 in accordance with Rule 2109.

(b) In the event that a registered public accounting firm is acquired by an entity that is not a registered public accounting firm, or combines with any other entity or entities to form a new legal entity –

(1) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer to each subpart of Item 3.2.e of that Form 4 is "no," that entity shall succeed to the registration status of the registered firm;

(2) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer to any subpart of Item 3.2.e of that Form 4 is "yes," that entity shall not succeed to the registration status of the registered firm; provided, however, that if that entity represents on Form 4 that it has filed, or that it intends to file within 45 days of the effective date of the acquisition or combination, an application for registration on Form 1, then –

(i) subject to the qualification in subparagraph (ii), that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of the acquisition or combination as reported on Form 4; and

(ii) if the acquisition or combination took effect before the effective date of this rule, that entity shall temporarily

RELEASE

succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of this rule.

(c) Subject to paragraph (d) of this rule, a public accounting firm that results from events described in paragraphs (a) or (b) of this rule shall not, in the absence of compliance with the provisions of Rule 2109, succeed to the registration status of a predecessor registered public accounting firm.

(d) Notwithstanding paragraph (c) of this rule, if a public accounting firm's failure to comply with the provisions of Rule 2109 is solely a failure concerning the timeliness of the submission, the firm may request leave to file Form 4 out of time by indicating and supporting that request in accordance with the instructions to the form. The Board will evaluate any such request in light of the relevant facts and circumstances and the public interest and may, in its discretion, grant or deny the request. If the Board grants leave to file the form out of time, the Form 4 shall be deemed filed and the provisions of paragraphs (a) and (b) shall apply as if the Form 4 had been timely filed. A Form 4 that has been submitted out of time may be withdrawn by the firm at any time before the Board has approved or disapproved the request for leave to file out of time.

2109. Procedure for Succeeding to the Registration Status of a Predecessor

(a) A public accounting firm seeking to succeed to the registration status of a predecessor registered public accounting firm, pursuant to the provisions of Rule 2108, must do so by filing a Form 4 –

(1) no later than the 14th day after the change or business combination takes effect, if the change or business combination takes effect on or after **[insert effective date of this rule]**; or

(2) no later than **[insert date 14 days after effective date of this rule]**, if the change or business combination took effect before **[insert effective date of this rule]**.

(b) A public accounting firm filing a Form 4 must do so by filing the Form 4 in accordance with the instructions to that form. Unless directed otherwise by the

RELEASE

Board, a public accounting firm filing a Form 4 must file the Form 4 and exhibits thereto electronically with the Board through the Board's Web-based system.

(c) A Form 4 shall be deemed to be filed on the date that the registered public accounting firm submits a Form 4 in accordance with Rule 2109(b) that includes the signed certification required in Part V of Form 4, *provided, however*, that any report so submitted after the applicable deadline as prescribed in paragraph (a) of this rule, shall not be deemed filed unless and until the Board, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

(d) The provisions of Rule 2204 concerning signatures, shall apply to each signature required by Form 4 as if it were a signature to a report on Form 3. Rule 2205 concerning amendments, and Rule 2207 concerning assertions of conflicts with non-U.S. laws, shall apply to any submission on Form 4 as if the submission were a report on Form 3.

RELEASE

FORM 4 – SUCCEEDING TO REGISTRATION STATUS OF PREDECESSOR

GENERAL INSTRUCTIONS

1. Purpose of this Form. Effective [**insert effective date of Rule 2109**], this Form must be used to submit information, representations, and affirmations to the *Board*, pursuant to Rule 2109, by a *public accounting firm* that seeks to succeed to the registration status of a predecessor firm in circumstances described in Rule 2108.
2. Defined Terms. 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*. In addition, as used in the instructions to this Form, the term "the Firm" means the *public accounting firm* that is submitting this Form to the *Board*, and the term "the predecessor firm" means the *registered public accounting firm* identified in Item 1.1.a of the Form.
3. Submission of this Form. Unless otherwise directed by the *Board*, the Firm must submit this Form, and all exhibits to this Form, to the *Board* electronically by completing the Web-based version of this Form available on the *Board's Website*. The Firm must use the predecessor firm's user ID and password to access the system and submit the Form. In the event of a transaction involving the combination of multiple *registered public accounting firms*, the Firm must access the system using only the user ID and password of the firm specifically identified in Item 1.1.a, and not those of any other *registered public accounting firm*.
4. When this Form Should be Submitted and When It is Considered Filed. To succeed to the registration status of the predecessor firm pursuant to the provisions of Rule 2108(a) or (b), the Firm must provide the information and representations required by this Form, in accordance with the instructions to this Form, and must file the Form no later than the 14th day after the effective date of the change in form of organization, change in jurisdiction of organization, or business combination. Different timing requirements apply with respect to events that occurred before [**insert effective date of Rule 2109**]. See Rule 2109(a)(2). Form 4 is considered filed when the Firm has submitted to the *Board*, through the *Board's Web-based reporting system*, a Form 4 that includes the signed certification required in Part V of Form 4, *provided, however*, that any Form 4 so submitted after the applicable filing deadline shall not be deemed filed

RELEASE

unless and until the *Board*, pursuant to Rule 2108(e), grants leave to file the Form 4 out of time.

5. Seeking Leave To File this Form Out of Time. To request leave to file Form 4 out of time, pursuant to the provisions of Rule 2108(e), the Firm must file the request on Form 4 and must attach as Exhibit 99.5 a detailed statement describing why, despite the passage of time since the event described on the Form 4, the *Board* should permit the Firm to succeed to the registration status of the predecessor firm. Any Form 4 that has been submitted out of time, and as to which a *Board* decision on whether to allow the form to be filed is pending, may be withdrawn by accessing the pending submission in the *Board's* Web-based system and selecting the "Withdraw" option.
6. Completing the Form. The Firm must complete Parts I, II, IV and V of this Form. Part III should be completed to the extent applicable, as described more fully in the instructions to Part II of the Form.
7. Amendments to this Form. The Firm must file an amendment to a filed Form 4 no later than the fourteenth day after becoming aware that it provided incorrect information in the Form or that it failed to include in the Form information that it was, at the time it filed the Form, required to include in the Form. When submitting a Form 4 to amend an earlier filed Form 4, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 4 all information, representations, affirmations, and certifications that were required to be included in the original Form 4.

Note: The *Board* will designate an amendment to a report on Form 4 as a report on "Form 4/A."

Note: Any change to a Form 4 that has been submitted out of time, and as to which a *Board* decision on whether to allow the form to be filed is pending, shall not be treated as an amendment. To make a change to any such pending Form 4 submission, the Firm must access the pending submission in the *Board's* Web-based system, select the "Withdraw and Replace" option, and submit a new completed Form 4 in place of the previously pending submission. The certification required in Part V of the new submission must be executed specifically for the replacement version of the Form and dated accordingly.

RELEASE

8. Rules Governing this Form. In addition to these instructions, the *rules* contained in Part 2 of Section 2 of the *Board's rules* govern this Form. Please read these *rules* and the instructions carefully before completing this Form.
9. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Exhibit 99.3 or Exhibit 99.5 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. If the Firm requests confidential treatment, it must identify the information in Exhibit 99.3 or Exhibit 99.5 that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, an exhibit that complies with the requirements of Rule 2300(c)(2). The *Board* will determine whether to grant confidential treatment requests on a case-by-case basis. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of that failure.
10. Assertions of Conflicts with Non-U.S. Law. If the Firm is a *foreign registered public accounting firm*, the Firm may, unless otherwise directed by the *Board* pursuant to Rule 2207(e), decline to provide the affirmation required by Item 4.1 of this Form if providing the affirmation would constitute a violation of non-U.S. law by the Firm and the Firm proceeds in accordance with Rule 2207. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2207 apply to any submission on this Form as if the submission were a report on Form 3.) If the firm withholds the affirmation, the Firm must indicate, in accordance with the instructions in Part V of the Form, that it has done so.
11. Language. Information submitted as part of this Form, including any exhibit to this Form, must be in the English language.



RELEASE

PART I – IDENTITY OF THE FIRM AND CONTACT PERSONS

Item 1.1 Names of Firm and Predecessor *Registered Public Accounting Firm*

a. State the legal name of the *registered public accounting firm* to whose registration status the Firm seeks to succeed.

Note: The name provided in Item 1.1.a should be the legal name of the *registered public accounting firm* as last reported to the *Board* on Form 1 or Form 3. This is the firm referred to in this Form as "the predecessor firm." In accessing and submitting this Form through the *Board's* Web-based system, the Firm must use the predecessor firm's user ID and password.

b. State the legal name of the Firm filing this Form.

Note: The name provided in Item 1.1.b will be the name under which the Firm is registered with the *Board* if this Form is filed in accordance with Rule 2109.

c. If different than the name provided in Item 1.1.b, state the name or names under which the Firm issues or intends to issue *audit reports*.

Item 1.2 Contact Information of the Firm

a. State the physical address (and, if different, mailing address) of the Firm's headquarters office.

b. State the telephone number and facsimile number of the Firm's headquarters office. If available, state the Website address of the Firm.

Item 1.3 Primary Contact and Signatory

a. State the name, business title, physical business address (and, if different, business mailing address), business telephone number, business facsimile number, and business e-mail address of a partner or authorized officer of the Firm who will serve as the Firm's primary contact with the *Board*, including for purposes of this Form 4, any annual reports filed on Form 2, and any special reports filed on Form 3.



RELEASE

PART II – GENERAL INFORMATION CONCERNING THE FILING OF THIS FORM

Item 2.1 Reason for Filing this Form

Indicate, by checking the box for either Item a or Item b below, the reason the Firm is filing this Form. Then proceed to the Parts and Items of this Form indicated parenthetically for the relevant item and provide the information described there. Provide responses only to those Parts and Items of the Form specifically indicated for the event or events that the Firm identifies in this Part II as the reason for filing this Form. (For example, if the Form is being submitted because the Firm has changed its form of organization, check the box for Item 2.1.a, and complete only Item 3.1 and Parts IV and V of the Form. Complete Item 2.2 or Item 2.3 if applicable.)

a. There has been a change in the Firm's form of organization, or the Firm has changed the jurisdiction under the law of which it is organized. (Complete Item 3.1, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

b. There has been an acquisition of a *registered public accounting firm* by an entity that was not a registered public accounting firm at the time of the acquisition, or a *registered public accounting firm* has combined with another entity or other entities to form a new legal entity. (Complete Item 3.2, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

Item 2.2 Request for Leave To File this Form Out of Time

If this Form is not submitted in accordance with Rule 2109(b) on or before the filing deadline set by Rule 2109(a), the Firm may request leave to file this Form 4 out of time by checking the box for this Item, completing this Form 4 as is otherwise required, and providing, as Exhibit 99.5 to this Form, a description of the reason(s) the Form was not timely filed and a statement of the grounds on which the Firm asserts that the *Board* should grant leave to file the Form out of time.

Note: Requests for leave to file Form 4 out of time are not automatically granted. See Rule 2108(d).

RELEASE

Item 2.3 Amendments

If this is an amendment to a Form 4 previously filed with the *Board* –

- a. Indicate, by checking the box corresponding to this item, that this is an amendment.
- b. Identify the specific Item numbers of this Form (other than this Item 2.3) as to which the Firm's response has changed from that provided in the most recent Form 4 or amended Form 4 filed by the Firm with respect to the event reported on this Form.

PART III – CHANGES IN THE FIRM

Item 3.1 Changes in Form of Organization or in Relevant Jurisdiction

If the Firm's form of organization has changed, or the Firm has changed the jurisdiction under the law of which the Firm is organized –

- a. State the Firm's legal form of organization;
- b. Identify the jurisdiction under the law of which the Firm is organized; and
- c. State the date that the change took effect.
- d. Affirm that, after the change reported or described in this Item 3.1, the Firm is a *public accounting firm* under substantially the same ownership as the predecessor firm.

Note: Neither the Act nor *Board rules* include any provision by which a *registered public accounting firm* may, in effect, transfer its *Board* registration to another entity. Rule 2108(a), in conjunction with this Form, allows the succession of registration status in circumstances in which a *registered public accounting firm* changes its legal form of organization while remaining under substantially the same ownership. For purposes of this Item, the Firm is considered to be under substantially the same ownership as the predecessor firm if a majority of the predecessor firm's partners, principals, or shareholders are partners, principals, or shareholders of the Firm and constitute a majority of the Firm's partner's, principals, or shareholders.

RELEASE

e. If, in connection with the change described in this Item 3.1, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the *Board* by the predecessor firm, provide as to each such license –

1. the name of the issuing *state*, agency, board, or other authority;
2. the number of the license or certification;
3. the date the license or certification took effect.

f. If, in connection with the change described in this Item 3.1, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has been terminated, revoked, suspended, surrendered, made subject to any conditions or contingencies, or has expired without renewal, provide, as to each such license –

1. the name of the issuing *state*, agency, board, or other authority;
2. the number of the license or certification; and
3. the date of the termination, revocation, suspension, surrender, expiration, or imposition of conditions or contingencies.

Item 3.2 Acquisitions of, or Combinations Involving, A *Registered Public Accounting Firm*

a. If there has been an acquisition of a *registered public accounting firm* by an entity that was not a registered public accounting firm at the time of the acquisition, or a *registered public accounting firm* has combined with another entity or other entities to form a new legal entity –

1. Provide the name of each entity, other than the predecessor firm, that was involved in the transaction and that was a *registered public accounting firm* immediately before the transaction, and as to each such entity –
 - (i) affirm that the entity has filed with the *Board* a request for leave to withdraw from registration on Form 1-WD; and
 - (ii) state the date that the entity filed Form 1-WD;

RELEASE

2. Provide the name of each entity, including any acquiror, that was involved in the transaction and that was not a *registered public accounting firm* immediately before the transaction;

3. Provide the date that the transaction took effect; and

4. Provide a brief description of the nature of the transaction.

b. Provide as Exhibit 99.4 to this Form, a statement in the form set out below, signed by a person who, immediately before the transaction, was a partner, principal, shareholder, or officer of the predecessor firm and who is now a partner, principal, shareholder, or officer of the Firm. The statement must be submitted on behalf of the Firm. Exhibit 99.4 must include a signature that appears in typed form in the electronic submission and a corresponding manual signature retained by the Firm in accordance with Rule 2109(d). The signature must be accompanied by the signer's current title, the signer's title immediately before the event described in Item 3.2.a, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address. Other than the insertion of the relevant names, Exhibit 99.4 must be in the exact following words –

On behalf of [name of the Firm], I certify that (1) I was a partner or officer of [name of predecessor firm] immediately before the transaction described in Item 3.2.a of the Form 4 to which this exhibit is attached; (2) immediately before that transaction [name of predecessor firm] was a *registered public accounting firm*; (3) as part of that transaction, a majority of [name of predecessor firm]'s partners, principals, or shareholders, moved into the entity resulting from that transaction, specifically [name of the Firm]; (4) [name of predecessor firm] intended that [name of the Firm] succeed to the *Board* registration status of [name of predecessor firm] to the extent permitted by the *Board's* rules; and (5) [name of predecessor firm] is no longer a *public accounting firm*.

c. If, in connection with the transaction described in Item 3.2.a, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the *Board* by the predecessor firm, provide, as to each such license –

1. the name of the issuing *state*, agency, board or other authority;

2. the number of the license or certification; and

RELEASE

3. the date the license or certification took effect.

d. If, in connection with the transaction described in Item 3.2.a, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has been terminated, revoked, suspended, surrendered, made subject to any conditions or contingencies, or has expired without renewal, provide, as to each such license –

1. the name of the issuing *state*, agency, board, or other authority;
2. the number of the license or certification; and
3. the date of the termination, revocation, suspension, surrender, expiration, or imposition of conditions or contingencies.

e. Provide a "yes" or "no" answer to each of the following questions –

1. Is there identified in Item 3.2.a.2 any entity that, if it were filing an application for registration on Form 1 on the date of the certification in Part V of this Form, would have to provide an affirmative response to either Item 5.1.a or Item 5.2.a of Form 1 in order to file a complete and truthful Form 1?

Note: In considering whether an affirmative response would be required to Item 5.1.a of Form 1, the Firm should take into account the guidance provided by question number 33 in Frequently Asked Questions Regarding Registration with the *Board*, PCAOB Release No. 2003-011A (Nov. 13, 2003).

2. Is there identified in Item 3.2.a.2 any entity that (i) issued an *audit report* with respect to an *issuer* on or after October 22, 2003 (or, if the entity is a non-U.S. entity, July 19, 2004), while not registered with the *Board*, and (ii) has never had an application for registration on Form 1 approved by the *Board*?

3. Is the Firm operating without holding any license or certification issued by a *state*, agency, board, or other authority authorizing the Firm to engage in the business of auditing or accounting?

Note: If the Firm answers "yes" to any question in Item 3.2.e, the Firm cannot succeed outright to the registration of the predecessor. If this Form 4 is submitted in accordance with Rule 2109, however, the Firm will

RELEASE

temporarily succeed to the registration of the predecessor for a transitional period not to exceed 90 days, as long as the Firm makes the representation required in Item 3.2.f below. If the Firm answers "yes" to any question in Item 3.2.e but fails to make the representation required in Item 3.2.f, this Form 4 will not be accepted for filing and the Firm will not succeed to the predecessor's registration even on a temporary basis. See Rule 2108(b)(2).

f. If the Firm answered "yes" to any question in Item 3.2.e, affirm, by checking the box corresponding to the appropriate item, that one of the following statements is true –

1. The Firm has filed an application for registration on Form 1 on or after the date provided in Item 3.2.a.3.

2. The Firm intends to file an application for Registration on Form 1 no later than 45 days after the date provided in Item 3.2.a.3.

PART IV – CONTINUING OBLIGATIONS

Item 4.1 Continuing Consent to Cooperate

Affirm that –

a. The Firm consents to cooperate in and comply with any request for testimony or the production of documents made by the *Board* in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002;

b. The Firm has secured from each of its *associated persons*, and agrees to enforce as a condition of each such person's continued employment by or other association with the Firm, a consent indicating that the *associated person* consents to cooperate in and comply with any request for testimony or the production of documents made by the *Board* in furtherance of its authority under the Sarbanes-Oxley Act of 2002, and that the *associated person* understands and agrees that such consent is a condition of his or her continued employment by or other association with the Firm; and

c. The Firm understands and agrees that cooperation and compliance, as described in Item 4.1.a., and the securing and enforcing of consents from its *associated persons* as described in Item 4.1.b., is a condition to the continuing effectiveness of the registration of the Firm with the *Board*.

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Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any *associated person* that is a *registered public accounting firm*.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any *associated person* that is a *foreign public accounting firm* in circumstances where that *associated person* asserts that non-U.S. law prohibits it from providing the consent, so long as the Firm possesses in its files documents relating to the *associated person's* assertion about non-U.S. law that would be sufficient to satisfy the requirements of subparagraphs (2) through (4) of Rule 2207(c) if that *associated person* were a *registered public accounting firm* filing a Form 2 and withholding the affirmation. This exception to the affirmation in Item 4.1.b. does not relieve the Firm of its obligation to enforce cooperation and compliance with *Board* demands by any such *associated person* as a condition of continued association with the Firm.

Note: If the Firm is a *foreign registered public accounting firm*, the affirmations in Item 4.1 that relate to *associated persons* shall be understood to encompass every *accountant* who is a proprietor, partner, principal, shareholder, officer, or manager of the Firm and who provided at least ten hours of *audit services* for any *issuer* during the reporting period.

Item 4.2 Continuing Responsibility for Previous Conduct

Affirm that, for purposes of the *Board's* authority with respect to *registered public accounting firms*, including but not limited to the authority to require reporting of information and the authority to impose disciplinary sanctions, the Firm either has retained or willingly assumes legal responsibility for the conduct of any predecessor *registered public accounting firm* before the change or business combination reported on this Form took effect.

Note: As used in Item 4.2 the term "*predecessor registered public accounting firm*," means (1) in circumstances not involving a transaction described in Item 3.2, the predecessor firm and (2) in circumstances involving a transaction described in Item 3.2, each *registered public accounting firm* that was involved in the business combination.

Note: The continuing responsibility in Item 4.2 includes, among other things, responsibility for reporting information on Form 2 and events on Form 3.

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Thus, for example, if a *registered public accounting firm* experienced a Form 3 reportable event before the event that is the subject of this Form, the Firm, as successor, has the obligation to report that event on Form 3, and bears responsibility for any failure by any predecessor to have filed a timely Form 3 to report the matter.

Note: The *Board's rules* do not require that any entity retain or assume legal responsibility for the conduct of any predecessor *registered public accounting firm*. In the absence of an affirmation that it will voluntarily do so, however, an entity cannot succeed to the *Board* registration status of any predecessor entity. See Rule 2108.

PART V – CERTIFICATION OF THE FIRM

Item 5.1 Signature of Partner or Authorized Officer

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2109(d), both a signature that appears in typed form within the electronic submission and a corresponding manual signature retained by the Firm. The signer must certify that –

- a. the signer is authorized to sign this Form on behalf of the Firm;
- b. the signer has reviewed this Form;
- c. based on the signer's knowledge, the Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and
- d. either –
 1. based on the signer's knowledge, the Firm has not failed to include in the Form any information or affirmation that is required by the instructions to the Form, with respect to the event or events being described on the Form, or
 2. based on the signer's knowledge –
 - (A) the Firm is a *foreign public accounting firm* and has not failed to include in the Form any information or affirmation that is required by the instructions to the Form other than an affirmation required by Item

RELEASE

4.1, which the Firm asserts it is prohibited by non-U.S. law from providing to the *Board* on this Form 4; and

- (B) with respect to each withheld affirmation required by Item 4.1, the Firm has made the efforts described in PCAOB Rule 2207(b) and has in its files the materials described in PCAOB Rule 2207(c).

The signature must be accompanied by the signer's title, the capacity in which the signer signed the Form, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address.

PART VI – EXHIBITS

To the extent applicable under the foregoing instructions, each report must be accompanied by the following exhibits:

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.3 Materials Required by Rule 2207(c)(2)–(4) – *Submit Only as an Exhibit to an Amended Form 4 in Response to a Request Made Pursuant to Rule 2207(d)*

Exhibit 99.4 Acknowledgment Concerning Registration Status in Certain Transactions

Exhibit 99.5 Statement in Support of Request for Leave To File Form 4 Out of Time.



Exhibit 2(a)(B)

Alphabetical List of Comments

American Institute of Certified Public Accountants

Deloitte & Touche LLP

New York State Society of Certified Public Accountants

PricewaterhouseCoopers LLP

Swiss Institute of Certified Accountants and Tax Consultants

July 24, 2006

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 020: Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm

Members and Staff of the Public Company Accounting Oversight Board:

The American Institute of Certified Public Accountants (the AICPA) respectfully submits the following written comments on the Public Company Accounting Oversight Board's (the PCAOB or the Board) Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm (the Proposed Rules).

The AICPA is the largest professional association of certified public accountants in the United States, with more than 340,000 members in business, industry, public practice, government, and education. The comments in this letter represent the views of those members who audit public companies.

* * * * *

General Comments

The AICPA commends the Board for proposing rules that would enable an existing registered public accounting firm (RPAF) to transfer its registration status to a successor entity by filing a new Form 4 ("Succeeding to Registration Status of Predecessor") with the Board. Under the Proposed Rules, an RPAF would be able to transfer its registration status to a successor entity "outright" in some circumstances, without any need to file a new Form 1 registration statement with the Board or any potential disruption to the firm's business and continued ability to audit issuers. In other circumstances, the Proposed Rules contemplate that a successor entity would succeed to its predecessor's registration status for a transitional period of no greater than 90 days, while a new Form 1 was filed with, and reviewed by, the Board.

In general, the AICPA believes that the Proposed Rules would establish an appropriate framework that includes proper safeguards for RPAFs to transfer their registration status with the Board to successor entities. We have identified several issues, however, that we believe merit further consideration by the Board.

Office of the Secretary
Public Company Accounting Oversight Board
July 24, 2006
Page 2

In addition, situations in which a public accounting firm was required to file a new Form 1 with the Board following a change in an RPAF's legal status or certain business combinations involving an RPAF could create substantial uncertainty for the firm and its issuer clients, since there would be no assurance that the PCAOB would act upon or approve the new application within the 90-day time frame contemplated under the Proposed Rules. Accordingly, we encourage the Board to establish a process analogous to a "pre-filing" conference that companies contemplating a public issuance of securities often schedule in advance of the offering with the Securities and Exchange Commission (SEC) staff. Under such procedures, an RPAF that anticipates that a successor entity might be required to file a new Form 1 with the PCAOB could review the relevant facts with the Board's staff on an informal basis *before* the relevant event to determine whether the PCAOB staff anticipates significant obstacles to approving the successor entity's application for registration with the Board.

Proposed Items 2.1(a) and 3.1 of Form 4 – Changes in Form of Organization or in Relevant Jurisdiction

Proposed Item 2.1(a) of Form 4 would require a firm to indicate if there had been a change in an RPAF's form of organization or a change in the jurisdiction under the laws of which the RPAF was organized. In such event, the firm also would be required to provide certain information set forth in Item 3.1 in order to succeed "outright" to its predecessor's registration status with the PCAOB. Among other things, the successor firm would be required to confirm that, after the relevant change, it was a public accounting firm "under substantially the same ownership" as the predecessor RPAF. An explanatory note to Item 3.1 in the Proposing Release states that a firm would be considered under "substantially the same ownership" as a predecessor firm if "a majority of the predecessor firm's partners, principals, or shareholders are partners, principals, or shareholders of the [firm filing the Form 4] and constitute a majority of the [successor firm's] partners, principals, or shareholders."

We believe that, from the Board's perspective, the key consideration should be whether, on a prospective basis, a majority of the successor firm's owners would consist of individuals who previously had been partners, principals or shareholders of a predecessor RPAF that was registered with the Board and subject to PCAOB oversight. Conversely, we believe that a successor firm should not be precluded from assuming a predecessor firm's registration status "outright" if less than a majority of its predecessor's owners remained with the successor firm (as might be the case, for example, if several partners at a small RPAF decided, concurrently with the firm's change in organizational structure, to exit the public accounting profession). Accordingly, we recommend that the Board revise this requirement to allow a successor firm to succeed to its predecessor's registration status "outright" under Items 2.1(a) and 3.1, when a majority of its owners previously had been partners, principals or shareholders of an RPAF. In such event, the Board could require an express representation that the predecessor RPAF intended to transfer its registration status to the successor entity, in order to avoid any situations in which multiple successor firms attempted to assume a predecessor's registration status.

Office of the Secretary
Public Company Accounting Oversight Board
July 24, 2006
Page 3

In addition, we believe that it would be useful if the PCAOB would clarify the references to “majority” ownership of firms in the explanatory note to Item 3.1. In particular, it is not entirely clear whether the Board’s intent was to require, among other things, that a majority of the individuals at a successor firm previously had been partners, principals, or shareholders of a predecessor RPAF, or instead that individuals who hold a majority of the economic interests in the successor firm previously had been partners, principals, or shareholders of the predecessor firm.

Proposed Items 2.1(b) and 3.2 of Form 4 – Acquisitions of, or Combinations Involving, an RPAF

Proposed Item 2.1(b) of Form 4 would require a firm to indicate if there had been an acquisition of an RPAF by an entity that was not registered with the Board, or if an RPAF had combined with one or more other entities to form a new legal entity. In such event, the successor firm would be required to provide certain information to the Board set forth in proposed Item 3.2 of Form 4. Depending on the information provided, a successor firm would (1) succeed to a predecessor RPAF’s registration status with the Board “outright,” (2) succeed to a predecessor RPAF’s registration status for a transitional period of no longer than 90 days, while the successor firm filed a new Form 1 with the Board, or (3) not succeed to any predecessor’s registration with the Board, either “outright” or on a temporary basis.

We believe the Board’s proposals under Items 2.1(b) and 3.2 would, in many circumstances, facilitate the transfer of a predecessor firm’s registration status to a successor firm. However, we respectfully submit that certain of the Board’s proposals may result in uncertainty as to a predecessor firm’s ability to transfer its registration status to a successor entity, or potential obstacles to the transfer of a predecessor firm’s registration that the Board may not have contemplated.

Ownership Requirements

Proposed Item 3.2 of Form 4 would require a successor firm to file an exhibit (Exhibit 99.4) containing a certification signed by an individual who had been a partner, principal, shareholder or officer of the predecessor RPAF and holds a similar position with the successor firm. Among other things, the individual would be required to certify that, as part of the business transaction involving the RPAF, “a majority of [name of predecessor firm]’s partners, principals, or shareholders, moved into the entity resulting from that transaction, specifically [name of the Firm].” If the successor firm were unable to provide this certification, it apparently would not be allowed to succeed to a predecessor firm’s registration status, either “outright” or on a temporary basis.

For the reasons discussed above with respect to Items 2.1(a) and 3.1 of Form 4, we believe that, from the Board’s perspective, the key consideration should be whether a majority of the successor firm’s owners consisted of individuals who previously had been partners, principals or

Office of the Secretary
Public Company Accounting Oversight Board
July 24, 2006
Page 4

shareholders of a predecessor RPAF subject to Board oversight, rather than whether a majority of the predecessor firm's owners had moved to the successor firm. Accordingly, we believe that the certification requirement for Exhibit 99.4 should be revised to reflect this change. In this regard, we note that the individual providing the certification might still be required to represent that the predecessor firm specifically intended that the successor firm succeed to the predecessor firm's registration status with the Board. In addition, for the reasons discussed above with respect to the explanatory note to proposed Item 3.1, we believe the Board should clarify its references in Item 3.2 to a "majority" of a predecessor firm's "partners, principals, or shareholders."

Impact of Pending Private Litigation

Item 3.2(e)(1) of Form 4 would require a successor firm to indicate whether any non-RPAF that acquired an RPAF or merged with an RPAF to form a new legal entity would have had to provide an affirmative response to either Item 5.1.a or Item 5.2.a of Form 1, if such entity were filing a Form 1 with the Board on the date on which the Form 4 was certified for filing with the PCAOB. Item 5.2.a of Form 1 requires a firm to disclose any pending civil or ADR proceedings brought against the firm or its associated persons by non-governmental entities involving conduct in connection with the issuance of audit reports (for either issuer or non-issuer clients).¹ If a successor firm responds in the affirmative, it could not succeed "outright" to a predecessor firm's registration status under the Proposed Rules, but instead would, at most, succeed to its predecessor's registration for a temporary 90-day period while a new Form 1 was filed with, and reviewed by, the Board.

We do not believe that an affirmative response to proposed Item 3.2(e)(1) of Form 4 should preclude a successor firm from succeeding "outright" to a predecessor firm's registration, if the basis for the response was the existence of pending audit-related civil litigation by a non-governmental entity against the firm or its associated persons. Private civil litigation against accounting firms and public accountants relating to their audit practices remains a fact of life for practicing accountants in the United States, and the thresholds for the filing of such actions by plaintiffs remain extremely low. Accordingly, we do not believe that the pendency of such litigation should require a successor firm that otherwise could succeed "outright" to a predecessor's registration with the Board to file a new Form 1. Instead, we submit that the Board should delete the reference to Item 5.2.a of Form 1 in Item 3.2(e)(1) of Form 4 and allow the successor firm to report any such pending proceedings to the Board in a separate item under Form 4.

Need for Board Flexibility to Extend Temporary Registrations

¹ In comparison, Item 5.1.a of Form 1 requires a firm to disclose certain pending criminal, civil or administrative proceedings against the firm or its associated persons brought by governmental, regulatory or disciplinary bodies, as well as similar proceedings in which a judgment or sanction was entered against the firm or an associated person during the past five years.

Office of the Secretary
Public Company Accounting Oversight Board
July 24, 2006
Page 5

As discussed above, under certain circumstances, a successor firm would not succeed “outright” to a predecessor’s registration with the Board under the Proposed Rules, but instead only for a temporary 90-day period during which the successor firm filed, and the Board reviewed, a new Form 1 with the PCAOB.

We recognize that, under the Proposed Rules, the successor firm would have to file a new Form 1 with the Board within 45 days of its Form 4 filing, and that the PCAOB staff generally would undertake to review the new filing prior to the expiration of the firm’s 90-day temporary registration. We believe, however, that the Board should be allowed to extend a successor entity’s 90-day temporary registration for an additional 45-day period, in situations where the Board was unable to approve a successor firm’s registration during the 90-day window and/or had requested additional information from the firm. This would be analogous to current Board Rule 2106(c), which allows the PCAOB to extend the period for reviewing a Form 1 application by an additional 45 days after receiving newly requested information from an applicant.

Need for “Pre-Filing Conference” Procedures

As noted in the “General Comments” section of our comments, we believe that the Board should announce “pre-filing” procedures, whereby an RPAF that anticipates that a successor entity might be required to file a new Form 1 with the PCAOB could review the relevant facts with the Board’s staff on an informal basis *before* the relevant event to determine whether the PCAOB staff anticipates significant obstacles to approving the successor entity’s application for registration with the Board. Without such a process (and/or some modification of the Board’s proposals, as discussed above), some RPAFs may be reluctant to change their form of legal organization or to enter into mergers or other business transactions with third parties that otherwise would enhance their ability to audit issuers, due to uncertainty as to a successor entity’s future registration status with the Board.

* * * * *

We appreciate the opportunity to comment on the Board’s Proposed Rules. We are firmly committed to working with the PCAOB and would welcome the opportunity to meet with you to clarify any of our recommendations.

Sincerely,



Susan S. Coffey, CPA
Senior Vice President
AICPA

Office of the Secretary
Public Company Accounting Oversight Board
July 24, 2006
Page 6

cc: Mr. Mark W. Olson, Chairman, PCAOB
Ms. Kayla J. Gillan, Member, PCAOB
Mr. Daniel L. Goelzer, Member, PCAOB
Mr. Willis D. Gradison, Member, PCAOB
Mr. Charles D. Niemeier, Member, PCAOB

**COMMENT LETTER ON BEHALF OF
DELOITTE & TOUCHE LLP,
THE NON-U.S. MEMBER FIRMS OF DELOITTE TOUCHE TOHMATSU
AND DELOITTE TOUCHE TOHMATSU
ON THE PCAOB'S PROPOSED PERIODIC REPORTING RULES
AND PROPOSED SUCCESSOR REGISTRATION RULES
FOR PUBLIC ACCOUNTING FIRMS**

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July 24, 2006

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006

Re: PCAOB Rulemaking Docket Matter No. 019 and PCAOB Rulemaking
Docket Matter No. 020

This letter is submitted on behalf of Deloitte & Touche LLP (“D&T”), the non-U.S. member firms of Deloitte Touche Tohmatsu, and Deloitte Touche Tohmatsu. We are pleased to respond to the request for comments from the Public Company Accounting Oversight Board (the “PCAOB” or the “Board”) on both its *Proposed Rules on Periodic Reporting by Registered Public Accounting Firms*, PCAOB Rulemaking Docket Matter No. 019 (May 23, 2006), and its *Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm*, PCAOB Rulemaking Docket Matter No. 020 (May 23, 2006).

TABLE OF CONTENTS

INTRODUCTION 1

COMMENTS ON PROPOSED PERIODIC REPORTING RULES 2

 I. GENERAL COMMENTS 3

 A. REGISTERED FIRMS SHOULD BE GIVEN MORE THAN
 FOURTEEN DAYS TO REPORT SPECIFIED EVENTS..... 3

 B. THE “CATCH-UP” REPORTING PROVISIONS ARE NOT
 TAILORED TO PROVIDE RELEVANT INFORMATION AND
 ARE UNDULY BURDENSOME..... 6

 II. SPECIFIC COMMENTS ON PROPOSED RULES 11

 A. RULE 2202—THE BOARD SHOULD PROVIDE
 CLARIFICATION REGARDING THE AMOUNT OF THE
 ANNUAL FEE TO BE PAID BY REGISTERED FIRMS..... 11

 B. RULE 2205—THE BOARD SHOULD FURTHER DEFINE
 THOSE CIRCUMSTANCES THAT REQUIRE A FIRM TO FILE
 AN AMENDMENT TO FORM 2 OR FORM 3. 12

 C. RULES 2207 AND 2300—THE PROPOSED AMENDMENTS
 TO THE CONFIDENTIAL TREATMENT REQUESTS RULE
 RAISE SIGNIFICANT ISSUES..... 13

 D. RULE 4000—THE BOARD SHOULD CLARIFY THE
 PURPOSE OF DEFINING INSPECTION AUTHORITY WITH
 REFERENCE TO FORM 2 AND FORM 3. 16

 III. PROPOSED FORM 2..... 17

 A. ITEM 3.2—THE FEE CATEGORIES REQUESTED BY THE
 BOARD SHOULD BE REVISED TO TRACK THE
 COMMISSION’S PROXY DISCLOSURE RULES. 17

 B. ITEM 4.1—THE BOARD SHOULD IDENTIFY THE
 PERSONNEL WHO “EXERCISED AUTHORITY” TO SIGN AN
 AUDIT REPORT..... 21

 C. ITEM 5.2—THE BOARD SHOULD CLARIFY THE MEANING
 OF PARTICULAR TERMS RELATING TO AUDIT-RELATED
 MEMBERSHIPS, AFFILIATIONS, OR SIMILAR
 ARRANGEMENTS..... 21

D.	ITEM 6.1—THE BOARD SHOULD ALLOW FIRMS TO PROVIDE A RANGE OF THE NUMBER OF PERSONNEL PROVIDING AUDIT SERVICES, RATHER THAN AN EXACT NUMBER.	22
E.	PART VII—THE REPORTING REQUIREMENTS FOR CERTAIN RELATIONSHIPS REQUIRE CLARIFICATION.	23
IV.	PROPOSED FORM 3.....	27
A.	ITEMS 2.1, 3.1, AND 4.1—THE BOARD SHOULD DELETE THE OBLIGATION TO FILE FORM 3 FOR WITHDRAWN AUDIT REPORTS, WITHDRAWN CONSENTS, AND THE UNAUTHORIZED USE OF A FIRM’S REPORT OR NAME.	27
B.	ITEMS 2.5 THROUGH 2.10 AND ITEM 5.1—THE LEGAL PROCEEDINGS REPORTING REQUIREMENT RAISES SIGNIFICANT ISSUES.	29
C.	ITEMS 2.11 THROUGH 2.13 AND ITEMS 6.1 THROUGH 6.3—THE REPORTING REQUIREMENTS FOR CERTAIN RELATIONSHIPS REQUIRE CLARIFICATION.....	33
D.	ITEMS 2.14, 2.15, 7.1 AND 7.2—THE BOARD SHOULD LIMIT THE REPORTING OF LICENSING STATUS CHANGES TO REDUCE THE BURDEN ON REGISTERED FIRMS.	34
	COMMENTS ON PROPOSED SUCCESSOR REGISTRATION RULES	35
I.	THE FOURTEEN DAY TIME PERIOD FOR FILING FORM 4 IS UNREASONABLY SHORT AND PRACTICALLY UNWORKABLE.	35
II.	THE BOARD SHOULD ALLOW REGISTERED FIRMS TO SUBMIT CONFIDENTIAL TREATMENT REQUESTS FOR INFORMATION ON FORM 4.	36
	CONCLUSION.....	36
	APPENDIX A.....	A

INTRODUCTION

We support the goals of the Sarbanes-Oxley Act of 2002 (the “Act”) in restoring investor confidence, as well as the Board’s efforts to faithfully implement the Act. Section 102(d) of the Act requires that “each registered public accounting firm shall submit an annual report to the Board, and may be required to report more frequently” to provide to the Board information specified by the Board or the Securities and Exchange Commission (the “Commission”). The act of periodic reporting by registered public accounting firms is important to the public markets, the accounting profession, and the Board, and we support the Board’s effort to create a rational, efficient, and effective periodic reporting system.

We similarly support the Board’s efforts to establish rules that allow a firm’s registration status to continue after a change in the registered firm’s legal form. Because Section 102(a) of the Act requires that all public accounting firms that will prepare or issue an audit report for an issuer be registered with the Board, we appreciate the Board’s efforts to streamline the registration process for successor entities.

In this comment letter, we have identified those aspects of the Board’s proposals that should be clarified or modified to enable the Board to carry out its duties and responsibilities. Such clarifications and modifications will also ensure that registered firms better understand and are better able to comply both with their periodic reporting responsibilities and with any registration responsibilities for successor entities. The recommendations proposed in this letter are intended so that the Board and public markets have access to relevant information, while simultaneously minimizing outdated and duplicative information that may be required to be produced under the rules as proposed. For ease of reference, we have included a summary of our

recommendations at Appendix A. If the Board would find it useful, we would welcome the opportunity to meet with the Board to provide further explanation of the recommendations we offer in this letter.

We first set forth general comments addressing significant issues that relate to several aspects of the Board's periodic reporting proposal. We then provide comments on the specific proposed rules and amendments to existing rules. Finally, we offer our comments with respect to proposed Form 2 and Form 3. Our comments generally follow the order in which the Board's May 23, 2006 Release No. 2006-004 presents the proposed rules.

In addition, this comment letter provides suggestions and clarifications to the Board's May 23, 2006 Release No. 2006-005 regarding proposed rules on succeeding to the registration status of a predecessor firm.

COMMENTS ON PROPOSED PERIODIC REPORTING RULES

We appreciate the Board's stated intent to accomplish its periodic reporting requirement objectives—to keep records current, to facilitate analysis and planning related to the Board's inspection responsibilities, and to track circumstances that may warrant inspection, investigation, or public attention—“without imposing any unnecessary burdens.”¹ The proposed rules, however, do not achieve this important balance in certain respects and will lead to reporting certain information to the Board that is of little or no value while imposing excessively burdensome and, in some cases, potentially unworkable reporting requirements. In this comment letter, we suggest means by which these proposed rules may be revised, while still maintaining

¹ See PCAOB Release No. 2006-004, at 2.

the underlying purposes of the rules. We have also identified requirements in the proposed rules that would benefit from further clarification by the Board. Such revisions and clarification would increase the efficiency and effectiveness of the Board's own collection and analysis of relevant information, as well as decrease the burdens and costs of compliance on registered public accounting firms.

We hope our recommendations and identification of issues for clarification will facilitate the Board's implementation of the provisions of Section 102(d) of the Act in the most effective manner possible without imposing unnecessary burdens.

I. GENERAL COMMENTS

Although many issues identified in our comments relate to specific provisions of the proposed rules and forms, two aspects of the proposed periodic reporting requirements require special attention. First, the requirement that Form 3 reports be filed within fourteen days of any event triggering the obligation to report is unreasonable and, in some cases, may be impracticable in application. Second, the substantial "catch-up" reporting proposed in connection with initial Form 2 and Form 3 reports will impose a significant burden on registered firms without any corresponding benefit to the Board or the public.

A. REGISTERED FIRMS SHOULD BE GIVEN MORE THAN FOURTEEN DAYS TO REPORT SPECIFIED EVENTS.

The Board has explained that "the public interest, as well as the ability to consider whether prompt action is warranted by the Board's inspection staff or enforcement staff, would

be served by the contemporaneous reporting” of the occurrence of certain events.² We acknowledge the interests of the public and the Board, but the Board’s proposed requirement that a special report—Form 3—be filed within *fourteen* days after the occurrence of the event imposes an unreasonable reporting obligation on registered firms.³ The Board should revise this proposal to require that Form 3 be filed within forty-five days from the event triggering the reporting obligation (and, in the case of non-U.S. firms, within ninety days from the event triggering the reporting obligation).

Significantly, in its proposed rules on succeeding to the registration status of a predecessor firm, the Board itself has recognized that a fourteen day time period after the occurrence of an event triggering the obligation to file is short.⁴ In the context of Form 4 reporting, the Board justifies such a short time period because the “transforming events to which Form 4 applies are events for which firms plan.”⁵ In contrast, the proposed events that trigger Form 3 reporting—for example, the initiation of legal proceedings against the firm or the modification or revocation of the registered firm’s licensing status—are not the type of events for which firms plan. Thus, applying the Board’s own reasoning to explain a short filing period for Form 4 compels extending the window for the Form 3 reporting requirements.

² PCAOB Release No. 2006-004, at 8.

³ See Proposed Rule 2203, PCAOB Release No. 2006-004, at A-2; Proposed General Instruction 3, PCAOB Release No. 2006-004, at A-28.

⁴ PCAOB Release No. 2006-005, at 8 (describing the fourteen days allowed to file Form 4 as “relatively short”). As discussed in more detail below with regard to the proposed successor registration rules, the fourteen day reporting window for Form 4 events may prove impracticable for some non-U.S. firms.

⁵ *Id.*

Requiring reporting of an event within fourteen days after its occurrence likely will not provide, in many instances, a registered firm with sufficient time (i) to recognize the occurrence of the event, (ii) to assess the reportability of the event, including the collection of salient facts relevant to the reporting analysis, (iii) to obtain legal advice regarding the report, as necessary, or (iv) to complete Form 3. For example, the Board proposes that a Form 3 report must be filed when a firm enters into an arrangement to receive consulting or other professional services from an individual or entity subject to certain disciplinary actions.⁶ It is conceivable that persons within a registered firm responsible for the Form 3 reporting function may not be able to determine within the fourteen day time period whether the Form 3 reporting requirement has been triggered because of the time and effort necessary to identify whether such individual or entity has been sanctioned. These difficulties are only magnified when the reporting obligation is triggered by the registered firm's "awareness" of certain events, a state of knowledge left undefined by the proposed rules. As discussed more fully below in Section IV(B), the vagueness of this term may lead to unintentional noncompliance with the Form 3 reporting requirements.

This problem is even more acute for non-U.S. firms, which in addition to the foregoing problems, must determine whether the filing of Form 3 for a particular event conflicts with privacy or other obligations under non-U.S. law. To do so, non-U.S. firms will need to consult legal counsel in many instances. And, given the complexity of non-U.S. law that can be implicated in these matters and the nuanced legal judgments that may need to be made, fourteen days is too short of a time period to accommodate this important process. Moreover, documents

⁶ Proposed Item 2.13 on Form 3, PCAOB Release No. 2006-004, at A-34.

relevant to the Form 3 reportable event may need to be translated, exacerbating the difficulties for non-U.S. firms.⁷

Accordingly, we strongly urge the Board to adopt a more practicable timeframe within which firms are required to file Form 3 reports. Under the current proposal, which lacks a safe harbor for a firm's unintentional noncompliance with the reporting deadline, notwithstanding good faith efforts to comply, a registered firm may be subject to criticism, or even discipline, under the Board's proposed rules if it cannot file a Form 3 within fourteen days of the triggering event. The extension of the time period for filing Form 3, for example, to forty-five days after the occurrence of the triggering event (or ninety days for non-U.S. firms) would still serve the public interest by bringing the event to light soon after its occurrence and would still provide the Board with the ability to consider whether action is required by the Board's inspection or enforcement staff. At the same time, this more rational framework would allow registered firms the time necessary to analyze the facts and prepare to file Form 3.

B. THE "CATCH-UP" REPORTING PROVISIONS ARE NOT TAILORED TO PROVIDE RELEVANT INFORMATION AND ARE UNDULY BURDENSOME.

The proposed periodic reporting rules require that the first time a registered firm is required to file Form 2 and Form 3 after the effective date of the rules, the firm must engage in wholesale "catch-up" reporting, providing certain categories of information from the cut-off date that the firm used for purposes of its Form 1 registration application. In some cases, this

⁷ For non-U.S. firms, the Board should also consider allowing such firms to report items consistent with the timeframes established for periodic and special reporting under their home country's regulatory oversight framework for public accountants, to the extent that such periodic and special reporting rules have been adopted.

proposal will require registered firms retroactively to compile and analyze nearly *four* years worth of data to fulfill this aspect of the proposed reporting requirement.⁸ Such catch-up reporting is difficult, time-consuming, and costly. To provide the catch-up information contemplated by the proposed rules, for example, a registered firm might be perceived as having to survey personnel who have left the firm and professional service providers with which the firm no longer has a relationship. Moreover, because the catch-up reporting provisions are not tailored to provide relevant information to the Board, the burden on registered firms of providing such information is not commensurate with any benefit that the Board may receive from the information provided. To the extent that the Board finds certain historical information meaningful for the purposes of fulfilling its obligations, some of this information already was accessible to the Board through the inspection process without the need for burdensome catch-up reporting.

As described below, because of the seemingly limited value of this historical information and the burdens associated with catch-up reporting, the Board should omit the catch-up reporting provisions in their entirety from its final reporting rules. Should the Board choose to retain catch-up reporting, in addition to any recommendations noted below, catch-up reporting should be limited to providing relevant information (*e.g.*, information relating to ongoing relationships with the firm or current legal proceedings) for the period following the registered firm's most recent Board inspection.

The Board should exempt non-U.S. firms that have not yet been inspected from any catch-up reporting requirements. If the Board retains catch-up reporting, the Board should limit

⁸ See Proposed Parts VII & VIII of Form 2, PCAOB Release No. 2006-004, at A-22-24; Proposed Rule 2203, PCAOB Release No. 2006-004, at A-2.

catch-up reporting for such firms to the six months preceding the effective date of the rule—this information likely would be the most valuable to the Board, as it would include information relating to ongoing relationships of the firm and current legal proceedings against such firms.

These recommendations stem from several concerns, discussed in more detail below, that the catch-up reporting requirements provide information of little value to the Board while imposing substantial burdens on registered firms. First, the Board should remove the catch-up reporting provisions in their entirety because the proposed catch-up reporting for both Forms 2 and 3 will result in the provision of information with little relevance to the Board's mission or the public in general. For example, the proposed catch-up reporting provisions require a registered firm to provide information regarding certain relationships between the firm and sanctioned individuals/entities, without limitation to relationships that are ongoing. Not only will it be difficult for firms to provide information about terminated relationships, but there is no value to the Board in receiving information where the registered firm no longer has a relationship with the sanctioned individual/entity. Similarly, the proposed Form 3 catch-up provisions are not limited to information about ongoing legal proceedings against the firm, its partners, shareholders, principals, owners, members, or managers, and would require submission of settled, dismissed, withdrawn, and otherwise resolved legal proceedings. The catch-up reporting requirements might also be perceived as requiring that the registered firm report actions that resulted in a finding in favor of the firm, its partners, shareholders, principals, owners, members, or managers. Because of the limited value of this information, and the availability of this information to the Board during the inspection process, the Board should eliminate the catch-up reporting requirement.

Second, the burden of these catch-up reporting provisions far exceeds the commensurate value to the Board of the information requested. The catch-up reporting provisions impose a substantial burden on the registered firm to collect information—for example, D&T, which has been registered since 2003, would be required to go back nearly *four* years to collect information. Requiring D&T, or any other registered firm, to provide information regarding certain relationships with sanctioned individuals/entities⁹ and information regarding the many other possible Form 3 reportable events¹⁰ presents a great challenge to collect information that may not have been recorded in a manner conducive for later retrieval or may not have been maintained at all by the registered firm. While Section 102(d) of the Act provides for periodic reporting, the statute does not suggest that catch-up reporting will be required. Nor has the Board previously alerted registered firms of this possible reporting procedure.

Third, although the Board “anticipates that most firms would have few or no Form 3 events to report for the catch-up period,”¹¹ registered firms nonetheless may have to expend considerable effort and resources to determine whether any reportable events occurred during the catch-up period. Thus, on account of the burdens and challenges of providing the proposed requested historical information, the Board should not require any catch-up reporting on Forms 2 or 3.

⁹ See PCAOB Release No. 2006-004, at 6; Proposed Part VII of Form 2, PCAOB Release No. 2006-004, at A-22.

¹⁰ Proposed Rule 2203, PCAOB Release No. 2006-004, at A-2 (requiring a registered firm to file a Form 3 catch-up report, including information on withdrawn audit reports, certain legal proceedings, certain relationships with sanctioned individuals/entities, and changes to licenses and certifications, among other things).

¹¹ PCAOB Release No. 2006-004, at 13.

If, despite these reasonable and significant concerns, the Board does not eliminate the catch-up reporting requirement, the Board should limit any catch-up reporting required of registered firms to information regarding ongoing relationships with individuals and entities and pending legal proceedings—that is, information that reflects an individual’s or entity’s current relationship with the firm and information regarding pending legal proceedings. Additionally, the Board should create an appropriately tailored transition period that would allow the initial Form 2 and Form 3 catch-up reports to be supplemented for a reasonable period of time.

Finally, the proposed requirement that a firm must file a catch-up Form 3 within fourteen days of the effective date of the rule to report any event that occurred after the firm’s registration¹² is even more unreasonable and unworkable than the standard fourteen day time period for reporting a Form 3 triggering event. Due to uncertainty over the precise information that may be required by the Board’s final rules, it will be difficult for registered firms to begin this time-consuming and costly process prior to the publication of the Board’s final rules. And, in any event, the collection and analysis of information from a period of nearly four years requires substantially more time than provided in the Board’s proposal. Non-U.S. firms face the additional difficulty of seeking legal opinions regarding the provision of information under these catch-up reporting requirements, and the Board should recognize the additional time that obtaining such legal advice may take given the complexity of non-U.S. law. Thus, if the Board does not eliminate the catch-up reporting requirement, to accommodate the extensive efforts

¹² Proposed Rule 2203(a)(3), PCAOB Release No. 2006-004, at A-2.

required by any catch-up reporting requirements, the Board should revise the deadline for filing a catch-up Form 3 report to, at a minimum, 120 days after the effective date of the rules.¹³

II. SPECIFIC COMMENTS ON PROPOSED RULES

A. **RULE 2202—THE BOARD SHOULD PROVIDE CLARIFICATION REGARDING THE AMOUNT OF THE ANNUAL FEE TO BE PAID BY REGISTERED FIRMS.**

Proposed Rule 2202 states that “[e]ach registered public accounting firm must pay an annual fee to the Board.”¹⁴ The Board’s proposal, however, does not provide any mechanism for establishing the fee to be charged. Parameters should be set to ensure that the Board exercises its authority within boundaries that have been addressed by the regulated community through the comment process and considered by the Commission. Thus, in order to assist firms to appropriately plan for additional operating expenses, as well as to ensure that the Board’s proposed annual fee receives due consideration by the Commission, the Board should further clarify the basis for the amount to be charged, either by establishing a range for the fee or by describing the method by which the Board will calculate the fee.

¹³ For Form 2 catch-up reporting, which under the Board’s proposal is required to be filed with the first annual Form 2 report due after the effective date of the rules, *see* proposed Parts VII & VIII, Form 2, PCAOB Release No. 2006-004, at A-22, A-24, the Board should allow a registered firm the greater of (a) 120 days after the effective date of the rules or (b) the number of days between the effective date and the date the first Form 2 is due, to submit the catch-up reporting.

¹⁴ PCAOB Release No. 2006-004, at A-1.

B. RULE 2205—THE BOARD SHOULD FURTHER DEFINE THOSE CIRCUMSTANCES THAT REQUIRE A FIRM TO FILE AN AMENDMENT TO FORM 2 OR FORM 3.

Proposed Rule 2205 requires that a registered firm file an amendment to Form 2 or Form 3 whenever the firm “becomes aware that it reported information that was incorrect at the time of such filing, or that it omitted any information or affirmation that it was, at the time of such filing, required to include in such report.”¹⁵ This provision specifies that the firm need not submit an amendment for errors or omissions that are “clearly inconsequential,” which the Board defines in its introductory comments as “[i]nsignificant discrepancies in quantitative information, or misspellings and typographical errors that do not affect the meaning of the information or the identifiability of a person or entity.”¹⁶

Requiring amendment of all information that is not “clearly inconsequential” sets the threshold too low, as a registered firm would be forced to amend errors and omissions that arguably could meet the Board’s implicit standard for “consequential” but nevertheless be *immaterial*. Such a requirement unnecessarily burdens both registered firms and the Board with consideration of amendments that ultimately are of limited, or no, value. To reduce the burden of amendment on registered firms, and to ensure that the Board receives only meaningful amended forms, the Board should qualify the amendment provision to require that a firm submit an amendment when the incorrectly reported or omitted information is *qualitatively or quantitatively material* to the form.

¹⁵ *Id.* at A-3.

¹⁶ *Id.* at 14.

In addition, proposed Rule 2205 requires that a registered firm file an amendment “no later than the fourteenth day after becoming aware of the error or omission.”¹⁷ Again, a fourteen day time period is unreasonable, particularly because it may be difficult for a firm to assess within a fourteen day period whether an error or omission is “clearly inconsequential.” In addition, because the term “aware” is unclear, as discussed more fully in Section IV(B), a registered firm may have difficulty determining when it has become “aware” of the error or omission within the fourteen day time period. This proposed provision consequently may subject a registered firm to criticism or discipline under the Board’s rules even when it has made good faith attempts to meet its amendment obligation. The Board should revise the amendment provision to allow a longer time period, for example forty-five days, and should clarify when a firm would be deemed to become “aware” of an error or omission.

C. RULES 2207 AND 2300—THE PROPOSED AMENDMENTS TO THE CONFIDENTIAL TREATMENT REQUESTS RULE RAISE SIGNIFICANT ISSUES.

We support the Board’s continued acceptance that certain information should be accorded confidential treatment. The availability of such treatment is essential to the periodic reporting process. We nevertheless have several concerns regarding the Board’s proposed amendments to the confidential treatment provision.

First, the proposed amendment to Rule 2300(b) provides that the “failure to provide an exhibit that complies with the requirements of paragraph (c)(2) of this Rule constitutes sufficient

¹⁷ *Id.* at A-3.

grounds for denial of any request for confidential treatment.”¹⁸ As it stands, decisions denying confidential treatment requests are appealable to the Board under Rule 5468, if the decision denying confidential treatment is made by the Board’s delegate.¹⁹ The Board should clarify that the proposed Rule 2300(b) is not intended to provide further substantive grounds for denying a confidential treatment request. This clarification is important to ensure that the registered firm’s rights to appeal denials of confidential treatment requests are not unintentionally constricted by the operation of proposed Rule 2300(b).

Second, the proposed amendment to Rule 2300 provides that a registered firm must submit a copy of “the specific provision of law that the requestor claims protects the information from public disclosure.”²⁰ Privileges and protections might arise from sources other than a particular provision of law (*e.g.*, a statute or regulation), including common law, judicial or arbitration orders, and contractual terms. The Board should revise this proposed amendment to more broadly define the scope of documentation that may be presented in support of a confidential treatment request and to acknowledge that confidential materials may support such a request.

Third, the Board’s proposed amendment and related discussion provides an insufficient basis to assess the reliability of the systems the Board plans to use to redact confidential

¹⁸ *Id.* at A-8; *see also* Proposed General Instruction 7 for Form 2, PCAOB Release No. 2006-004, at A-13 (describing the portions of Form 2 for which a confidential treatment request may be made and stating that a confidential treatment request may be denied for failure to comply with proposed Rule 2300(c)(2)).

¹⁹ PCAOB Rule 5468; PCAOB Rule 2300(h).

²⁰ Proposed amendment to Rule 2300(c), PCAOB Release No. 2006-004, at A-9.

information from a registered firm's filed Form 2 or Form 3. While we support the Board's commitment to release all forms to the public "as soon as practicable after filing,"²¹ the Board's intention to use a Web-based reporting system to automatically publish a Form 2 or Form 3 to the Board's Web site is a source of potential concern.²² In particular, the system's capabilities to automatically "redact from the published version any information for which the firm [has] requested confidential treatment"²³ may not function without error. Given the sensitivity of confidential information at issue, and the inability to reestablish confidentiality once information has become public, additional information is needed about the functionality of the system the Board proposes to use in this regard. Although automation undoubtedly decreases the burden on the Board of publishing this information, such automation may not be appropriate for handling a firm's confidential treatment requests.²⁴

In addition, non-U.S. firms may be severely disadvantaged by proposed Rule 2207(e) which would require a firm to provide information withheld in accordance with non-U.S. law (e.g., privacy and confidentiality laws) to the Board upon the Board's request.²⁵ This provision could put a non-U.S. firm in the untenable position of having to choose between either breaching

²¹ Proposed amendment to Rule 2300(c), PCAOB Release No. 2006-004, at A-8.

²² *See id.* at 15.

²³ *Id.* at 15-16.

²⁴ Concerns about Web-based confidentiality sources have only increased in the wake of recent breaches of confidentiality—for example, the recent posting on a civilian Web site of personal data for 28,000 soldiers for which the source of the error allowing publication has not yet been determined. *See, e.g.,* Sailors' data posted on Web, CNN, June 23, 2006, <http://www.cnn.com/2006/US/06/23/navy.data.ap/index.html>.

²⁵ Proposed Rule 2207(e), PCAOB Release No. 2006-004, at A-4.

the Board's rules or breaching the relevant non-U.S. law. Although the Board appears to suggest that it will apply the proposed Rule only as a last resort,²⁶ the end result is unfair with respect to non-U.S. firms and their obligations under non-U.S. law. The Board should revise this proposal to include appropriate safeguards for non-U.S. firms to allow such firms to comply to the fullest extent permitted by their home country laws and regulations.

D. RULE 4000—THE BOARD SHOULD CLARIFY THE PURPOSE OF DEFINING INSPECTION AUTHORITY WITH REFERENCE TO FORM 2 AND FORM 3.

The Board has proposed amending Rule 4000 governing “Inspections” to provide that “the Board may at any time request that a registered public accounting firm provide to the Board additional information or documents relating to information provided by the firm in any report filed pursuant to Section 2 of these Rules, or relating to information that has otherwise come to the Board’s attention.”²⁷ The existing language of Rule 4000 provides that “[e]very registered public accounting firm shall be subject to all such regular and special inspections as the Board may from time to time conduct in order to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the Board’s rules, the rules of the Commission, and professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.”²⁸ To avoid unnecessary confusion and any potential inconsistencies, the Board should revise its proposed amendment to

²⁶ PCAOB Release No. 2006-004, at 23 n.33 (stating that the Board can “ultimately put the firm to the choice of providing the information or being subject to a sanction for violating the Board’s rules”).

²⁷ PCAOB Release No. 2006-004, at A-11; *see also* PCAOB Release No. 2006-004, at 23.

²⁸ PCAOB Rule 4000(a).

ensure that the inspection authority described in the amendment, to the extent that it is not duplicative of existing authority, is to be exercised by the Board for the purpose of assessing compliance with “the Act, the Board’s rules, the rules of the Commission, and professional standards.”

III. PROPOSED FORM 2

A. ITEM 3.2—THE FEE CATEGORIES REQUESTED BY THE BOARD SHOULD BE REVISED TO TRACK THE COMMISSION’S PROXY DISCLOSURE RULES.

Proposed Item 3.2 requires that a registered firm state the percentage of fees attributable to fees billed to issuer audit clients for audit services, other accounting services, tax services, and non-audit services.²⁹ This Item as proposed is potentially unworkable and imprudent in many respects, including that the proposed Item requests information not currently tracked by firms or issuers. The Board should revise this proposed Item to require that the registered firm provide fee percentage information derived from the firm’s issuer clients’ most recent proxy statements (or in the case of non-U.S. issuers, from such issuer’s most recently filed periodic report containing the fee disclosure information), and the firm’s most recently completed fiscal year prior to the March 31 cut-off. Additionally, the Board should clarify that the reported data may reflect a good faith estimate on the part of the registered firm.

The current proposal will impose substantial burdens on registered firms with correspondingly little benefit to the Board or the public. The proposed fee categories are inconsistent with the information currently required by the Commission’s proxy disclosure rules.

²⁹ PCAOB Release No. 2006-004, at A-18.

In addition, the time period over which the information is requested (April 1 to March 31) is inconsistent with the cut-off for data accumulation of the majority of firms. These inconsistencies may result in extensive and unnecessary effort within firms to coordinate with engagement teams to collect and analyze data. The collection and analysis of data is likely to be imprecise in certain respects, and the requested information may not even accurately reflect the structure of a registered firm's business (for example, if the firm is organized along functional lines).

As an initial matter, the Board should revise the fee percentage categories to track the information required by the Commission's 2003 proxy disclosure rules.³⁰ The Board suggests that the proposed categories generally correspond with the "categories with respect to which the Commission's rules require issuers to report the amounts paid the issuer's auditor."³¹ However, the terms and definitions as used in Form 1 and proposed Form 2 are not fully consistent with the terms and definitions in Schedule 14A of the Commission's proxy rules: The Commission refers to "audit fees," "audit-related fees," "tax fees," and "all other fees," whereas the Board's proposal requires information for "audit services," "other accounting services," "tax services," and "non-audit services."

³⁰ Strengthening the Commission's Requirements Regarding Auditor Independence, 68 Fed. Reg. 6006 (February 5, 2003).

³¹ PCAOB Release No. 2006-004, at 4 n.3.

Although the Board has stated that its intent was to conform the definitions of the terms in proposed Item 3.2 to the Commission's definitions,³² the existing differences between the two sets of definitions will cause confusion and impose an unnecessary compliance burden. Revising the Board's proposal to track the proxy disclosure rules and the guidance related thereto will allow registered firms to use the same mechanism for annual reporting under Form 2 that issuers use to track data. Such revision will reduce the effort required by registered firms to track the requested information, without reducing the value to the Board of the information requested.

Beyond these definitional concerns, however, the Board's fee reporting proposal, where both client and firm data is reported as of the March 31 cut-off date, would create substantial burdens for registered firms. An efficient solution to this problem would be to revise the proposal to require that a registered firm report—as the numerator in the fee percentage calculations—the fee information for each category from the issuers' most recently filed proxy statements prior to submission of a registered firm's Form 2 report. And, the registered firm's revenue data for its most recent fiscal year ending prior to the March 31 cut-off should be used as the denominator for purposes of calculating the fee percentages. Because the proposed reporting period for Form 2 runs from April 1 through March 31³³ and the fiscal years of issuer clients vary, firms are unlikely to have ready access to the information requested by proposed Item 3.2.

³² PCAOB Release No. 2003-007, at A-3-vii (noting that in response to comments, the Board's final Rule 1001(a)(vii)(1), the definition of "audit services," "is intended to conform to the category of fees disclosed as 'audit fees' under the SEC's recently revised auditor independence rules").

³³ Proposed General Instruction 4 to Form 2, PCAOB Release No. 2006-004, at A-13.

This suggested revision is a sensible solution to the numerous burdens that the current proposal would cause. Even this proposed alternative formulation will prove burdensome for firms.³⁴

In the alternative, the Board should revise the proposal to require a registered firm to provide the fee percentages requested over the firm's most recent fiscal year prior to the March 31 cut-off date, rather than the April 1 to March 31 time period.³⁵ For example, a registered firm with a fiscal year ending on December 31 should be allowed to provide fee percentage data from the time period January 1 to December 31. While this alternative likely would still impose a significant burden on registered firms to collect from engagement teams the fee data for issuer clients that corresponds to the firm's fiscal year end (as opposed to the clients' fiscal year ends), a registered firm would at least be allowed to use one data point that should be readily available—the firm's own revenue as of the fiscal year end prior to the March 31 cut-off date. Allowing such reporting simultaneously may increase the accuracy of the data reported and reduce the burdens associated with collecting data over a cycle that does not correspond to a fiscal year.

³⁴ For instance, information for fees of non-U.S. firms will need to be culled from the reported fee information because the Commission's regulations request data on fees billed to the client, which potentially includes other network firms that may have provided services, not just the registered firm's data.

³⁵ In addition, for non-U.S. firms, the fee percentage data may be proprietary in nature or confidential under applicable non-U.S. laws and, as such, the Board should consider whether non-U.S. firms should be allowed to submit a confidential treatment request for Item 3.2.

B. ITEM 4.1—THE BOARD SHOULD IDENTIFY THE PERSONNEL WHO “EXERCISED AUTHORITY” TO SIGN AN AUDIT REPORT.

Proposed Item 4.1(b) requires that the registered firm provide “the total number of firm personnel who exercised authority to sign the firm’s name to an *audit report* during the reporting period.”³⁶ The meaning of “exercised authority” in this proposed Item is unclear. The Board should clarify that proposed Item 4.1(b) requires that the registered firm identify the total number of individuals who were authorized to sign an audit report rather than the number of individuals who actually exercised such authority by signing a report.

C. ITEM 5.2—THE BOARD SHOULD CLARIFY THE MEANING OF PARTICULAR TERMS RELATING TO AUDIT-RELATED MEMBERSHIPS, AFFILIATIONS, OR SIMILAR ARRANGEMENTS.

Proposed Item 5.2 requires a registered firm to report on an annual basis whether it has any “[a]ffiliation, whether by contract or otherwise, with another entity through or from which the Firm commonly employs or leases personnel to perform *audit services*, or with which the Firm otherwise engages in an alternative practice structure.”³⁷ This provision contains undefined terms that will be a source of confusion to registered firms attempting to fulfill their reporting obligations. For example, we assume that in using the phrase “commonly” employed or leased personnel, the Board intends to capture relationships that are ongoing, frequent, and established, but the Board should confirm that this understanding is correct. In addition, the Board should clarify what is meant by the term “alternative practice structure.” Providing

³⁶ Proposed Item 4.1 to Form 2, PCAOB Release No. 2006-004, at A-19.

³⁷ PCAOB Release No. 2006-004, at A-20.

further clarification, including definitions where necessary, will allow registered firms to avoid confusion and to provide the information the Board wants under proposed Item 5.2.

D. ITEM 6.1—THE BOARD SHOULD ALLOW FIRMS TO PROVIDE A RANGE OF THE NUMBER OF PERSONNEL PROVIDING AUDIT SERVICES, RATHER THAN AN EXACT NUMBER.

The precise information requested by the Board in proposed Item 6.1—specific numerical totals of the firm’s accountants, certified public accountants, personnel, and personnel who provided audit services during the reporting period—provides the Board with no more significant understanding of the firm’s composition than would an estimate or range.³⁸ Although the Board requests that the numerical totals be current as of the last day of the reporting period, determining the total number of individuals engaged in any of these categories of service, particularly personnel providing audit services, is inherently susceptible to some degree of imprecision. In any registered firm, but especially in large registered firms, individual personnel move between positions and functions. Thus, determining an exact numerical total on any given day is difficult, if not impossible.

These concerns are especially true with respect to Item 6.1(d), which requires the registered firm to provide the precise number of firm personnel who performed audit services during the reporting period, segregated by functional level (for example, partner, senior manager, manager, and staff). The information provided under this proposed Item may be inexact and present an unbalanced view of the firm’s composition because individuals who spend only a fraction of their time on “audit services” would be reflected in the numerical total. Accordingly,

³⁸ PCAOB Release No. 2006-004, at A-21.

the Board should modify this proposal to provide that non-audit specialists who participate in the performance of audits, such as actuarial, valuation, and tax specialists, are not to be included in the reported data.

If the Board is seeking information regarding the registered firm's leverage in connection with the performance of audit services for issuers, the Board should consider allowing a firm to provide those leverage statistics reflecting the ratio of audit staff and managers to partners, rather than providing the aggregate numbers of personnel by category. Here, too, if this approach is adopted, the Board should clarify that non-audit specialists who participate in the audit need not be included in the reported data.

Given these factors, the Board should revise its proposal to accept an estimate or a range, particularly for Item 6.1(d), which would provide the information the Board needs without imposing unnecessary burdens.

E. PART VII—THE REPORTING REQUIREMENTS FOR CERTAIN RELATIONSHIPS REQUIRE CLARIFICATION.

Proposed Part VII of Form 2, covering annual reporting of "Certain Relationships," is the source of several concerns. Part VII requires that a registered firm provide information about relationships between the firm and certain sanctioned individuals, individuals connected with certain sanctioned firms, and certain sanctioned entities. Proposed Item 7.1 requires that a registered firm state whether it has taken on as an employee, partner, shareholder, principal, or member any individual subject to certain disciplinary proceedings.³⁹ Proposed Item 7.2 requires

³⁹ PCAOB Release No. 2006-004, at A-22.

that a registered firm state whether it has taken on as an employee, partner, shareholder, principal, or member any individual who was a partner, shareholder, principal, member, or proprietor of a public accounting firm that had been subject to certain disciplinary sanctions.⁴⁰ Proposed Item 7.3 requires that a registered firm state whether it has become owned or partly owned by an entity subject to certain disciplinary sanction.⁴¹ And, proposed Item 7.4 requires that a registered firm state whether it has entered into an arrangement to receive consulting or other professional services from a sanctioned individual or entity.⁴² These proposed requirements are problematic in several respects.

First, proposed Items 7.1, 7.2, 7.3, and 7.4 require a registered firm to state whether it has entered into the above-described relationships.⁴³ Because a firm's response under these proposed Items will often depend on the fullness of the information provided by an individual or entity, the proposed Items could cause registered firms to be disciplined under the Board's rules in circumstances where the ability to report accurately is beyond their control. The Board should consider revising these Items to require the registered firm to make good faith efforts to ascertain the disciplinary status of an individual or entity at the time the relationship commences. To provide better context to the meaning of "good faith," the Board may also consider providing guidance as to the means a registered firm should use to assess the disciplinary status of an individual or entity.

⁴⁰ *Id.*

⁴¹ *Id.* at A-23.

⁴² *Id.*

⁴³ *Id.* at A-22-23.

Second, proposed Item 7.1 requires reporting where a firm has taken on as an “employee, partner, shareholder, principal, or member” an individual who, within the last five years was the subject of certain sanctions, including under Rule 102(e) of the Commission’s Rules of Practice.⁴⁴ We acknowledge the importance of this reporting obligation, but encourage the Board to clarify that the requirement applies only to accountants with whom the firm has entered into a relationship. Section 102(e) theoretically applies to a range of professionals beyond accountants who may be or may have been employed by the firm—for example, lawyers, engineers, and brokers—and there is no apparent rationale for requiring a registered firm to report such a relationship with professionals other than accountants to the Board. The Board should also consider modifying proposed Item 7.1 so that the reporting obligation extends to “associated persons” whom the firm has taken on, rather than all employees.

Third, proposed Item 7.2 requires that the firm state whether it has “taken on as an employee, partner, shareholder, principal, or member” any individual who was a “partner, shareholder, principal, member, or proprietor” of a public accounting firm that has been subject to disciplinary sanction.⁴⁵ If the individual himself has not been sanctioned, it is unclear how this information is relevant. The proposed rule also could be read to require that the registered firm file a Form 3 report when the firm takes on an individual who was previously associated with a public accounting firm that was subject to disciplinary sanction only after the individual had left the later-sanctioned firm. As the relevance to the Board of this information is attenuated,

⁴⁴ *Id.* at A-22.

⁴⁵ *Id.*

the Board should revise its proposal to avoid these types of unintended consequences. In light of these concerns, the Board should delete this requirement from its final Form 2 requirements.⁴⁶

Fourth, proposed Item 7.4 requires that the firm report whether it has “entered into a contractual or other arrangement to receive consulting or other professional services from any individual or entity” subject to disciplinary sanction.⁴⁷ This proposed Item suffers from two related flaws—uncertainty over the scope of “consulting or professional services” and questions of relevancy for the reporting of non-audit related professional services. The terms “consulting or professional services” are overbroad—the common understanding of both of these terms can include, for example, human resources consultants or legal counsel engaged to advise the firm on its own affairs. The Board should clarify what services it intends to be covered by “professional services.” Moreover, to the extent that the understanding of “consulting” or “professional services” extends beyond the provision of audit-related services, the information requested lacks relevance. The Board should limit this Item to arrangements to provide professional services supporting the direct performance of audits of issuers by the registered firm.

Finally, further clarification from the Board is necessary as to the circumstances under which it is appropriate to report on Form 2 (proposed Items 7.1, 7.2, and 7.4), or file a Form 3

⁴⁶ In the event the Board retains Item 7.2 as proposed, for the reasons noted above, we urge the Board to tailor the reporting obligation for that item to “associated persons” the firm has taken on where such individual came from a public accounting firm that had been subject to certain disciplinary sanctions.

⁴⁷ *Id.* at A-23.

(proposed Items 6.1, 6.2, and 7.3), for these events.⁴⁸ To the extent that these obligations are duplicative, we urge the Board to delete the triggering obligations from proposed Form 3, as annual reporting of this information on Form 2 is more appropriate.

IV. PROPOSED FORM 3

A. ITEMS 2.1, 3.1, AND 4.1—THE BOARD SHOULD DELETE THE OBLIGATION TO FILE FORM 3 FOR WITHDRAWN AUDIT REPORTS, WITHDRAWN CONSENTS, AND THE UNAUTHORIZED USE OF A FIRM’S REPORT OR NAME.

Proposed Items 2.1 and 3.1 require a registered firm to file a Form 3 report when “[t]he Firm has withdrawn an *audit report* on financial statements, or withdrawn its consent to the use of its name in a report, document, or written communication containing an *issuer’s* financial statements, and the *issuer* has failed to comply with a *Commission* requirement to make a timely report concerning the matter pursuant to Item 4.02 of *Commission* Form 8-K.”⁴⁹ Proposed Item 4.1 requires the registered firm to report when the firm “becomes aware” that an issuer “has made use of the Firm’s name without the consent of the Firm.”⁵⁰ In light of the process outlined by Section 10A(b) of the Securities Exchange Act of 1934, proposed Items 2.1, 3.1, and 4.1 should be deleted as creating duplicative, and possibly conflicting, regulatory schemes.

⁴⁸ See PCAOB Release No. 2006-004, at A-22-24. It is not clear why the Board has chosen to require reporting of relationships with individuals connected with certain sanctioned firms only in Form 2. *Id.* The recommendations made here with regard to the certain relationships reporting required by Form 2 are also applicable to the proposed items on Form 3 relating to the same. See Proposed Items 2.11-13, 6.1-6.3, PCAOB Release No. 2006-004, at A-33-34, A-38-39.

⁴⁹ PCAOB Release No. 2006-004, at A-31-32.

⁵⁰ *Id.* at A-36.

The matters covered by proposed Items 2.1, 3.1, and 4.1 are, and should remain, public reporting considerations for issuers, not registered firms. Moreover, there are appropriate processes established for these matters, and the Commission has the authority to oversee these processes. For example, Section 10A(b) requires specific procedures to be followed to identify issues regarding a current audit client, and under certain circumstances, requires reporting the audit client's failure to properly communicate those issues to the Commission.⁵¹ Failure to properly follow the Section 10A(b) process may result in disciplinary action by the Commission. There is no reason to add another layer of regulation for failure to abide by the Section 10A(b) process. In addition to being duplicative in several respects to the Section 10A(b) process, the proposed Items may subvert the process outlined by Section 10A(b) because a firm could feel compelled to report under the Board's requirements even though an issue had not properly worked its way through the Section 10A(b) reporting framework. Importantly, these proposed reporting requirements, by putting the onus on the registered firm to report, could be interpreted by some as implying that the registered firm has done something to require reporting. Yet, at their core, proposed Items 2.1, 3.1, and 4.1 relate to instances where the issuer, not the firm, potentially has acted improperly. Section 10A(b) already covers this type of issuer action, and in this regard, the topics sought to be covered under proposed Items 2.1, 3.1, and 4.1 appear more within the purview of the Commission than the Board.

Similarly, if the issuer is not a current client, a registered firm is not in a position to monitor that former client to determine whether the issuer failed to make a timely 8-K report, whether the issuer has improperly filed an audit report for which the registered firm has

⁵¹ Securities Exchange Act of 1934, § 10A

withdrawn consent, or whether the issuer has made unauthorized use of the firm's name. Thus, the Board should not propose to subject a registered firm to discipline or criticism under the Board's rules under Items 2.1, 3.1, and 4.1 for the actions of former clients.

The Board should delete these requirements in their entirety, as Section 10A(b) already provides an adequate process for the failure to report unlawful acts of issuers.

B. ITEMS 2.5 THROUGH 2.10 AND ITEM 5.1—THE LEGAL PROCEEDINGS REPORTING REQUIREMENT RAISES SIGNIFICANT ISSUES.

A registered firm's obligation to file a Form 3 special report is triggered under the Board's proposed Form when the firm becomes "aware" that it or certain categories of individuals associated with the firm are involved in certain legal proceedings.⁵² Several aspects of this Form 3 proposal raise concerns.

First, the proposal fails to define, and provides no guidance about, when a registered firm is deemed to become "aware" of the existence of certain legal proceedings.⁵³ Without guidance, a firm will not be able to determine when it will have been deemed by the Board to have been "aware" of the proceedings, and thus, the vagueness of this term could lead to unintentional non-compliance by registered firms of the Form 3 reporting requirements.

⁵² *Id.* at A-32-33, A-36-38.

⁵³ Similarly, other proposed Items that reference a firm's becoming "aware" of an event do not provide any guidance as to the understanding of the term awareness. *See, e.g.*, Proposed Item 2.4, PCAOB Release No. 2006-004, at A-32.

For example, when a firm becomes involved in a legal proceeding, the firm often will not receive service or other formal notice of the legal proceeding within the fourteen day time period. It is unclear from the proposed Items, however, if a firm will be deemed to be “aware” of a legal proceeding based on a single telephone call from a government investigator, a story on the evening news watched by employees of the firm, or by notification of the legal proceeding to any firm department. When the legal proceeding involves an individual, and not the firm as a whole, the circumstances under which a firm becomes “aware” of the existence of the proceeding will be even more uncertain because no expectation exists that the firm will receive notification of a legal proceeding against an individual. The Board should clarify the circumstances under which a firm’s obligation to report the existence of certain legal proceedings is triggered. For example, reporting might be appropriate when senior management of the national office responsible for policy and decision-making of a registered firm is notified that service of process of the legal proceeding has been received.⁵⁴

Second, unlike the comparable provisions in Form 1, the proposal in Items 2.7 and 2.8, requiring the reporting of certain proceedings, is not limited to those proceedings that involve conduct in connection with an “audit report, or comparable report prepared for a client that is not an issuer,”⁵⁵ and rather extends to proceedings involving conduct associated with any “professional services.” These proposed Items are accordingly overbroad and require the

⁵⁴ See, e.g., 17 C.F.R. § 275.206(4)-4 (defining, in the context of the regulatory framework over investment advisers, “management person” as “a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.”)

⁵⁵ See, e.g., Form 1, Items 5.1(a)(2) & (3).

reporting of information to the Board that is unrelated to the Board's duties. The Board should revise this proposal to require that registered firms report the commencement of the legal proceedings identified in these Items only if such proceedings involve conduct in connection with an "audit report or comparable report prepared for a client that is not an issuer."

Third, proposed Items 2.6, 2.8 and 2.9 require that the registered firm file a Form 3 if it becomes aware that "a partner, shareholder, principal, owner, member, or manager of the Firm" becomes involved in certain legal proceedings. These proposed items are overbroad as they request information regarding the involvement of many individuals, including individuals without an ownership stake in the firm, in legal proceedings. The Board should consider narrowing the categories of individuals for which this reporting is required. In the alternative, the reporting of the involvement of the individuals noted in the proposal in certain legal proceedings should be an annual reporting requirement on Form 2, rather than a Form 3 requirement.

Fourth, proposed Item 2.6 requires the firm to report if it becomes aware that a partner, shareholder, principal, owner, member, or manager has been charged with any crime arising out of alleged conduct relating to, among other things, "dishonesty" or has been "charged with any crime arising out of alleged conduct that, if proven, would bear materially on the individual's fitness to provide *audit services to issuers*."⁵⁶ These clauses are overbroad. The term "dishonesty" lacks context and definition, particularly because dishonesty can be considered an element of many crimes, including petty offenses, such as shoplifting. Additionally, whether

⁵⁶ Proposed Item 2.6, PCAOB Release No. 2006-004, at A-32.

particular conduct would “bear materially on the individual’s fitness to provide *audit services*” is vague. The Board should delete “dishonesty” and the “other crimes” clause from the list of criminal conduct that independently trigger a Form 3 reporting requirement. If the Board chooses to retain the term “dishonesty,” the Board should consider revising the proposed Item to require reporting of conduct that relates to “dishonesty” only in connection with the provision of audit services.

Fifth, proposed Item 5.1(d) requires that the firm provide a brief description of the alleged conduct giving rise to a violation of a statute, rule or legal duty for which a legal proceeding has been initiated.⁵⁷ Form 1 requires that an applicant for registration only supply basic information about the proceeding, including only the statutes, rules or other requirements that an individual is charged with having violated.⁵⁸ The Board should consider revising this proposed Item to require the same information required to be filed on Form 1 by an applicant for registration, removing the requirement that the registered firm describe the alleged conduct. In the alternative, the Board should allow the registered firm to provide a brief description of the conduct alleged in the complaint. In many cases it will be impossible for the registered firm to describe the conduct alleged beyond what is in the complaint. Moreover, any such description may also unfairly and unnecessarily compromise the firm’s or the individual’s defense of the legal proceeding.

⁵⁷ *Id.* at A-37.

⁵⁸ Form 1, Item 5.1(b).

Finally, proposed Item 5.1(e)'s requirement that, in reporting on certain legal proceedings, the firm report the name of any client that was the recipient of professional services to which any claim or charge relates⁵⁹ is burdensome because it is difficult, and at times impossible, to identify, based on the filing of a complaint, the clients who may have received such services. Such disclosure may also violate client confidentiality, particularly as it relates to non-U.S. laws. Form 1 does not require any identification of such clients,⁶⁰ and the Board should consider revising the proposed Item on Form 2 to remove this requirement, or at a minimum, confine it to these clients identified in a complaint.

**C. ITEMS 2.11 THROUGH 2.13 AND ITEMS 6.1 THROUGH 6.3—
THE REPORTING REQUIREMENTS FOR CERTAIN
RELATIONSHIPS REQUIRE CLARIFICATION.**

As discussed above at Section III(E) with respect to Form 2, the provisions requiring the reporting of certain relationships raise several issues, including the possibility that a registered firm may be held liable under the proposal despite good faith efforts to ascertain the disciplinary status of an individual or entity, and the burdens imposed without any corresponding benefit to the Board or the public by the proposed reporting requirements as they relate to the reporting of certain relationships with individuals and arrangements to receive consulting and other professional services. While we need not repeat our concerns, which apply also to proposed Items 2.11, 2.12, 2.13 and proposed Items 6.1, 6.2, and 6.3 of Form 3, the issues raised above are exacerbated by the fourteen day reporting period required by the Form 3 proposal. A firm may

⁵⁹ PCAOB Release No. 2006-004, at A-37.

⁶⁰ Form 1, Item 5.1(b)(4) (requiring that the registered firm identify the name of the issuer that was the subject of the audit report to which a particular legal proceeding relates).

not have sufficient time within the prescribed period to accurately ascertain the disciplinary status of an individual or entity, or sufficient time to determine that such a relationship exists between the registered firm and the individual or entity.

D. ITEMS 2.14, 2.15, 7.1 AND 7.2—THE BOARD SHOULD LIMIT THE REPORTING OF LICENSING STATUS CHANGES TO REDUCE THE BURDEN ON REGISTERED FIRMS.

Proposed Items 2.14-2.15 and 7.1-7.2 require that the firm file a report when it becomes aware that a license or certification issued to it, among other things, has been terminated or been made subject to conditions or contingencies; when it has obtained a new license; or when there has been a change in a license number.⁶¹ Without clarification, this request likely will prove burdensome, as most major firms simultaneously are licensed in multiple states with licensing requirements that often change in scope and nature. The Board should clarify that events that are broadly applicable to all licensed firms are not considered “conditions” or “contingencies” that trigger a reporting obligation. In this regard, the Board should require reporting only when the registered firm has obtained, terminated or surrendered a license.

This reporting requirement is also made more difficult by the vagueness and uncertainty over when a firm becomes “aware” of such a change in license status. The Board should consider requiring the reporting of licensing status changes only on the annual Form 2 report to reduce the possibility of inadvertent failures to report because the firm was unable to ascertain its own awareness of the change of licensing status within the specific period.

⁶¹ PCAOB Release No. 2006-004, at A-34, A39-40.

COMMENTS ON PROPOSED SUCCESSOR REGISTRATION RULES

We support the Board's proposal to allow a firm to succeed to a predecessor's registration in certain circumstances without any disruption in registration status, and to allow temporary succession under other circumstances. We have identified two issues—the shortness of the time period for filing and the inability to submit a confidentiality request—with regard to these proposed rules that we believe warrant additional attention by the Board.

I. THE FOURTEEN DAY TIME PERIOD FOR FILING FORM 4 IS UNREASONABLY SHORT AND PRACTICALLY UNWORKABLE.

The Board's proposed rules require that a registered firm file Form 4 within fourteen days after the change of legal form takes effect.⁶² Although the Board explains that “the events to which the proposed rules would apply are events for which a firm plans, not unanticipated events to which a firm reacts,”⁶³ requiring that Form 4 be filed within *fourteen* days after the occurrence of the event does not provide a registered firm sufficient time after the event to properly assess its reporting obligations and complete the form.

Non-U.S. firms are faced with the additional obstacle of determining whether the filing of Form 4 conflicts with obligations under non-U.S. law. The fourteen day reporting requirement is insufficient to allow non-U.S. firms to consult legal counsel to determine the impact of non-U.S. law on the firm's Form 4 requirements.

⁶² Proposed Rule 2109, PCAOB Release No. 2006-005, at A-2.

⁶³ PCAOB Release No. 2006-005, at 2.

Although the proposed rules do allow the Board to grant leave to file the form out of time,⁶⁴ extending the Board's prescribed time period will alleviate the need for firms to seek Board permission to file out of time. Accordingly, the Board should revise its proposal to allow a more reasonable timeframe, for example forty-five days, after the firm's change in legal status to file Form 4.

II. THE BOARD SHOULD ALLOW REGISTERED FIRMS TO SUBMIT CONFIDENTIAL TREATMENT REQUESTS FOR INFORMATION ON FORM 4.

Proposed Form 4 allows confidential treatment requests to be submitted only for information submitted in certain exhibits to the proposed Form.⁶⁵ Proposed Form 4 requests the provision of certain information (for example, information regarding the acquisition) that may need to be kept confidential under non-U.S. law or by the terms of the agreement between predecessor and successor entities. Because certain Form 4 information may require confidential treatment, the Board should revise the proposed Form to allow for the submission of confidential treatment requests related to Form 4 responses, not just exhibits to Form 4.

CONCLUSION

This comment letter identifies those aspects of the Board's proposals that should be clarified or modified to enable the Board to carry out its duties and responsibilities and to ensure that registered firms better understand and are able to comply both with their periodic reporting responsibilities and with registration responsibilities for successor entities. We support the

⁶⁴ Proposed Rule 2108(d), PCAOB Release No. 2006-005, at A-2.

⁶⁵ Proposed General Instruction 9 for Form 4, PCAOB Release No. 2006-005, at A-6.

Board's efforts to create a rational, efficient, and effective periodic reporting system, as well as a mechanism for transferring registration status to successor entities. The changes recommended above will allow the public markets to access appropriate information to achieve the goals of the Act.

We appreciate the opportunity to comment on these proposed rules. The issues presented here are very complex and may warrant further discussion. We would welcome the opportunity to further discuss these issues with the Board. If you have any questions or would like to discuss these issues further, please contact Robert Kueppers at (212) 492-4241, Harold Tinkler at (203) 761-3545, or Guy Moore at (203) 761-3226.

Very truly yours,

/s/ Deloitte & Touche LLP

cc: Mark W. Olson, Chairman of the PCAOB
Kayla J. Gillan, Member
Daniel L. Goelzer, Member
Bill Gradison, Member
Charles D. Neimeier, Member

APPENDIX A

Summary of Recommendations

Proposed Provision	Recommendation	Cross-Reference
Proposed Rules		
Proposed Rule 2109 (requiring Form 4 to be filed 14 days after change in legal form)	Revise to extend time period to forty-five days after a firm's change in legal status.	Successor Reg. Rules, Sec. I
Proposed Rule 2202 (annual fee)	Clarify the parameters for the fee calculation and the basis for amount to be charged.	Periodic Rep. Rules, Sec. II(A)
Proposed Rule 2203 (requiring Form 3 to be filed 14 days after triggering event)	Revise to allow 45 days for filing Form 3 reports for U.S. firms and 90 days for filing Form 3 reports for non-U.S. firms.	Periodic Rep. Rules, Sec. I(A)
Proposed Rule 2203 (requiring Form 3 "catch-up" reporting)	Remove; If not removed, limit to information on ongoing relationships and legal proceedings from period of most recent inspection (or previous 6 months for non-U.S. firms), provide period for supplementing the Form 3 catch-up report, and extend deadline to 120 days after effective date of rule.	Periodic Rep. Rules, Sec. I(B)
Proposed Rule 2205 (amendments)	Revise to require amendment when the incorrectly reported or omitted information is qualitatively or quantitatively material to the form; revise to require amendment within 45 days; and clarify what constitutes "awareness" of an error or omission.	Periodic Rep. Rules, Sec. II(B)
Proposed Rule 2207 (document demand by Board)	Revise to provide appropriate safeguards for non-U.S. firms.	Periodic Rep. Rules, Sec. II(C)

<p>Proposed Rule 2300 (confidential treatment requests)</p>	<p>Clarify effect of 2300(b) is not intended to provide further substantive grounds for denying confidential treatment requests; remove requirement that provision of law supporting confidentiality be submitted (or more broadly define the scope of documentation allowed); and further elaborate on functionality of Web-based redaction system.</p>	<p>Periodic Rep. Rules, Sec. II(C)</p>
<p>Proposed Rule 4000 (inspections)</p>	<p>Revise to clarify scope of inspection authority in amendment.</p>	<p>Periodic Rep. Rules, Sec. II(D)</p>
<p>Proposed Form 2</p>		
<p>Proposed Item 3.2 (fee percentages)</p>	<p>Revise to track information required by proxy disclosure rules; allow percentages calculated based on (a) issuers’ most recent proxy statements divided by (b) the firm’s revenue data for the fiscal year ending prior to the March 31 cut-off date; alternative allow percentages based on (a) the issuer’s fee data as of the firm’s most recent fiscal year ending prior to the March 31 cut-off date divided by (b) the firm’s revenue data for the fiscal year ending prior to the March 31 cut-off date; and clarify that a good faith estimate is acceptable.</p>	<p>Periodic Rep. Rules, Sec. III(A)</p>
<p>Proposed Item 4.1 (audit reports)</p>	<p>Clarify that (b) requires the firm to identify the total number of individuals authorized to sign an audit report.</p>	<p>Periodic Rep. Rules, Sec. III(B)</p>
<p>Proposed Item 5.2 (audit-related memberships, affiliations, and similar arrangements)</p>	<p>Clarify “commonly” employed and “alternative practice structure.”</p>	<p>Periodic Rep. Rules, Sec. III(C)</p>
<p>Proposed Item 6.1 (number of firm personnel)</p>	<p>Revise to accept an estimate or a range of personnel; and clarify that personnel performing audit services does not include non-audit specialists. Alternatively, if data regarding leverage is the information desired, revise to allow the firm to report leverage statistics for its audit practice, excluding non-audit specialists.</p>	<p>Periodic Rep. Rules, Sec. III(D)</p>

<p>Proposed Parts VII & VIII (requiring “catch-up” reporting)</p>	<p>Remove; If not removed, limit to information on ongoing relationships and legal proceedings from period of last inspection (or previous 6 months for non-U.S. firms) and provide period for supplementing the Form 3 catch-up report.</p>	<p>Periodic Rep. Rules, Sec. I(B)</p>
<p>Proposed Part VII (certain relationships)</p>	<p>Revise to require a good faith effort to ascertain the disciplinary status of an individual or entity; clarify that 7.1 applies only to accountants (if retained, limit to “associated persons”); remove 7.2 (if retained, limit to “associated persons”); limit 7.4 to audit-related professional services; and clarify the relationship between Form 2 and Form 3 reporting requirements for certain relationships.</p>	<p>Periodic Rep. Rules, Sec. III(E)</p>
<p>Proposed Form 3</p>		
<p>Proposed General Instruction 3 (requiring Form 3 to be filed 14 days after triggering event)</p>	<p>Revise to allow 45 days for filing for U.S. firms and 90 days for filing for non-U.S. firms.</p>	<p>Periodic Rep. Rules, Sec. I(A)</p>
<p>Proposed Item 2.1 (withdrawn audit reports, withdrawn consent)</p>	<p>Remove. Public reporting is, and should remain, a consideration of issuers.</p>	<p>Periodic Rep. Rules, Sec. IV(A)</p>
<p>Proposed Item 3.1 (withdrawn audit reports, withdrawn consent)</p>	<p>Remove. Public reporting is, and should remain, a consideration of issuers.</p>	<p>Periodic Rep. Rules, Sec. IV(A)</p>
<p>Proposed Item 4.1 (unauthorized use of firm name)</p>	<p>Remove. Public reporting is, and should remain, a consideration of issuers.</p>	<p>Periodic Rep. Rules, Sec. IV(A)</p>

Proposed Items 2.5—2.10 (certain legal proceedings)	Clarify when a firm becomes “aware” of a legal proceeding (<i>e.g.</i> when senior management is notified of service of process); limit to proceedings arising from or relating to conduct in connection with the provision of audit or comparable reports for non-issuers; remove “dishonesty” and other crimes bearing materially on fitness; and narrow categories of individuals for which reporting is required (or, in the alternative, revise to make annual report on Form 2 rather than a Form 3 requirement).	Periodic Rep. Rules, Sec. IV(B)
Proposed Items 2.11—2.13 (certain relationships)	Remove; If not removed, revise to require a good faith effort to ascertain the disciplinary status of an individual or entity; clarify that 2.11 applies only to accountants; limit 2.13 to audit-related professional services; and clarify the relationship between Form 2 and Form 3 reporting requirements for certain relationships.	Periodic Rep. Rules, Sec. IV(C)
Proposed Items 2.14 & 2.15 (licensing)	Revise to make Form 2 annual reporting requirement and clarify “conditions” and “contingencies.”	Periodic Rep. Rules, Sec. IV(D)
Proposed Item 5.1 (certain legal proceedings)	Limit description of conduct to Form 1 description (or, alternatively, to conduct alleged in complaint) and remove identification of clients requirement.	Periodic Rep. Rules, Sec. IV(B)
Proposed Items 6.1—6.3 (certain relationships)	Remove; If not removed, revise to require a good faith effort to ascertain the disciplinary status of an individual or entity, clarify that 2.11 applies only to accountants, limit 2.13 to audit-related professional services, and clarify the relationship between Form 2 and Form 3 reporting requirements for certain relationships.	Periodic Rep. Rules, Sec. IV(C)
Proposed Items 7.1 & 7.2 (licensing)	Revise to make annual reporting and clarify “conditions” and “contingencies.”	Periodic Rep. Rules, Sec. IV(D)

Proposed Form 4		
Proposed General Instruction 9	Revise to allow confidential treatment requests for information provided in Form 4.	Successor Reg. Rules, Sec. II



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July 21, 2006

Public Company Accounting Oversight Board
Office of the Secretary
1666 K Street, N.W.
Washington, DC 20006-2803

By e-mail: comments@pcaobus.org

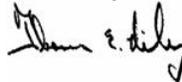
Re: PCAOB Release No. 2006-004 – Proposed Rules on Periodic Reporting by Registered Public Accounting Firms (Docket No. 019), and PCAOB Release No. 2006-005 – Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm (Docket No. 020)

Dear PCAOB Board Members:

The New York State Society of Certified Public Accountants, the oldest state accounting association, representing approximately 30,000 CPAs, welcomes the opportunity to comment on the proposed rules of the PCAOB referenced above.

The NYSSCPA SEC Practice and Auditing Standards and Procedures Committees deliberated the proposed rules and have prepared the attached comments. If you would like additional discussion with the committees, please contact Mitchell J. Mertz, chair of the SEC Practice Committee at (212) 891-4048, Robert W. Berliner, chair of the Auditing Standards and Procedures Committee, at (212) 503-8853, or Ernest J. Markezin of the NYSSCPA staff, at (212) 719-8303.

Sincerely,



Thomas E. Riley
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**COMMENTS TO THE PUBLIC COMPANY ACCOUNTING OVERSIGHT
BOARD ON**

**RELEASE NO. 2006-004 – PROPOSED RULES ON PERIODIC REPORTING BY
REGISTERED PUBLIC ACCOUNTING FIRMS**

AND

**RELEASE NO. 2006-005 – PROPOSED RULES ON SUCCEEDING TO THE
REGISTRATION STATUS OF A PREDECESSOR FIRM**

July 21, 2006

Principal Drafters

Robert W. Berliner
Jonathan Elmi
Mitchell J. Mertz
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NYSSCPA Staff
Ernest J. Markezin

New York State Society of CPAs**Comments to the Public Company Accounting Oversight Board on Release No. 2006-004 – Proposed Rules on Periodic Reporting by Registered Public Accounting Firms (Docket No. 019), and PCAOB Release No. 2006-005 – Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm (Docket No. 020)****July 21, 2006****Comments on Release 2006-04****FORM 2**

The Public Company Accounting Oversight Board (PCAOB) should reconsider the requirement to impose a common reporting year ending March 31. This may impose an administrative burden, in compiling the required information, on firms that have a different fiscal year. Furthermore, many firms may not have billed for work done in busy season until some time after the end of busy season. As an alternative, we suggest that the information called for should be hours charged rather than hours billed. This is more indicative of the earnings activity of the firm. Form 1 should be revised as well to reflect this alternative.

We note that the form asks for tax billings as a fourth category of revenue in addition to the three called for in Form 1. We are not clear why the form asks for a distinction in the categories of non-audit services, or what use this information is to the PCAOB. We believe that the Form should use the same categories as required for issuers in their annual proxies.

We also note that information is requested for networks or affiliations of the registered public accounting firm. We suggest that some materiality standard be set because minor affiliations likely will have little impact on a firm's practice.

FORM 3

Reporting on criminal and other proceedings, etc. (Items 2.6, 2.8, and 2.9) should not rely on titles but on roles in the audits of issuers. The "associated persons" concept from Form 1 should be used, and would provide for consistency. Also, there should be clarification as to whether the requirement as presently written encompasses individuals in tax, consulting and other roles as well as in audits of issuers. This would go beyond the Form 1 requirement.

Item 2.13 should clarify the meaning of “other arrangements” and whether it includes individuals that “funnel” issuer work to the firm. This is a very common arrangement in the smaller-issuer, smaller-registered firm arena. While there may be no formal compensatory arrangement with such individuals, a significant portion of the issuer work of certain firms comes from such relationships. Such individuals can be in a position to exert significant influence on the firm. Furthermore, it is not unusual for them to have regulatory matters in their past. Such individuals should be included in the reporting under this item, whether compensation is exchanged or not. We suggest that some threshold based on both number of referrals and magnitude of fees should trigger a reporting requirement.

Comments on Release No. 2006-005

FORM 4

The requirement for the successor firm to formally acknowledge responsibility for any conduct of the predecessor firm has the potential to significantly erode the successor’s defensive position, without merit, in the event of certain litigation arising from acts of the predecessor. In spite of the exposure draft’s attempt to delimit this responsibility, it provides no support for this delimitation. Such matters can only be known through the results of cases litigated through the judicial system. We believe that the PCAOB may already have the authority to accomplish the same results without requiring this affirmation. This should be examined.

The requirement for “an individual who is a member of the old firm and a member of the new firm... certify that the predecessor ...intended for its registration to attach to the successor firm” is too lax and probably inoperative. This is indicating that any member, no matter how marginal their role in the predecessor, has the power to represent the intent of the entire predecessor firm. This needs to be revised to provide a mechanism that truly expresses the intent of the predecessor by requiring a majority of the predecessor firm’s interests to authorize the certification on their behalf.

There are three “yes” or “no” questions which need to be answered negatively in order to file Form 4 rather than a Form 1 registration. We suggest that a fourth question needs to be asked – whether the successor will adopt the quality control document previously filed (and as amended) by the predecessor registered firm with Form 1. If the answer is “no”, the new quality control document should be submitted. The ability of an audit firm to perform work that complies with PCAOB standards depends, to a large extent, on its formally adopted system of quality control. Systems of quality control vary greatly, particularly among non-registered firms. The PCAOB should add this fourth item.



July 24, 2006

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW, 9th Floor
Washington, DC 20006

PricewaterhouseCoopers
300 Madison Avenue
New York, NY 10017
Telephone (646) 471-3000
Facsimile (813) 286-6000

Re: PCAOB Rulemaking Docket Matter No. 020

Dear Mr. Secretary,

PricewaterhouseCoopers appreciates the opportunity to comment on the Public Company Accounting Oversight Board's proposed rules, *Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm*, PCAOB Release No. 2006-005, May 23, 2006, PCAOB Rulemaking Docket Matter No. 020. We commend the efforts of the PCAOB to establish helpful rules that would allow a registered public accounting firm's registration status to continue with an entity that emerges after a merger or other change in the registered firm's legal form. We have reviewed the proposed rules of the Board and have a few observations and proposals that we feel will help support the overall objectives of the Board. Our comments are set forth in the attachment.

In general, we feel that the rules create an effective mechanism to ensure continuity of registration in appropriate circumstances, and thereby spare firms that change organization or engage in transactions from the burden of reregistering under Form 1. However, we feel that the rules might be clarified in certain respects without altering their fundamental objectives. Our specific comments are set forth in the accompanying document

We will be pleased to discuss any of our comments or answer any questions that you may have. Please do not hesitate to contact Richard R. Kilgust at 646-471-6110 regarding our comment letter.

Very truly yours,

A handwritten signature in cursive script that reads "PricewaterhouseCoopers". The signature is written in dark ink and is positioned above the printed name of the firm.

PricewaterhouseCoopers

PricewaterhouseCoopers Comment Letter Dated July 24, 2006***Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm, PCAOB Release No. 2006-005, May 23, 2006, PCAOB Rulemaking Docket Matter No. 020***

PricewaterhouseCoopers (“PwC”)¹ appreciates the opportunity to comment on the Public Company Accounting Oversight Board’s (the “Board” or “PCAOB”) rulemaking proposal relating to succession of registration status in certain circumstances.

PwC commends the Board’s efforts to develop a flexible system of allowing successor firms to succeed to the predecessor firm’s registration status. We particularly appreciate the Board’s sensitivity to the need to avoid unnecessarily burdensome regulatory requirements. Our comments on the proposed rules focus primarily on clarifying the rules, rather than changing any fundamental objectives of the proposed rules.

This comment letter presents our comments on certain aspects of the proposed rules that should be clarified and/or that should be reconsidered to mitigate burdens on successor firms. Where appropriate, we present alternatives that we believe would address these points while at the same time retaining the Board’s underlying purposes for the proposed rules.

I. FILING PERIOD FOR FORM 4

Proposed Form 4 prescribes a 14-day filing period for all firms seeking to succeed to the registration status of the predecessor firm. As a general proposition, we believe 14 days is an unduly short timeframe within which to require a firm to review, assess and report on information required by the Form. Although many of the matters covered by the form are accessible and available, we do not believe that firms should be denied the benefits of the successor rules if they are unable to complete the work within two weeks after a change in organization or a merger.

Form 4 does allow firms to file “out of time.” However, we are concerned that this does not provide a meaningful alternative. In cases where a firm files a petition for an out of time application, it is unclear whether the firm can still issue audit reports for audit clients while the Board reviews the out of time request. Nor is it clear what the effect is if the Board denies the request, both with respect to audit reports that were issued after the 14 day period expires and the filing of the out-of-time request and with respect to audit reports that were issued while the out-of-time request is pending. The resulting uncertainty would not be in the interests either of firms or their audit clients.

As an alternative, we would propose a 45-day deadline for filing a Form 4 registration succession request. A 45-day deadline would still constitute timely reporting while allowing firms sufficient time to compile and file the necessary information. While it is to be expected that many firms may require less than the full 45 days to complete Form 4, the administrative ease and simplicity

¹ PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International, Ltd., each of which is a separate and independent legal entity.

Office of the Secretary
Public Company Accounting Oversight Board
July 24, 2006
Page 2

of having a single time period for all items will ease the compliance burden considerably. If a longer period is provided, then we believe the out-of-time procedure can be omitted altogether. This will provide certainty about the continuing validity of audit reports issued by successor firms.

We also believe the rule should be clarified to state that the registration of the successor firm remains in effect pending the filing of the Form 4. While this is implicit in the rules, it is desirable to make it explicit.

PROPOSAL: Time period for filing Form 4 would be 45 days. The successor firm will be registered and can continue to issue audit report during the filing period. Out-of-time applications will not be allowed.

II. RESPONSIBILITY FOR CONDUCT OF PREDECESSOR FIRM

Item 4.2 of proposed Form 4 requires the successor firm to affirm that it “either has retained or willingly assumes legal responsibility for the conduct of” any predecessor firm. We think it is reasonable for the Board to condition successor registration on the successor firm acknowledging the Board’s ongoing regulatory powers with respect to matters predating the transaction. However, we believe that nothing in the proposed rules or Form 4 should result in an assumption of liability by the successor firm for any matters other than possible disciplinary actions by the Board. Thus, we think the certification can be more closely tailored to the Board’s regulatory purpose without using such broad language.

PROPOSAL: Revise Item 4.2 to read:

“Item 4.2 Continuing Authority of the Board Over Previous Conduct.

“Acknowledge and agree to the Board’s continuing authority, including but not limited to the authority to require reporting of information and the authority to impose disciplinary sanctions for the conduct of any predecessor registered public accounting firm before the change or business combination took effect.”

III. ACQUISITION TRANSACTIONS

We think it would be helpful to provide a definition of “acquisition” for purposes of Rule 2108 and Item 3.2. Otherwise, there could be uncertainty in planning transactions as to whether a particular transaction would result in transfer of the registration to a successor. For example, does hiring a majority of the predecessor firm’s partners, principals or shareholders amount to an

Office of the Secretary
Public Company Accounting Oversight Board
July 24, 2006
Page 3

acquisition? Or must the successor firm also acquire the predecessor firm's assets or a substantial portion thereof?

PROPOSAL: Conform what is a covered acquisition in Form 4 to the definitions of reportable transactions under Part VIII of Form 2.

Item 3.2 also requires that the successor firm submit a statement that, among other things, certifies that as part of an acquisition transaction, a majority of the predecessor firm's partners, principals or shareholders "moved into" the entity resulting from that transaction. The phrase "moved into" could be clarified, as it is unclear what capacity the former partner, principal or shareholder must "move." We suggest adopting language along the lines of similar provisions in the proposed reporting rules.

PROPOSAL: Provide that a majority of the predecessor firms' partners, principals or shareholders "are taken on as employees, partners, shareholders, principals, members or owners" of the successor firm.

The statement under Item 3.2 also requires that the successor firm attest that the predecessor firm is no longer a public accounting firm. While the Board notes that this allows the predecessor firm to retain businesses other than public accounting, it precludes a predecessor firm from engaging in public accounting even if it no longer issues audit reports on audit clients. It is not clear why a firm should not be able to transfer or spin off its U.S. audit client business and remain in public accounting so long as it gives up its U.S. registration with the Board. This may be a particular issue for foreign registered public accounting firms.

PROPOSAL: Provide that a successor firm can succeed to the predecessor firm's registration if it acquires all of the predecessor firm's U.S. audit client business or if a majority of the predecessor firm's partners, principals or shareholders engaged in that business "are taken on as employees, partners, shareholders, principals, members or owners" of the successor firm.

IV. TEMPORARY REGISTRATION STATUS

In cases of acquisitions (but not change in form of organization), Rule 2108 creates the possibility of temporary successor registration status. In cases where a successor firm answers certain questions affirmatively, the firm is not eligible for successor registration, but instead can receive a temporary registration pending filing of and Board action on a registration application on Form 1. The rules, as they currently stand, note that this temporary registration will last for "the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of the acquisition or combination...."

Office of the Secretary
Public Company Accounting Oversight Board
July 24, 2006
Page 4

As worded currently, the proposed rules could create the situation where temporary registration status might lapse while approval of the successor firm's Form 1 application is still pending review. Theoretically, 90 days should be sufficient since rule 2106(b) provides that the Board will act upon applications for registration within 45 days. However, in some cases the Board can ask for more information, which would restart the 45-day clock. In that case, an extended time for registering would be appropriate.

PROPOSAL: The Board should revise the language of Rule 2108(b)(2)(i) to read, "subject to the qualification in subparagraph (ii), that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the date that the PCAOB renders a decision on the entity's Form 1 application."

IV. LICENSES AND CERTIFICATIONS

Items 3.1e, 3.1f, 3.2c, and 3.2d require disclosure of changes in licenses or certifications resulting from the transaction. Some such changes could occur after the filing of the Form 4. We assume the Board's does not intend the filing to be deficient if the Form 4 is amended to report such information after the filing date.

PROPOSAL: State expressly that information responsive to these items relating to changes in licenses or certifications that occur after the filing date may be filed by amendment.

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TREUHAND  KAMMER

Location/Date Zurich, July 24, 2006
Recipient Secretary, Public Company Accounting Oversight Board
Sender Walter Hess, Secretary General, and Reinhard Oertli, Member of the Committee on Oversight over Accounting Firms and Chairman of the Subcommittee on Oversight over Accounting Firms by U.S. Authorities

**PCAOB Release No. 2006-004, *Proposed Rules on Periodic Reporting by Registered Public Accounting Firms* (PCAOB Rulemaking Docket Matter No. 019) and
PCAOB Release No. 2006-005, *Proposed Rules on Succeeding to the Registration Status of a Predecessor Firms* (PCAOB Rulemaking Docket Matter No. 020)**

Also by e-mail: comments@pcaobus.org

PCAOB
Office of the Secretary
Mr. J. Gordon Seymour
1666 K Street, N.W.
Washington, D.C. 20006-2803
U.S.A.

Dear Mr. Seymour

The Swiss Institute of Certified Accountants and Tax Consultants (the "Institute") appreciates the opportunity to submit its general comments to the U.S. Public Company Accounting Oversight Board ("PCAOB") regarding the rules proposed in PCAOB Release No. 2006-004, *Proposed Rules on Periodic Reporting by Registered Public Accounting Firms* (PCAOB Rulemaking Docket Matter No. 019) and in PCAOB Release No. 2006-005, *Proposed Rules on Succeeding to the Registration Status of a Predecessor Firms* (PCAOB Rulemaking Docket Matter No. 020, both rules proposed therein the "Proposed Rules") by which the PCAOB proposes a system for updating the registration of registered public accounting firms periodically or after the occurrence of certain special events.

In our five previous letters to the PCAOB and the SEC dated March 27, 2003, July 2, 2003, August 18, 2003, January 20, 2004, and January 26, 2004 (collectively the "Letters"), we have provided comments as to how the Sarbanes-Oxley Act of 2002 (the "Act") and the registration, inspection and investigation system for foreign public accounting firms affects and will affect our members. Furthermore, in the Letters we highlighted areas where the PCAOB's proposed rules conflict with Swiss law.

We also refer to

- (i) a copy of the relevant portion of the conflicting Swiss law;

- (ii) a legal opinion issued by Baer & Karrer, attorneys-at-law, and dated April 15, 2004, that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and
- (iii) an explanation of the Swiss accounting firms' 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

(collectively the "Attachments"), that were submitted together with Form 1 as attachments 99.2 (i), (ii) and (iii) by the Swiss public accounting firms in the course of their initial registration.

We consider the Letters and Attachments to be integral parts of this submission, as many of our comments made herein repeat or refer to issues discussed in the Letters and/or the Attachments.

When dealing with conflicts of law, we refer to Swiss law as the law that applies to the majority of situations. We note, however, that several of the Swiss registered accounting firms are licensed to provide audit services in the Principality of Liechtenstein. We refer in that regard to the legal opinion provided by Marxer & Partner Rechtsanwälte, dated April 23, 2004, as submitted by certain Swiss public accounting firms in the course of their initial registration. In special circumstances, the laws of other jurisdictions may also be applicable. Thus any reference to Swiss law below should be taken as Swiss and/or for any other applicable non-U.S. law.

All capitalized terms used herein and not otherwise defined shall have the meaning as described in the Rules.

A. General Comments

We appreciate the reporting framework the PCAOB lays out in the Proposed Rules for registered accounting firms to update the information provided by them upon registration; the reporting would occur both on an annual basis and upon occurrence of certain events, and we support the general approach set out in the Proposed Rules.

This being said, we are of the opinion that the Proposed Rules do not take sufficiently into account the constraints and risks that Swiss registered public accounting firms are exposed to due to their being subject to two (or more) legal systems, with the ensuing risk of conflicting legal requirements between these jurisdictions. We have referred before to the substantial and concrete risk that a Swiss registered accounting firm, by complying without limitation to the information requests imposed by the Act and by the Rules and Forms issued by the Board, could be exposed to civil and criminal liability for violation of auditor's secrecy, banking and stock exchange and securities traders' secrecy, confidentiality obligations imposed by general penal law (violation of manufacturing or business secrets), company law and contract law, data processing law, employment law, the prohibition to commit illegal acts for a foreign state, economic espionage or similar public policy limitations imposed by Swiss or other applicable laws.

The Proposed Rules and forms also appear to deviate in several ways from principles set forth in the Rules applying for registration of non-U.S. accounting firms, and, more specifically, to

require more information from and grant less consideration to the specific situation of registered non-U.S. accounting firm than when these firms initially registered. We trust and assume that no substantial deviation from the registration Rules was intended, and that the PCAOB will continue to honor and reciprocate the willingness of the Swiss registered accounting firms to apply the principle of cooperation within the limits set by applicable law.

B. Main Topics of Concern regarding the Proposed Rules

The chief topics of concern to us are the following:

- I. Limitation of Possibility to Assert Legal Conflicts
- II. Limitation of Possibility to Claim Confidential Treatment
- III. Insufficient Notification Period

I. Limitation of Possibility to Assert Legal Conflicts

There should be no limitations on information that can be withheld based on legal conflicts so long as the conflict can be supported. As outlined by us on several occasions, Swiss law prohibits disclosure of sensitive information not already publicly known, whereby in most circumstances consent by the issuer client does not cure the problem fully. It should suffice for the Swiss registered accounting firm to comply with proposed Rule 2207 with regard to the assertion of conflicts with non-U.S. laws, so as not to be exposed to civil and criminal liability for violation of Swiss laws.

II. Limitation of Possibility to Claim Confidential Treatment

There should be no absolute limitations on confidential treatment requests for certain types of information, as information that is proprietary and/or subject to applicable laws relating to the confidentiality of proprietary, personal or other information should be able to be kept confidential, so long as the requirement for confidentiality can be supported, in reliance on Section 102(e) of the Act.

III. Insufficient Notification Period

Forms 3 and 4 provide for a notification period of fourteen days after the occurrence of certain events. This notice period may be too short for verifying the necessary facts. Furthermore, this period will limit the time and possibility to obtain the consent and waiver of the issuer client and other third parties involved, a legal opinion and other evidence accompanying the assertion of a legal impediment or a confidentiality request as required in Proposed Rule 2207.

C. Comments to PCAOB Release No. 2006-004 and Forms 2 and 3

I. Rule 2203. Special Reports

The PCAOB proposes in its proposed Rule 2203 a period of fourteen days after the occurrence of certain events. Such period is extremely short and we are concerned that in more complex cases this timeframe would not allow for proper collection of the required information, verification, conclusive assessment of implications, and information to the Board in the form requested.

Within the same timeframe, the firm would have to seek consents from issuer clients and other persons affected and obtain copies of applicable laws and a legal opinion, what we expect will be necessary in many circumstances.

We have highlighted earlier that general consents obtained from clients in advance and without connection to a specific instance may not be valid under Swiss law, since such consents could only be given in a form that would be too general to cover a particular case that may come up much later and involving questions that were not contemplated at the time the consent was given.¹ In addition further consents of third parties with whom the accounting firm does not have any direct contacts may be necessary. Also, administration, updating and assuring completeness of such consents would be an unreasonable administrative burden for Swiss registered accounting firms, given the number of issuer clients including their subsidiaries and other third parties potentially affected.

In particular, the foreign public accounting firm must have available a legal opinion (proposed Rule 2207 (c) (3)) before submission of a Form 2 or Form 3. Such legal opinion must be focused on the particular case in question and must be current. Therefore, such legal opinion can only be prepared after the occurrence of an event. The instruction of the lawyer and the drawing up of the opinion will normally take more than fourteen days.

We propose either a longer notification period (*e.g.*, 45 days), or a staggered notification process, with an initial notification period during which the registered accounting firm would have to provide basic information only (in particular that a specific event occurred), followed by a subsequent notification period during which the registered accounting firm would have to provide details of the event, legal opinion, copies of applicable laws, etc.

Rule 2300 (a) (2) enables the Board to ignore the request for confidential treatment, if the firm requesting the confidential treatment fails to provide additional information on the background of the request. To mitigate consequences of technical failures or omissions during process of filing a form, we recommend – in the case that a request for confidential treatment is made, but no or insufficient supporting material is submitted – that the Board set a short timeframe for the firm to submit the missing supporting material to cure such omission.

¹ We refer to item 65 page 31 of the Swiss legal opinion filed together with the initial registration documents.

II. Rule 2207. Assertion of Conflicts with Non-U.S. Laws

We note and agree with the fact that the new proposed Rule 2207 does not contain a *per se* limitation of items for which legal conflict cannot be asserted.

While most of the areas the Board identifies in item IV.C of PCAOB Release No. 2006-004, Page 21, are not likely to present problems, we respectfully ask the Board to avoid creating any possibility of a conflict which might arise, *e.g.*, under Part IV, item 4.1 of Form 2, Parts III and IV of Form 3, or Part IV, item 4.2 of Form 4, by omitting the respective limitation from the instructions with respect to the three proposed forms.

III. Rule 2300. Public Availability of Information Submitted to the Board; Confidential Treatment Requests

As stated above, we view an absolute exclusion of confidential treatment requests for certain types of information not to be in compliance with Section 102(e) of the Act, provided the Swiss registered accounting firm provides the detailed and valid explanations as requested in proposed Rule 2300 para. (c)(2).

While most of the areas the Board identifies in item III of PCAOB Release No. 2006-004, Pages 16-17, are not likely to present problems, we respectfully ask the Board to avoid negative consequences for the registered accounting firms by treating as non-confidential all confidential information provided as part of the proposed forms (*e.g.*, also under Parts III and IV of Form 2, or Parts III, IV and V of Form 3, or Part IV of Form 4).

IV. Rule 4000. General

It has been outlined on several occasions that the Swiss registered accounting firms may not provide information the provision of which would violate Swiss (and/or other applicable) laws. Some of this information may be able to be inspected, once the Swiss Accounting Oversight Act (the "AOA") has come into force, by the Swiss Accounting Oversight Authority, which may make it available to the PCAOB through the mechanism of international assistance and information exchange, as further outlined in the AOA. Until that time, inspections by the PCAOB may be carried out in coordination with and through the channels established with the Swiss Federal Government for exchange of information by using the traditional means of judicial and administrative assistance.

V. Form 2 – Annual Report Form

(1) Part III Item 3.2

This would be proprietary information of the registered Swiss Accounting firm, for which it should be allowed to ask for confidential treatment.

(2) Part IV Item 4.1

The requirement to identify each report issued during the reporting period appears to be an excessive burden on registered firms that audit a large number of issuers or audit large issuers that have extensive audit needs. The information requested here is already known and available to the PCAOB through the SEC reporting system and publicly known through the electronic SEC Filings & Forms system EDGAR.

We understand that the focus of the Proposed Rules should be oversight over accounting firms, and not duplication of oversight over issuers, what could lead to conflicts and frictions.

(3) Part VII Item 7.1 Certain Sanctioned Individuals and Item 7.2 Individuals Connected With Certain Sanctioned Firms

As a consequence of Swiss employment law, under certain circumstances the names of such employees cannot be provided to the PCAOB. This is generally true in all situations where the connection between the name of the person and the sanction is not already publicly known. Consent of the employee to such disclosure would not cure the situation, since it may be invalid or insufficient under Swiss law.

This requirement goes beyond what had been requested in Form 1, where the questions in items 5.1.a.(3), for foreign registered accounting firms, were limited to any applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of audit services for any issuer during the last calendar year, whereas items 7.1 and 7.2 ask for information on all persons, irrespective of whether they were personally involved in the sanctioned behavior (item 7.2), and irrespective of whether they have been or will be involved in the provision of audit services to issuer clients. We do not understand the reason for this extension of the reporting requirement, and do not consider it warranted, given the fact that within the registered Swiss accounting firms, a large number of partners and employees are engaged in audit services for non-issuers, or in non-audit services.

(4) Part VII Item 7.4 Certain Arrangements to Receive Consulting or Other Professional Services

Item 7.4 requires the Swiss registered accounting firms to indicate details on arrangements to receive consulting or other professional services with third parties meeting certain criteria. This requirement in our opinion should be limited to arrangements relating to audit services, and should have a materiality threshold, so as to spare the registered accounting firms from making statements on arrangements that have no impact, or only a minimal impact, on their providing

audit services. The requirement pursuant to the form as proposed would lead to an administrative burden on the Swiss registered accounting firms that does not seem justified.

(5) Part IX Item 9.1.a Affirmation of Understanding of, and Compliance with, Consent Requirements

As in the course of the initial registration, Swiss public accounting firms may not be able to give the requested affirmations. We refer to the legal opinion of April 15, 2004 and the cover letter submitted by the Swiss public accounting firms together with their Form 1, which highlight in detail that complying with the affirmation would expose the Swiss registered accounting firm to civil and criminal liability for violation of auditor's secrecy, banking and stock exchange and securities traders' secrecy, confidentiality obligations imposed by general penal law (violation of manufacturing or business secrets), company law and contract law, data processing law, employment law, the prohibition to commit illegal acts for a foreign state, economic espionage or similar public policy limitations imposed by Swiss or other applicable laws. Also giving the affirmation could be subject to penal sanctions as a preparatory measure. We point out once again that client consents sought and obtained in advance would not cure the situation fully, since they might be invalid and could not serve as basis of reliance for the Swiss registered accounting firms when complying with the affirmation.

(6) Part IX Item 9.1.b Securing Consents from Associated Persons

We take this opportunity to draw your attention to the fact that consents from associated persons would be subject to (at least) the same limitations as would be the consent that could be given by the Swiss registered accounting firm. The Proposed Rules, in the same way as the registration Rules with regard to the consent in Form 1, do not provide for an alteration of the wording of the affirmation, but allow the Swiss registered accounting firm to withhold the consent for legal conflict reasons. This should not, however, alter anything with respect to the willingness of the Swiss registered accounting firms and their associated persons to cooperate and comply with the Board to the extent permitted by Swiss and other applicable laws.

We also draw your attention to the fact that making such consent a condition for continued employment may not in all circumstances be compatible with Swiss employment law.

VI. Form 3

(1) Part II

Several items of this Part II refer to the registered accounting firms becoming aware. It should be made clear that an accounting firm is deemed to be aware once the persons responsible for reporting requirements have become aware of the details of the facts and persons involved, and have had the opportunity to inspect and verify the facts internally, assuming of course an appropriate internal controlling and reporting structure and everybody's acting with all due efficiency and speed. Knowledge of the person whose acts or omissions are subject to the reporting requirement should clearly not be considered awareness on the part of the firm.

(2) Part II Item 2.5 through 2.8 and Part V Item 5.1

This requirement goes beyond what had been requested in Form 1, where the questions in items 5.1.a.(2) and 5.1.a.(3) were limited to proceeding in connection with an audit report, and for foreign registered accounting firms only with regard to an applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of audit services for any issuer during the last calendar year, whereas item 2.8 asks for information on all persons, irrespective of whether the behavior that is subject to the relevant proceeding relates to audit services, and items 2.6 and 2.8 would apply irrespective whether the relevant persons have been or will be involved in the provision of audit services to issuer clients. We do not understand the reason for this extension of the reporting requirement, and do not consider it warranted, given the fact that within the registered Swiss accounting firms, a large number of partners and employees are engaged in audit services for non-issuers, or in non-audit services.

We also take this opportunity to highlight that Swiss employment law would not allow employees of Swiss registered accounting firms to be asked for information that would not relate to their ability to provide audit services, and would not allow this information to be provided for an employee of a Swiss registered accounting firm except where all of the facts are already publicly known (*cf.* item C.V(3) above).

(3) Part II Item 2.11 and 2.12

This would require the consent of third parties, who are under no obligation to provide their consent.

(4) Part II Item 2.14 and 2.15

We understand this requirement to relate to licenses that have been granted to the registered accounting firms only, to the exclusion of licenses granted to individual partners or employees, as is presently the case in Switzerland. (The AOA, upon its coming into force, will set in place a uniform system of licenses being granted to accounting firms.) The PCAOB should additionally consider asking for this information only as part of the annual registration process *in lieu of* within 14 days of obtaining the license.

(5) Part III Item 3.1 Withdrawn *audit reports* and consents

The withdrawal of an audit report may be information that cannot be provided under Swiss law, irrespective of the consent of the issuer client, unless the issuer client has complied with the respective SEC reporting requirements or the withdrawal and the facts surrounding it have otherwise become publicly known. Where the issuer client has not complied with the respective SEC reporting requirements, there will most likely be a dispute situation, where client consent would not be available, and the Swiss accounting firm should be able to assert a legal conflict on that ground.

We understand that the focus of the Proposed Rules should be oversight over accounting firms, and not duplication of oversight over issuers, what could lead to conflicts and frictions.

Furthermore, the Swiss registered accounting firms must be permitted to submit a confidentiality request unless the fact has become publicly known.

(6) Part IV Item 4.1 Unauthorized Use of Firm Name

Any act of unauthorized use of the name of an accounting firm is most likely to occur in a dispute situation, where client consent would not be available.

Furthermore, the Swiss registered accounting firms must be permitted to submit a confidentiality request unless the fact has become publicly known.

(7) Part VI Item 6.1 New Relationship with Person Subject to Bar or Suspension

We refer to what has been said above to Item 7.1 of Form 2 (Clause C.V(3)).

(8) Part VII Certain Relationships

This requirement should be limited to persons who are providing services related to audit reports.

D. Release No. 2006-005 and Form 4

I. Form 4

(1) Part III Item 3.2.a.1.

If the predecessor firm has to file a request for leave to withdraw from registration on Form 1-WD before the acquisition or combination has become effective, there may be a registration “gap” for one of the predecessor registered firms as they would need to apply to withdraw their registration prior to legally combining with the new registered entity (unless withdrawal could be made effective upon the closing of the transaction). It should be possible to make the request of withdrawal contingent upon the closing and non-revocation of the transaction. Alternatively, it should be possible for the succeeding firm to make this request for withdrawal on the behalf of the predecessor firm between the date of the combination and the 14 day filing date; or to make a statement similar to the one in item 3.2.b.

(2) Part III Item 3.2.b.

This may not be practical in those cases where none of the persons that were members of the predecessor registered firm becomes a member of the new firm.

(3) Part III Item 3.2.e.1 in combination with Item 3.2.f

In connection with the reference to items 5.1.a or 5.2.a of Form 1, we refer to the fact that a “no” answer could not be given by a Swiss accounting firm, since in principle Swiss employment law prohibits it from collecting the necessary information in an encompassing way.

Furthermore, in a transaction involving a party which is not a registered public accounting firm that, if registering with the PCAOB, would have to give a positive response to questions 5.1.a or 5.2.a, the requirement that the resulting firm has to re-register with a complete Form 1 appears to be overly punitive, particularly for large registered accounting firms that combine with smaller firms. It would seem to be more appropriate to impose a special filing requirement that relates to the disciplinary history or civil proceedings only, *i.e.*, that is limited to items 5.1 and/or 5.2 of Form 1.

The answer to this question should also be able to be subject to a confidentiality request, since it may allow third parties to draw conclusions that could expose the firm or its associated persons to liability claims, or an increased risk of such claims.

(4) Part IV Item 4.1 Continuing Consent to Cooperate

We refer to what has been said in items C.V(5) and C.V(6) above with regard to Form 2.

(5) Part IV Item 4.2 Continuing Responsibility for Previous Conduct

It should be made clear that this affirmation related to reporting, testimony and document production obligations towards the PCAOB (insofar as not conflicting with Swiss and other applicable laws), but does not relate to civil or criminal liability for acts of the predecessor firm except insofar as such liability is explicitly transferred and assumed by way of contract or law (other than the Act and the Rules issued thereunder). It is not the intention of the Act, and cannot be the intention of the PCAOB, to increase the liability exposure of accounting firms.

E. Conclusions

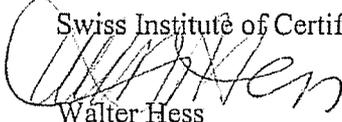
We trust that the Board will take into consideration the concerns that arise from the special situation of non-U.S. registered accounting firms, both with regard to the items referred to above and as part of its general policy, and refrain from imposing any requirements that would increase and accentuate the exposure to conflicts between the different legal regimes that are applicable to them.

This is even more warranted in a situation where the AOA has been approved by both houses of the Swiss Parliament and is expected to enter into force in 2007.

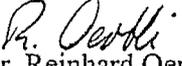
We appreciate this opportunity to express the continuing interest of our members to work towards a well balanced reporting and registration system, and look forward to continuing discussions with the PCAOB regarding these matters. The goal should be to establish a reporting framework that achieves our common goal on the basis of the principles set forth in the Proposed Rules, but gives all due consideration to the conflicting legal requirements to which Swiss registered accounting firms are exposed, and allows for the necessary coordination with the Swiss authorities, in particular with the Swiss Oversight Authority once the AOA has come into force.

Respectfully submitted,

Swiss Institute of Certified Accountants and Tax Consultants



Walter Hess
Secretary General



Dr. Reinhard Oertli
Chairman of the Subcommittee on Oversight over
Accounting Firms by U.S. Authorities



RELEASE

the rules and the related form – Form 4 – substantially as proposed. In certain circumstances, the rules allow a firm to succeed outright to a predecessor's registration. In other circumstances, the rules permit succession temporarily (generally 90 days, but longer in some circumstances) while the firm seeks registration by filing an application on Form 1. The rules will take effect 60 days after Commission approval, but the rules include provisions that allow firms to take advantage of the Form 4 succession option with respect to changes that occurred after a firm's registration but before the effective date of these rules by submitting a Form 4 within 14 days after the rules take effect (*i.e.*, 74 days after Commission approval).

In establishing the Form 4 process, the Board sought to identify bright line tests that can be addressed through representations in a form, on the basis of which the continuation of an entity's registration status can be determined, without involving delays or the application of Board or staff judgment. Some comments on the proposal seemed animated by an implicit premise that the Board's processes should allow for uninterrupted registration in every particular situation in which the application of judgment might support that result. The Board's objective for the Form 4 process in particular, however, is to identify those categories of cases as to which no case-specific judgment is required and to provide a streamlined mechanism for uninterrupted registration in those cases.

II. Overview of the Process

The rules afford the opportunity for continuity in two general categories of circumstances: (1) changes related to a firm's legal form of organization or the jurisdiction in which it is organized, and (2) transactions in which a registered firm is acquired by an unregistered entity or combines with other entities to form a new legal entity. The events to which the rules apply are events for which a firm plans, not unanticipated events to which a firm reacts. The rules are designed to facilitate a firm's ability to factor into its planning, and to predict with certainty, whether and how continuity of registration can be maintained.

The rules provide for a form the firm must file (Form 4), set a deadline for filing the form, and require certain information and representations in the form. If the firm files the form within the required timeframe, provides the required representations, and certifies that all required information is included, then continuity of registration is



RELEASE

automatic, without the need for separate Board action.^{1/} The rules and form also build in safeguards to ensure that the Form 1 process is not circumvented in circumstances where that process is more appropriate than Form 4 succession, as discussed in Section III below.

To obtain continuing effectiveness of an existing registration, the firm must acknowledge the continuity of, and commit to honor, certain obligations that accompany the registration status. Those obligations, described below, fall into two categories: continuing consent to cooperate with the Board and continuing responsibility to the Board for the conduct of predecessor registered firms.

A. Consent to Cooperate

Form 4 requires that the firm affirm its consent to cooperate with the Board and enforce cooperation by the firm's associated persons. Tracking the consent language included in Form 1 and Form 2, Item 4.1 of Form 4 requires the firm (1) to affirm its consent to cooperate with Board requests for testimony or documents, (2) to affirm that it has secured from each of its associated persons the required consents to cooperate with the Board, and (3) to affirm the firm's understanding and agreement that its cooperation and compliance, and the securing and enforcing of consents from its associated persons, is a condition of its continued registration with the Board. Under the rule, subject only to an accommodation for firms that face non-U.S. legal obstacles,^{2/}

^{1/} A Form 4 will be treated as "filed" when a signed form, completed in accordance with the form's instructions, is submitted. Upon filing, continuity of registration would occur by operation of the rule. (Subsequent discovery of false representations or certifications in the form would be grounds for disciplinary sanctions, potentially including revocation of registration.) As described in Section V below, a submission that is deficient solely because it is late could, in the discretion of the Board, be accepted for filing.

^{2/} The rules include accommodations for foreign registered firms that assert that non-U.S. law limits their ability to provide certain affirmations or information required by Form 4. These accommodations are discussed in Section VI below. In addition, a note to Item 4.1 explains that the affirmation there shall not be understood to include an affirmation that the firm has secured consents from associated unregistered foreign firms that assert that non-U.S. law prohibits them from providing the consent, as long as certain requirements concerning that assertion are satisfied. While that note effectively defines the limit of the affirmation being made in Item 4.1, it is not an exercise



RELEASE

the firm's affirmation of these points is strictly required, and the Board's system will not accept for filing a Form 4 that does not include it.

B. Responsibility to the Board for Predecessor's Conduct

Item 4.2 of Form 4 requires an affirmation that, for purposes of the Board's authority with respect to registered public accounting firms, including but not limited to the authority to impose disciplinary sanctions, the firm either has retained or assumes responsibility for the conduct of any predecessor registered public accounting firm before the change in legal form took effect. Where the change is a change in the legal form of organization, or the jurisdiction of organization, of an entity that otherwise remains substantially the same, this affirmation means that the firm accepts continuing responsibility to the Board for, and the possibility of Board sanctions for, its conduct before the event. Where the change is a combination of two or more entities, this affirmation means that the resulting entity accepts responsibility to the Board for, and the possibility of Board sanctions for, the conduct of each of the combining entities that was a registered public accounting firm at the time of the combination. A firm that is unwilling to provide the affirmation may not avail itself of the Form 4 process for succeeding to registration.

Commenters expressed concern that this affirmation might erode otherwise valid legal defenses in contexts such as criminal or private civil proceedings, and suggested that the Board should make clear that no such result is intended. The Board reiterates what it said in proposing the requirement: The affirmation of continuing responsibility for a predecessor's conduct is not intended to create any new liability, nor is it intended to affect the legal consequences of the transaction with respect to any person or entity other than the Board. As between the firm and the Board, however, the Board views the affirmation as indispensable if a firm wishes to make use of the Form 4 process. In an effort to reduce the possibility of misunderstanding about the intended scope, the Board has made slight changes to the wording of Item 4.2 – such as changing the heading to specify that the item is about continuing responsibility "to the Board," and removing the broad adjective "legal" in describing the nature of the responsibility being retained or assumed – but the Board is adopting the substance of the requirement essentially as proposed.

of the Board's exemption authority under Section 106(c) of the Act and does not modify a firm's obligation, under Section 102(b)(3)(A) of the Act, to secure required consents.



RELEASE

The Form 4 process is also not intended to affect the applicability of any aspect of Commission rules or Commission staff guidance. The process does not, for example, have any bearing on whether the change in legal form or other event affecting the firm constitutes a change in auditor required to be reported pursuant to Item 4.01 of the Commission's Form 8-K.^{3/} Nor does a firm's Form 4 affirmation of continuing responsibility for a predecessor's conduct have any bearing on how an issuer satisfies its obligation to file with the Commission an audit opinion for a prior period in circumstances where the firm that issued the opinion no longer exists.^{4/} The Form 4 process does not affect any such issues; it merely allows the new entity to operate as a registered firm, regardless of whatever other regulatory issues are triggered by the change in the firm.

III. Circumstances in Which Form 4 Succession Is Available

The rules afford the opportunity for continuity of registration in two categories of circumstances. Aspects of each category are described below.

A. Changes in Form of Organization or Jurisdiction of Organization

Under the rules, if a firm changed its legal form of organization, such as changing from a private corporation to a limited liability partnership, the firm could secure its continuing registration status through the Form 4 process and would not need to again seek registration with the Board by filing a Form 1. Similarly, if a firm were to change the jurisdiction under the law of which the firm is organized (i.e., reorganize under the law of a different state, while otherwise remaining substantially the same firm), it could secure its continuing registration status through the Form 4 process.

^{3/} Guidance issued by the Commission staff provides that a "merger of accounting firms always results in a change in accountants due to the change in legal entity of the firm that performs the audit. . . . An Item 4.01 Form 8-K must be filed no later than 4 business days after the merger." *See Current Accounting and Disclosure Issues in the Division of Corporation Finance* (November 30, 2006) at 67-68 (on the Commission's Web site at www.sec.gov/divisions/corpfin/cfacctdisclosureissues.pdf).

^{4/} *See id.* ("Should the new firm be willing to assume liability for the old firm's audits, it could issue a new opinion that covers the prior audited periods and provide consents to the use of that opinion.")



RELEASE

This Form 4 option is available only in circumstances where the successor firm is under substantially the same ownership as the predecessor firm. This Form 4 option is not available to facilitate any transfer of registration status from one firm (such as a firm exiting the business of auditing issuers) to a different firm. Nor is it available when a firm is dissolving, and a minority of the firm's members form a new firm for which they would like to use the old firm's registration.

For purposes of this Form 4 item, the firm in its new form is considered to be under substantially the same ownership as the predecessor if a majority of the persons who held an equity ownership interest in the predecessor also constitute a majority of the persons who hold an equity ownership interest in the successor.^{5/} The test focuses on a majority of the individuals holding ownership interests, as distinct from focusing on whether a group of individuals, smaller than a majority of owners, held a majority of the ownership interest.

One commenter suggested that the test should focus on whether, on a prospective basis, a majority of the successor firm's owners would consist of individuals who had held ownership interests in the predecessor firm. Similarly, another commenter expressed the view that a successor firm should not be precluded from assuming a predecessor firm's registration status just because less than a majority of its predecessor's owners remained with the successor firm. In the Board's view, those suggestions are unworkable for a process intended to provide for automatic succession upon the satisfaction of bright line criteria. Without supplemental information and the intervention of judgment, the Board could not provide for succession in those circumstances without running a risk that more than one "successor" entity might lay claim to the same predecessor's registration.

B. Acquisitions of, or Combinations Involving, a Registered Firm

The rules also allow for continuity of registration in certain circumstances when a registered firm is acquired by an unregistered entity, or when a registered firm combines

^{5/} The reference to equity ownership interests reflects a wording change to the Note in Item 3.1 made in response to a comment that noted, correctly, that the proposed wording's use of the term "partner" did not necessarily limit the scope to individuals with an equity ownership interest, which is the intended scope. For the same reason, a similar wording change has been made to Item 3.2.b. and the certification required there, which are discussed in Section III.B. below.



RELEASE

with other entities to form a new legal entity.^{6/} The portion of Form 4 applicable to such circumstances requires, among other things, a certification that certain conditions are satisfied, information that determines whether succession is permanent or temporary, and representations about the withdrawal from registration of any registered firms involved in the combination other than the firm to whose registration status the firm is succeeding. These points are discussed separately below.

1. Certification of Certain Aspects of the Transaction

A Form 4 filing relating to an acquisition or combination must include, as Exhibit 99.4, a certification made by a person who was an officer of, or held an equity ownership interest in, the predecessor registered firm at the time of the transaction and who, as part of the transaction, obtained an equity ownership interest in, or became employed by, the new firm.^{7/} The Exhibit 99.4 certification must use specified wording and must accompany the Form 4. The significant conditions described in the certification are discussed separately below.

a. Majority of the Predecessor's Owners

The Exhibit 99.4 certification includes a statement that a majority of the individuals who held equity ownership interests in the predecessor registered firm have become employees of or holders of equity ownership interests in the successor.^{8/} One

^{6/} If a registered firm combines with another firm (whether registered or unregistered) by acquiring the other firm, the firm's registration continues without the need for a Form 4 filing. The acquiring firm would be required to report the transaction in Part VIII of its annual report on Form 2. See Rules on Periodic Reporting by Registered Public Accounting Firms, PCAOB Release No. 2008-004 (June 10, 2008) ("Reporting Rules Release").

^{7/} After consideration of a comment on this point, the description of criteria concerning who must make the certification has been reworded slightly from the proposal in order not to require that the person has become a "member" of the new firm as part of the transaction.

^{8/} After consideration of a comment on this point, the wording of the Form has been revised slightly to speak in terms of individuals becoming employees or holders of equity ownership interests rather than speaking in terms of having "moved into" the new firm in certain capacities.



RELEASE

commenter suggested revising this condition to focus not on whether a majority of the predecessor's principals are with the new firm but, rather, whether a majority of the new firm's principals were with the predecessor firm. For the same reason discussed in Section III.A. (avoiding the possibility that more than one "successor" entity might lay claim to the same predecessor's registration), the Board does not intend that Form 4 succession be available to an entity that does not include a majority of the owners of the predecessor registered entity. In the case of an acquisition or other combination (as distinct from a change in legal form, discussed in Section III.A.), Form 4 succession does not require that those owners necessarily constitute a majority of the successor's owners,^{9/} but the concept of automatic succession is inappropriate where the new entity does not include a majority of the registered predecessor's owners.

One commenter suggested that the Board should define "acquisition" in this context, and raised questions concerning whether, to be an "acquisition" for which Form 4 succession is available, the transaction must involve acquisition of the predecessor firm's assets or a substantial portion thereof. For Form 4 succession to be available, the Board does not require that the transaction include anything other than what is described in the Exhibit 99.4 certification: a majority of the equity owners in a predecessor registered firm have become equity owners or employees of an unregistered firm, and the predecessor registered firm ceases to be a public accounting firm. For clarity on this point, the wording of Item 3.2.a. has been revised to refer to an acquisition of "any portion of" a registered public accounting firm, though Form 4 succession following any such acquisition is available only if all of the Exhibit 99.4 criteria are satisfied.

b. Intention of the Predecessor Firm

The Exhibit 99.4 certification also includes a statement that the predecessor registered firm intended for the successor firm to succeed to its registration status. One commenter questioned the appropriateness of allowing a single individual to certify that the predecessor intended such succession, and expressed concern about the Board acting on such a certification by someone who may only have had a marginal role in the

^{9/} Accordingly, it is possible that Form 4 succession could occur in circumstances where a large unregistered firm (presumably with no pre-existing issuer audit practice) acquires a small registered firm. Whether that succession would be permanent or only temporary (while the firm has an opportunity to file an application on Form 1) would depend upon the answers to the questions discussed in section III.B.2 below, as those questions relate to the large unregistered firm.



RELEASE

predecessor registered firm. As proposed and adopted, however, the required certification would be included in a filing that cannot be made except by the successor firm, which cannot make the filing unless a majority of the predecessor's owners are part of that successor firm. In those circumstances, it is not necessary to more specifically limit which of the predecessor's former owners or officers must execute the required certification.

c. Status of the Predecessor Firm

The Exhibit 99.4 certification also includes a statement that the predecessor registered firm has ceased to exist as a public accounting firm. This does not mean that the predecessor registered firm must cease to exist. The Form 4 process allows for the possibility that a registered firm might combine its public accountancy practice with another firm, and seek continuity of its registration in that other firm, while the legal entity in which that practice was previously housed continues to exist as something other than a public accounting firm.

One commenter questioned this requirement and suggested that a firm should be able to spin off its issuer audit business, including its registration status, to another firm and still remain a public accounting firm. The Board is not precluding the possibility that a firm can spin off its issuer audit business and still remain a public accounting firm; rather, the Board is identifying this criterion – whether the predecessor continues to exist as a public accounting firm – as relevant to whether registration status can move to the new firm through the Form 4 process or whether that firm can obtain registration status only through the Form 1 process.

If the predecessor registered firm continues to exist as the same legal entity that registered with the Board and continues to be engaged in the practice of public accounting, then the transaction suggested by the commenter would involve an existing public accounting firm – an entity which can legally be registered – conveying its registration to another public accounting firm, a transaction that the Board views as fundamentally inappropriate. Accordingly, in that circumstance, the firm to which the predecessor's issuer audit practice moved could not use the Form 4 process but would need to apply for registration on Form 1 – which it could do even before the relevant transaction takes effect.

In contrast, if the legal entity that originally registered ceases to exist as a public accounting firm, then it cannot legally be a registered public accounting firm. For that entity's registration status to move with elements of that entity into another entity,



PCAOB Release No. 2008-005
July 29, 2008
Page 10

RELEASE

through the Form 4 process, does not raise the same concerns about transferability of registration from one existing public accounting firm to another.

2. Permanent Succession vs. Temporary, Transitional Succession

Item 3.2.e. of Form 4 presents three yes-or-no questions. Assuming that the form is otherwise completed and submitted in accordance with Rule 2109, the responses to these three questions will determine whether the firm succeeds outright to the registration of the predecessor or whether the firm merely receives the benefit of a temporary succession allowing a transition period in which to seek registration through the Form 1 process.

Two of the three yes-or-no questions focus on any entities involved in the transaction that were not registered firms immediately before the transaction. Item 3.2.e. asks (1) whether any such entity, if it were filing an application for registration on Form 1, would have to provide an affirmative response to the Form 1 item that asks about the existence of a disciplinary history,^{10/} and (2) whether any such entity issued any audit report with respect to an issuer on or after October 22, 2003 (or, if the entity is a non-U.S. entity, July 19, 2004), and has never had an application for registration approved by the Board. The third question asks whether the firm submitting the form is operating without holding any license or certification issued by a state, agency, board, or other authority authorizing the firm to engage in the business of auditing or accounting. If the firm answers yes to any one of these three questions or, in the case of a non-U.S. firm, asserts as to any one of those questions that non-U.S. law prohibits it from providing the answer, the firm cannot remain registered without filing, and obtaining Board approval of, an application on Form 1. The firm will, however, receive the benefit of a temporary succession to registration, so long as the firm represents that it either has filed an application for registration on Form 1 or intends to do so within 45 days of the effective date of the acquisition or combination.

^{10/} As proposed, this question also encompassed whether the entity would have to provide an affirmative response to the Form 1 item asking about the existence of certain types of pending private civil actions against the firm. One commenter suggested that the existence of such actions should not be treated as a factor that renders succession temporary and requires the firm to file a Form 1. On further consideration, the Board agrees with that view, in light of its experience that the existence of such proceedings has not proven to be a decisive factor in approving or disapproving registration applications. The Board has not included that element in Item 3.2.e. as adopted.



PCAOB Release No. 2008-005
July 29, 2008
Page 11

RELEASE

One commenter questioned the requirement to file a Form if a firm involved in the transaction would need to answer "yes" on the Form 1 disciplinary history question if filing a Form 1. The commenter suggested that this requirement could be punitive, especially for large registered firms that combine with smaller firms. Item 3.2.e., however, does not pose any significant risk of that sort. If a large registered firm acquires a smaller unregistered firm, the large registered firm would merely be required to report that in its annual report on Form 2, without resort to the Form 4 process. Alternatively, if a large registered firm were involved in a transaction that did lead to a Form 4 filing, the disciplinary histories of that firm and its associated persons would be irrelevant to Item 3.2.e. because the large firm was already registered at the time of the transaction. Item 3.2.e. relates only to disciplinary history information of entities (and their associated persons) that were not already registered at the time of the transaction.

Commenters suggested that the 90-day limit on the transition period was too short and too inflexible. They noted that the Board has 45 days to act on an application, and also noted that the Board could ask for additional information, thereby restarting the 45-day clock and potentially pushing a registration decision out beyond the 90-day period. One commenter suggested revising the proposal so that the temporary registration status would continue until the Board makes a final decision on the Form 1. Another suggested revising the proposal to give the Board flexibility to extend the temporary registration status in situations where the Board does not take final action on the Form 1 within the 90 days.

The Board does not believe it would be appropriate to adopt a rule providing for a temporary registration period that continues until the Board acts on the Form 1, since firms could then keep the temporary registration status in place by not filing Form 1 or by delaying a response to a Board request for additional information on the application. The Board, however, sees the value in a measure of flexibility on this point. Accordingly, in Rule 2108(b)(2), the Board has retained the proposed 90 days as the initial transition period but has also added certain qualifications. If the Board formally requests additional information from the firm with less than 60 days remaining in the initial 90-day period, the temporary registration will continue to the date that is 60 days after the date of the Board's request. The effect will be that a firm has 15 days to respond to the Board's request if the firm wants to stay on track to keep its temporary registration until Board action on the Form 1. If the Board makes follow-up requests for information, the Board has the discretion to extend the temporary registration to a later date. Depending on the circumstances, however, the Board might, in making a follow-up request, conclude that further extension of the temporary registration is unwarranted, and could communicate that to the firm in the second request.



PCAOB Release No. 2008-005
July 29, 2008
Page 12

RELEASE

One commenter suggested that the Board should adopt procedures by which a firm that anticipates that a successor will need to file a new Form 1 could review the relevant facts with the Board's staff before the transaction to determine whether the staff sees significant obstacles to approving the successor's application. In the Board's view, however, to the extent it is appropriate for the staff to review information relevant to a prospective Form 1 filing, the staff may already do so without the need for special procedures.

3. Other Registered Predecessors' Withdrawal from Registration

In every Form 4 succession situation, one registered firm must be identified as the "predecessor firm" to whose registration status the filing entity seeks to succeed.^{11/} In the event that a combination of firms involves more than one registered firm, all of which are merging into an unregistered entity, the entity filing Form 4 must indicate, in Item 3.2.a.1., that each registered firm other than the "predecessor firm" has filed Form 1-WD seeking to withdraw from registration. This requirement facilitates the principally administrative objective of keeping the Board's list of registered firms free of entities that no longer exist or no longer practice public accounting, while still relying, for the withdrawal point, on representations from the withdrawing firm.^{12/}

One commenter expressed concern that there may be a registration gap for the predecessor firm that files the Form 1-WD prior to the transaction if the withdrawal is granted prior to the close of the transaction. The representation concerning the filing of a 1-WD, however, does not apply to the "predecessor firm," but only to other registered firms, if any, that are merging into the filing entity as part of the transaction. In connection with any Form 4 filing, the firm designated as the "predecessor firm" should not seek leave to withdraw from registration. In addition, in transactions involving additional registered firms, the Form 1-WD filings need not occur far in advance of the

^{11/} See Form 4, General Instruction No. 2 and Item 1.1.a.

^{12/} Because the firm filing the Form 4 will access the filing system by using the system ID and password of the "predecessor firm," the Board will have reasonable assurance that the predecessor firm is a participant in the transaction that is the subject of the Form 4 filing. The Board would have no similar assurance, however, concerning other registered firms identified in the filing as participants in the transaction, and the Board will not terminate any such firm's registration status in that context in the absence of its filing a Form 1-WD.



PCAOB Release No. 2008-005
July 29, 2008
Page 13

RELEASE

Form 4 filing. The Form 4 requirements can be satisfied even if the relevant Form 1-WD filings occur immediately before the Form 4 filing.

IV. Relationship Between Form 4 and Reporting Requirements

The Form 4 process is meant to facilitate automatic succession to registration in appropriate circumstances. It is not intended as a supplemental vehicle for reporting of information that is not otherwise required of all registered firms through Forms 2 and 3. Accordingly, the information required on Form 4 is limited to that information that the Board believes sufficient to demonstrate that the circumstances are appropriate for automatic succession to registration without bringing judgment to bear. Beyond that, any information to be collected should be collected from all registered firms, not just Form 4 filers, and is therefore the province of annual and special reporting requirements.^{13/}

With respect to certain basic information, however, there is overlap between information required on Form 4 and information concerning which a registered firm must report changes on Form 3. Transactions with respect to which a firm uses the Form 4 process could involve the successor registered firm emerging with a different name, different contact information, or different professional licenses than the predecessor registered firm, and current information on those points must be provided on Form 4. To the extent that the information represents a change from the most recent information

^{13/} The Board's annual and special reporting rules do not require reporting of all categories of information that are captured by a Form 1 application for registration. Any firm that succeeds to registration status through the Form 4 process will have the same reporting requirements as all registered firms, and Form 4 is not intended to create additional disclosure requirements beyond the minimum information that the Board judges necessary to determine whether Form 4 succession is appropriate and whether the circumstances call for a full Form 1 application. For this reason, the Board has not adopted a commenter's suggestion to have Form 4 also require information or documents about any differences between the successor's quality control policies and the narrative summary of those policies filed with the predecessor's Form 1 registration application. With respect to changes to quality control policies, there is no compelling reason to distinguish between successors to registration through Form 4 and other registered firms, and changes to those policies – which are generally available to the Board through its inspection processes – are not currently part of the information that Board rules require any firm to report on Form 2 or Form 3.



PCAOB Release No. 2008-005
July 29, 2008
Page 14

RELEASE

provided by the predecessor firm, those changes need not, and should not, be separately reported on Form 3. Notes in Parts V and VI of Form 3 reinforce this point.

One commenter noted that changes in licenses and certifications may occur after the filing of a Form 4 and suggested that the Board should expressly state that such changes may be described in an amendment to Form 4. Because a firm succeeds to registration automatically upon the Form 4 being filed, however, the firm immediately becomes subject to the same annual and special reporting requirements as any other registered firm. Accordingly, a license change that occurs after the filing of the Form 4 should be reported on Form 3 in accordance with Rule 2203.^{14/}

V. Timing and Bring-Current Filings

For succession to registration to take effect automatically upon filing under the rules, Form 4 must be filed within 14 days after the effective date of the change in legal form or other event. Commenters expressed a view that 14 days is too short a period, and suggested that it was insufficient time for non-U.S. firms to evaluate the impact of non-U.S. law in a particular case or to obtain consents, waivers, and legal opinions relating to potential legal conflicts. More generally, one commenter noted that 14 days does not allow sufficient time after the event for a firm to assess its reporting obligations and complete the form. Two commenters suggested expanding the 14-day period to a 45-day period.

The Board has considered these comments but has decided to adopt the 14-day deadline. Given the purpose of the filing – avoiding breaks in registration status – the Board believes that the rule should require filing of the form in as short a period as reasonably possible, so that any questions about the entity's registration status are kept to as narrow a period as possible. In addition, the events giving rise to a Form 4 are events for which firms plan, and such planning can encompass prompt filing of the relatively short and simple Form 4.

^{14/} A Form 4 that is submitted after the Rule 2109(a) filing deadline is not treated as "filed" unless and until the Board, pursuant to Rule 2108(d) grants leave to file the form out of time. In the period between an out of time submission and Board action granting leave to file out of time, the firm may make changes to the form to update or correct information, but those changes are not treated as amendments to a filed form and are not governed by Rules 2109(d) and 2205. See Form 4, Note to General Instruction No. 7.



PCAOB Release No. 2008-005
July 29, 2008
Page 15

RELEASE

Even so, the rules make some allowance for late filing. A firm that fails to file Form 4 within the 14-day period may submit a late Form 4 and request that the Board grant leave to file the form out of time. In a late submission, the firm should include as an exhibit to the form a statement in support of its request for leave to file out of time. If the Board grants the request and allows the form to be filed, the firm will succeed to the predecessor's registration (either outright or for the transitional period described above).

One commenter sought clarification of a firm's registration status during a period in which a Form 4 is pending with a request for leave to file out of time, suggesting that it is unclear whether the firm can issue audit reports while the request is pending. As discussed in the proposing release, a firm submitting a late Form 4 should make no assumption about whether the Board will allow it to be filed. Accordingly, during the period that the request is pending with the Board, a firm should not assume that it is a registered public accounting firm and, therefore, should not assume that it may issue audit reports. The rule's provision for late submissions is not principally intended as an accommodation to firms, but is intended to afford the Board the opportunity to allow Form 4 succession, despite a late filing, when doing so would be consistent with the public interest. Eventual favorable Board action on the request would effectively confer registered status on the firm back to the date of the transaction that is the subject of the Form 4 filing (just as with a timely filed Form 4), but unfavorable Board action would mean that the entity filing the Form 4 was never registered.

The rules also provide for Form 4 filings by firms that had a change in legal form, or that resulted from an acquisition or combination, in the period between the firm's registration and the effective date of the rules. Some firms have advised the Board of such events as they occurred. Those firms, and others that have undergone such changes without advising the Board, should report the change on Form 4 within 14 days of Rule 2108 taking effect.

VI. Amendments, Confidential Treatment, and Conflicts with Non-U.S. Law

Rule 2109(d) provides that certain PCAOB rules applicable to annual and special reporting apply to a filing on Form 4 as if it were a filing on Form 3. Specifically, the provisions of the rules concerning signatures, amendments, and asserted conflicts with



PCAOB Release No. 2008-005
July 29, 2008
Page 16

RELEASE

non-U.S. law (Rules 2204, 2205, and 2207, respectively) apply to a Form 4 filing. In addition, Rule 2300, as amended, applies to Form 4 confidential treatment requests.^{15/}

As with Forms 2 and 3, a firm may file amendments to a filed Form 4. Amendments should be filed only if the filed form was incorrect or incomplete at the time of the filing, and not to update the filing for changes to the information.^{16/}

As with Forms 2 and 3, the Form 4 process includes accommodations for non-U.S. firms that may face non-U.S. legal restrictions. A non-U.S. firm may withhold responses to specified Form 4 items if it certifies that it is doing so on the basis of a non-U.S. legal restriction and that it has complied with Rule 2207 concerning asserted conflicts. The proposed rules would have limited that option to the affirmation, in Item 4.1, of the Firm's consent to the cooperation obligations. One commenter suggested that non-U.S. firms might also sometimes face legal obstacles to answering the Item 3.2.e. yes-no questions that determine whether succession is permanent or temporary. The Board has determined to allow non-U.S. firms to withhold those answers on legal conflict grounds. The consequence of doing so, however, will be the same as if the firm had supplied a "no" answer: the succession afforded by the Form 4 process will only be for a transitional period to allow the firm an opportunity to seek registration through the Form 1 process.

As with Forms 2 and 3, Form 4 limits the categories of information for which a firm can request confidential treatment. Confidential treatment requests that have no genuine basis in law needlessly distract Board resources and delay the availability of information to the public. In the case of Form 4, the basic, nonpersonal, and

^{15/} For a general discussion of the rules concerning amendments and asserted conflicts with non-U.S. law, and amended Rule 2300, see Reporting Rules Release at 25-26.

^{16/} As noted above, in the period between an out of time Form 4 submission and Board action granting leave to file out of time, the firm may make changes to the form to update or correct information, but because the Form is not yet considered "filed," those changes are not treated as amendments and are not governed by Rules 2109(d) and 2205. See Form 4, Note to General Instruction No. 7.



PCAOB Release No. 2008-005
July 29, 2008
Page 17

RELEASE

nonproprietary nature of the required information leads the Board to foreclose confidential treatment requests for almost all of the items in the form.^{17/}

The Board encouraged commenters to comment on whether the proposal overlooked actual or realistically foreseeable legal requirements to maintain the confidentiality of information. Commenters who addressed the point did so only in vague terms without providing any specific basis for concluding that the proposal overlooked any potentially applicable protection. One commenter stated generally that certain information required by Form 4 may need to be kept confidential under non-U.S. law or by the terms of an agreement between predecessor and successor entities. The commenter did not identify what information in Form 4 might fall into that category and did not provide an example of the type of non-U.S. law that might protect its confidentiality. Moreover, in the absence of relevant law, an agreement between private parties to keep information confidential does not in itself satisfy the confidential treatment criteria described in Rule 2300(b)(1). The commenter also expressed slightly more focused concern about the protection of "information regarding the acquisition," but did not specify what information, among the very basic acquisition-related information required by Form 4, could be considered confidential or proprietary.

Another commenter raised potential confidentiality concerns about Item 3.2.e.1. As adopted today, that Item asks whether the acquisition or combination involves any previously unregistered entity that, if it were filing an application for registration on Form 1, would have to provide an affirmative response to Item 5.1.a, which asks about the existence of certain specified disciplinary histories. The commenter suggested that indicating whether a firm would have to answer "yes" to that question might lead others to draw unfavorable conclusions that could expose the firm to an increased risk of liability claims. Whether that is true, though, is a separate question from whether that

^{17/} Form 4 allows confidential treatment requests for Exhibits 99.3 and 99.5, neither of which would be included routinely with a Form 4 filing. Exhibit 99.3 is filed only in response to a request made by the Board or the staff, under Rule 2207(d), that the firm submit certain supporting materials in connection with an asserted conflict with non-U.S. law. Exhibit 99.5 is a firm's statement in support of a request for leave to file Form 4 out of time.



PCAOB Release No. 2008-005
 July 29, 2008
 Page 18

RELEASE

"yes" answer is information that is protected from disclosure by applicable law. The commenter has not suggested how that would be the case.^{18/}

In weighing these comments, the Board views as relevant the fact that Form 4 is not a required filing. While the Board does not view its optional nature as justification for dispensing with the possibility of confidential treatment, the Board does not believe that the comments on this point warrant any change from what was proposed.

VII. Effective Date

Rules 2108 and 2109 and Form 4 will take effect on the date that is 60 days after Commission approval. That delay will build in sufficient lead time for firms to become aware of Commission approval of the rules and to begin finalizing any Form 4 submissions that will be due shortly after the rules take effect, i.e., filings covering events that occurred before the effective date of the rules.

* * *

On the 29th day of July, in the year 2008, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
 Secretary

July 29, 2008

APPENDICES –

Rules on Succeeding to the Registration Status of a Predecessor Firm
 Form 4 Instructions

^{18/} Moreover, as a practical matter, any reader of the Form 4 would recognize that a firm's request for confidential treatment of its answer to Item 3.2.e.1. would mean that its answer was "yes."

**RELEASE****Appendix – Draft Rules and Form on Succeeding to Registration Status****SECTION 2. REGISTRATION AND REPORTING
Part 1 – Registration of Public Accounting Firms****2108. Succeeding to the Registration Status of a Predecessor**

(a) In the event that a registered public accounting firm changes its form of organization or changes the jurisdiction under the law of which it is organized, in circumstances that do not involve an acquisition or combination as described in paragraph (b) of this Rule, the entity in its new form shall succeed to the registration status of the predecessor if the new entity is a public accounting firm and files a Form 4 in accordance with Rule 2109.

(b) In the event that a registered public accounting firm is acquired by an entity that is not a registered public accounting firm, or combines with any other entity or entities to form a new legal entity –

(1) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to each subpart of Item 3.2.e of that Form 4 is "no," that entity shall succeed to the registration status of the registered firm;

(2) if the acquiring entity or the new entity is a public accounting firm that files a Form 4 in accordance with Rule 2109, and the answer provided to any subpart of Item 3.2.e of that Form 4 is other than "no," that entity shall not succeed to the registration status of the registered firm; provided, however, that if that entity represents on Form 4 that it has filed, or that it intends to file within 45 days of the effective date of the acquisition or combination, an application for registration on Form 1, then –

(i) subject to the qualifications in subparagraphs (ii), (iii), and (iv), that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of the acquisition or combination as reported on Form 4;



PCAOB Release No. 2008-005
July 29, 2008
Page A-2

RELEASE

(ii) subject to the qualifications in subparagraphs (iii) and (iv), if the acquisition or combination took effect before the effective date of this rule, that entity shall temporarily succeed to the registration status of the registered firm for a transitional period, but that registration will cease to be effective on the earlier of the date that the entity's application on Form 1 is approved or the date that is 91 days after the effective date of this rule;

(iii) if the Board requests additional information from the entity pursuant to Rule 2106(c) with less than 60 days remaining in the original transitional period, the entity's temporary succession to registration status shall continue to the date that is 60 days after the date of the Board's request; and

(iv) if, after the original transition period has been extended pursuant to subparagraph (iii), the Board makes any further requests for additional information from the entity pursuant to Rule 2106(c), the Board may in its discretion extend the temporary succession to registration status for such finite period as the Board shall specify.

(c) Subject to paragraph (d) of this rule, a public accounting firm that results from events described in paragraphs (a) or (b) of this rule shall not, in the absence of compliance with the provisions of Rule 2109, succeed to the registration status of a predecessor registered public accounting firm.

(d) Notwithstanding paragraph (c) of this rule, if a public accounting firm's failure to comply with the provisions of Rule 2109 is solely a failure concerning the timeliness of the submission, the firm may request leave to file Form 4 out of time by indicating and supporting that request in accordance with the instructions to the form. The Board will evaluate any such request in light of the relevant facts and circumstances and the public interest and may, in its discretion, grant or deny the request. If the Board grants leave to file the form out of time, the Form 4 shall be deemed filed and the provisions of paragraphs (a) and (b) shall apply as if the Form 4 had been timely filed. A Form 4 that has been submitted out of time may be withdrawn by the firm at any time before the Board has approved or disapproved the request for leave to file out of time.



RELEASE

2109. Procedure for Succeeding to the Registration Status of a Predecessor

(a) A public accounting firm seeking to succeed to the registration status of a predecessor registered public accounting firm pursuant to the provisions of Rule 2108 must do so by filing a Form 4 –

(1) no later than the 14th day after the change or business combination takes effect, if the change or business combination takes effect on or after **[insert effective date of this rule]**; or

(2) no later than **[insert date 14 days after effective date of this rule]**, if the change or business combination took effect before **[insert effective date of this rule]**.

(b) A public accounting firm filing a Form 4 must do so by filing the Form 4 in accordance with the instructions to that form. Unless directed otherwise by the Board, a public accounting firm filing a Form 4 must file the Form 4 and exhibits thereto electronically with the Board through the Board's Web-based system.

(c) A Form 4 shall be deemed to be filed on the date that the public accounting firm submits a Form 4 in accordance with Rule 2109(b) that includes the signed certification required in Part V of Form 4, *provided, however*, that any report so submitted after the applicable deadline as prescribed in paragraph (a) of this rule, shall not be deemed filed unless and until the Board, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

(d) The provisions of Rule 2204 concerning signatures, shall apply to each signature required by Form 4 as if it were a signature to a report on Form 3. Rule 2205 concerning amendments, and Rule 2207 concerning assertions of conflicts with non-U.S. laws, shall apply to any submission on Form 4 as if the submission were a report on Form 3.



RELEASE

FORM 4 – SUCCEEDING TO REGISTRATION STATUS OF PREDECESSOR

GENERAL INSTRUCTIONS

1. Purpose of this Form. Effective **[insert effective date of Rule 2109]**, this Form must be used to submit information, representations, and affirmations to the *Board*, pursuant to Rule 2109, by a *public accounting firm* that seeks to succeed to the registration status of a predecessor firm in circumstances described in Rule 2108.
2. Defined Terms. 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*. In addition, as used in the instructions to this Form, the term "the Firm" means the *public accounting firm* that is submitting this Form to the *Board*, and the term "the predecessor firm" means the *registered public accounting firm* identified in Item 1.1.a of the Form.
3. Submission of this Form. Unless otherwise directed by the *Board*, the Firm must submit this Form, and all exhibits to this Form, to the *Board* electronically by completing the Web-based version of this Form available on the *Board's* Website. The Firm must use the predecessor firm's user ID and password to access the system and submit the Form. In the event of a transaction involving the combination of multiple *registered public accounting firms*, the Firm must access the system using only the user ID and password of the firm specifically identified in Item 1.1.a, and not those of any other *registered public accounting firm*.
4. When this Form Should be Submitted and When It is Considered Filed. To succeed to the registration status of the predecessor firm pursuant to the provisions of Rule 2108(a) or (b), the Firm must provide the information and representations required by this Form, in accordance with the instructions to this Form, and must file the Form no later than the 14th day after the effective date of the change in form of organization, change in jurisdiction of organization, or business combination. Different timing requirements apply with respect to events that occurred before **[insert effective date of Rule 2109]**. See Rule 2109(a)(2). Form 4 is considered filed when the Firm has submitted to the *Board*, through the *Board's* Web-based reporting system, a Form 4 that includes the signed



PCAOB Release No. 2008-005
July 29, 2008
Page A-5

RELEASE

certification required in Part V of Form 4, *provided, however*, that any Form 4 so submitted after the applicable filing deadline shall not be deemed filed unless and until the *Board*, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

5. Seeking Leave To File this Form Out of Time. To request leave to file Form 4 out of time, pursuant to the provisions of Rule 2108(d), the Firm must file the request on Form 4 and must attach as Exhibit 99.5 a detailed statement describing why, despite the passage of time since the event described on the Form 4, the *Board* should permit the Firm to succeed to the registration status of the predecessor firm. Any Form 4 that has been submitted out of time, and as to which a *Board* decision on whether to allow the form to be filed is pending, may be withdrawn by accessing the pending submission in the *Board's* Web-based system and selecting the "Withdraw" option.
6. Completing the Form. The Firm must complete Parts I, II, IV and V of this Form. Part III should be completed to the extent applicable, as described more fully in the instructions to Part II of the Form.
7. Amendments to this Form. Amendments shall not be submitted to update information into a Form 4 that was correct at the time the Form was submitted, but only to correct information that was incorrect at the time the Form was submitted or to provide information that was omitted from the Form and was required to be provided at the time the Form was submitted. When submitting a Form 4 to amend an earlier submitted Form 4, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 4 all information, affirmations, and certifications that were required to be included in the original Form 4. The Firm may access the originally filed Form 4 through the *Board's* Web-based system and make the appropriate amendments without needing to re-enter all other information. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2205 concerning amendments apply to any submission on this Form as if the submission were a report on Form 3.)

Note: The *Board* will designate an amendment to a report on Form 4 as a report on "Form 4/A."

Note: Any change to a Form 4 that was originally submitted out of time, and as to which a *Board* decision on whether to allow the form to be filed



PCAOB Release No. 2008-005
July 29, 2008
Page A-6

RELEASE

is pending, shall not be treated as an amendment. To make a change to any such pending Form 4 submission, the Firm must access the pending submission in the *Board's* Web-based system, select the "Withdraw and Replace" option, and submit a new completed Form 4 in place of the previously pending submission. The certification required in Part V of the new submission must be executed specifically for the replacement version of the Form and dated accordingly.

8. Rules Governing this Form. In addition to these instructions, the *rules* contained in Part 2 of Section 2 of the *Board's rules* govern this Form. Please read these *rules* and the instructions carefully before completing this Form.
9. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Exhibit 99.3 or Exhibit 99.5 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. If the Firm requests confidential treatment, it must identify the information in Exhibit 99.3 or Exhibit 99.5 that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, an exhibit that complies with the requirements of Rule 2300(c)(2). The *Board* will determine whether to grant confidential treatment requests on a case-by-case basis. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of that failure.
10. Assertions of Conflicts with Non-U.S. Law. If the Firm is a *foreign registered public accounting firm*, the Firm may, unless otherwise directed by the *Board* pursuant to Rule 2207(e), decline to provide the affirmation required by Item 4.1 of this Form and any answer required by Item 3.2.e of this Form if doing so would constitute a violation of non-U.S. law by the Firm and the Firm proceeds in accordance with Rule 2207. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2207 apply to any submission on this Form as if the submission were a report on Form 3.) If the firm withholds the affirmation or answer, the Firm must indicate, in accordance with the instructions in the relevant Part of the Form, that it has done so.



PCAOB Release No. 2008-005
July 29, 2008
Page A-7

RELEASE

11. Language. Information submitted as part of this Form, including any exhibit to this Form, must be in the English language.



PCAOB Release No. 2008-005
July 29, 2008
Page A-8

RELEASE

PART I – IDENTITY OF THE FIRM AND CONTACT PERSONS

Item 1.1 Names of Firm and Predecessor *Registered Public Accounting Firm*

- a. State the legal name of the *registered public accounting firm* to whose registration status the Firm seeks to succeed.

Note: The name provided in Item 1.1.a should be the legal name of the *registered public accounting firm* as last reported to the *Board* on Form 1 or Form 3. This is the firm referred to in this Form as "the predecessor firm." In accessing and submitting this Form through the *Board's* Web-based system, the Firm must use the predecessor firm's user ID and password.

- b. State the legal name of the Firm filing this Form.

Note: The name provided in Item 1.1.b will be the name under which the Firm is registered with the *Board* if this Form is filed in accordance with Rule 2109.

- c. If different than the name provided in Item 1.1.b, state the name or names under which the Firm issues or intends to issue *audit reports*.

Item 1.2 Contact Information of the Firm

- a. State the physical address (and, if different, mailing address) of the Firm's headquarters office.

- b. State the telephone number and facsimile number of the Firm's headquarters office. If available, state the Website address of the Firm.

Item 1.3 Primary Contact and Signatory

- a. State the name, business title, physical business address (and, if different, business mailing address), business telephone number, business facsimile number, and business e-mail address of a partner or authorized officer of the Firm who will serve as the Firm's primary contact with the *Board*, including for purposes of this Form 4, any annual reports filed on Form 2, and any special reports filed on Form 3.



PCAOB Release No. 2008-005
July 29, 2008
Page A-9

RELEASE

PART II – GENERAL INFORMATION CONCERNING THE FILING OF THIS FORM

Item 2.1 Reason for Filing this Form

Indicate, by checking the box for either Item a or Item b below, the reason the Firm is filing this Form. Then proceed to the Parts and Items of this Form indicated parenthetically for the relevant item and provide the information described there. Provide responses only to those Parts and Items of the Form specifically indicated for the event or events that the Firm identifies in this Part II as the reason for filing this Form. (For example, if the Form is being submitted because the Firm has changed its form of organization, check the box for Item 2.1.a, and complete only Item 3.1 and Parts IV and V of the Form. Complete Item 2.2 or Item 2.3 if applicable.)

a. There has been a change in the Firm's form of organization, or the Firm has changed the jurisdiction under the law of which it is organized. (Complete Item 3.1, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

b. There has been an acquisition of a *registered public accounting firm* by an entity that was not a registered public accounting firm at the time of the acquisition, or a *registered public accounting firm* has combined with another entity or other entities to form a new legal entity. (Complete Item 3.2, Part IV, and Part V; complete Item 2.2 or Item 2.3 if applicable.)

Item 2.2 Request for Leave To File this Form Out of Time

If this Form is not submitted in accordance with Rule 2109(b) on or before the filing deadline set by Rule 2109(a), the Firm may request leave to file this Form 4 out of time by checking the box for this Item, completing this Form 4 as is otherwise required, and providing, as Exhibit 99.5 to this Form, a description of the reason(s) the Form was not timely filed and a statement of the grounds on which the Firm asserts that the *Board* should grant leave to file the Form out of time.

Note: Requests for leave to file Form 4 out of time are not automatically granted. See Rule 2108(d).



PCAOB Release No. 2008-005
July 29, 2008
Page A-10

RELEASE

Item 2.3 Amendments

If this is an amendment to a Form 4 previously filed with the *Board* –

- a. Indicate, by checking the box corresponding to this item, that this is an amendment.
- b. Identify the specific Item numbers of this Form (other than this Item 2.3) as to which the Firm's response has changed from that provided in the most recent Form 4 or amended Form 4 filed by the Firm with respect to the event reported on this Form.

PART III – CHANGES IN THE FIRM

Item 3.1 Changes in Form of Organization or in Relevant Jurisdiction

If this Form 4 is being submitted in connection with a change in the Firm's form of organization or a change in the jurisdiction under the law of which the Firm is organized –

- a. State the Firm's current (i.e., after the change in legal form or jurisdiction) legal form of organization;
- b. Identify the jurisdiction under the law of which the Firm is organized currently (i.e., after the change in legal form or jurisdiction); and
- c. State the date that the change took effect.
- d. Affirm that, after the change reported or described in this Item 3.1, the Firm is a *public accounting firm* under substantially the same ownership as the predecessor firm.

Note: Neither the Act nor *Board rules* include any provision by which a *registered public accounting firm* may, in effect, transfer its *Board* registration to another entity. Rule 2108(a), in conjunction with this Form, allows the succession of registration status in circumstances in which a *registered public accounting firm* changes its legal form of organization while remaining under substantially the same ownership. For purposes of this Item, the Firm is considered to be under substantially the same ownership as the predecessor firm if a majority of the persons who held an equity ownership interest in the predecessor also constitute a majority of the persons who hold an equity ownership interest in the Firm.



PCAOB Release No. 2008-005
July 29, 2008
Page A-11

RELEASE

e. If, in connection with the change described in this Item 3.1, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the business of auditing or accounting, that is different from any such license or certification number previously reported to the *Board* by the predecessor firm, provide as to each such license –

1. the name of the issuing *state*, agency, board, or other authority;
2. the number of the license or certification;
3. the date the license or certification took effect.

f. If, in connection with the change described in this Item 3.1, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license –

1. the name of the issuing *state*, agency, board, or other authority;
2. the number of the license or certification; and
3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

Item 3.2 Acquisitions of, or Combinations Involving, A *Registered Public Accounting Firm*

a. If this Form 4 is being submitted in connection with a transaction concerning which a person who holds an equity ownership interest in the Firm, or is employed by the Firm, can certify the points set out in Item 3.2.b. and Exhibit 99.4, –

1. Provide the name of each entity, other than the predecessor firm, that was involved in the transaction and that was a *registered public accounting firm* immediately before the transaction, and as to each such entity –



PCAOB Release No. 2008-005
July 29, 2008
Page A-12

RELEASE

- (i) affirm that the entity has filed with the *Board* a request for leave to withdraw from registration on Form 1-WD; and
 - (ii) state the date that the entity filed Form 1-WD;
 2. Provide the name of each entity, including any acquiror, that was involved in the transaction and that was not a *registered public accounting firm* immediately before the transaction;
 3. Provide the date that the transaction took effect; and
 4. Provide a brief description of the nature of the transaction.
- b. Provide as Exhibit 99.4 to this Form, a statement in the form set out below, signed by a person who, immediately before the transaction, was an officer of, or held an equity ownership interest in, the predecessor firm and who now either holds an equity ownership interest in, or is employed by, the Firm. The statement must be submitted on behalf of the Firm. Exhibit 99.4 must include a signature that appears in typed form in the electronic submission and a corresponding manual signature retained by the Firm in accordance with Rule 2109(d). The signature must be accompanied by the signer's current title, the signer's title immediately before the event described in Item 3.2.a, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address. Other than the insertion of the relevant names, Exhibit 99.4 must be in the exact following words –
- On behalf of [name of the Firm], I certify that (1) I was an officer of, or held an equity ownership interest in, [name of predecessor firm] immediately before the transaction described in Item 3.2.a of the Form 4 to which this exhibit is attached; (2) immediately before that transaction [name of predecessor firm] was a *registered public accounting firm*; (3) as part of that transaction, a majority of the persons who held equity ownership interests in [name of predecessor firm] obtained equity ownership interests in, or became employed by, [name of the Firm]; (4) [name of predecessor firm] intended that [name of the Firm] succeed to the *Board* registration status of [name of predecessor firm] to the extent permitted by the *Board's* rules; and (5) [name of predecessor firm] is no longer a *public accounting firm*.
- c. If, in connection with the transaction described in Item 3.2.a, the Firm has obtained, or will practice under, a license or certification number, authorizing it to engage in the



PCAOB Release No. 2008-005
July 29, 2008
Page A-13

RELEASE

business of auditing or accounting, that is different from any such license or certification number previously reported to the *Board* by the predecessor firm, provide, as to each such license –

1. the name of the issuing *state*, agency, board or other authority;
2. the number of the license or certification; and
3. the date the license or certification took effect.

d. If, in connection with the transaction described in Item 3.2.a, any license or certification that authorized the predecessor firm to engage in the business of auditing or accounting has ceased to be effective or has become subject to any conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide, as to each such license –

1. the name of the issuing *state*, agency, board, or other authority;
2. the number of the license or certification; and
3. the date that the authorization ceased to be effective or became subject to conditions or contingencies.

e. Provide a "yes" or "no" answer to each of the following questions –

1. Is there identified in Item 3.2.a.2 any entity that, if it were filing an application for registration on Form 1 on the date of the certification in Part V of this Form, would have to provide an affirmative response to Item 5.1.a of Form 1 in order to file a complete and truthful Form 1?

Note: In considering whether an affirmative response would be required to Item 5.1.a of Form 1, the Firm should take into account the guidance provided by question number 33 in Frequently Asked Questions Regarding Registration with the *Board*, PCAOB Release No. 2003-011A (Nov. 13, 2003).

2. Is there identified in Item 3.2.a.2 any entity that (i) issued an *audit report* with respect to an *issuer* on or after October 22, 2003 (or, if the entity is a non-U.S. entity,



PCAOB Release No. 2008-005
July 29, 2008
Page A-14

RELEASE

July 19, 2004), while not registered with the *Board*, and (ii) has never had an application for registration on Form 1 approved by the *Board*?

3. Is the Firm operating without holding any license or certification issued by a *state*, agency, board, or other authority authorizing the Firm to engage in the business of auditing or accounting?

Note: If the Firm answers "yes" to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law prohibits it from providing an answer, the Firm cannot succeed outright to the registration of the predecessor. If this Form 4 is submitted in accordance with Rule 2109, however, the Firm will temporarily succeed to the registration of the predecessor for a transitional period as described in Rule 2108(b)(2) as long as the Firm makes the representation required in Item 3.2.f below. If the Firm answers "yes" to any question in Item 3.2.e or asserts as to any of those questions that non U.S. law prohibits it from providing an answer but fails to make the representation required in Item 3.2.f, this Form 4 will not be accepted for filing and the Firm will not succeed to the predecessor's registration even on a temporary basis. See Rule 2108(b)(2).

f. If the Firm answered "yes" to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law prohibits it from providing an answer, affirm, by checking the box corresponding to the appropriate item, that one of the following statements is true –

1. The Firm has filed an application for registration on Form 1 on or after the date provided in Item 3.2.a.3.

2. The Firm intends to file an application for Registration on Form 1 no later than 45 days after the date provided in Item 3.2.a.3.



PCAOB Release No. 2008-005
July 29, 2008
Page A-15

RELEASE

PART IV – CONTINUING OBLIGATIONS

Item 4.1 Continuing Consent to Cooperate

Affirm that –

- a. The Firm consents to cooperate in and comply with any request for testimony or the production of documents made by the *Board* in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002;
- b. The Firm has secured from each of its *associated persons*, and agrees to enforce as a condition of each such person's continued employment by or other association with the Firm, a consent indicating that the *associated person* consents to cooperate in and comply with any request for testimony or the production of documents made by the *Board* in furtherance of its authority under the Sarbanes-Oxley Act of 2002, and that the *associated person* understands and agrees that such consent is a condition of his or her continued employment by or other association with the Firm; and
- c. The Firm understands and agrees that cooperation and compliance, as described in Item 4.1.a., and the securing and enforcing of consents from its *associated persons* as described in Item 4.1.b., is a condition to the continuing effectiveness of the registration of the Firm with the *Board*.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any *associated person* that is a *registered public accounting firm*.

Note: The affirmation in Item 4.1.b. shall not be understood to include an affirmation that the Firm has secured such consents from any *associated person* that is a *foreign public accounting firm* in circumstances where that *associated person* asserts that non-U.S. law prohibits it from providing the consent, so long as the Firm possesses in its files documents relating to the *associated person's* assertion about non-U.S. law that would be sufficient to satisfy the requirements of subparagraphs (2) through (4) of Rule 2207(c) if that *associated person* were a *registered public accounting firm* filing a Form 2 and withholding this affirmation. This exception to the affirmation in Item 4.1.b. does not relieve the Firm of its obligation to enforce cooperation and compliance with *Board* demands by any such *associated person* as a condition of continued association with the Firm.



PCAOB Release No. 2008-005
July 29, 2008
Page A-16

RELEASE

Note: If the Firm is a *foreign registered public accounting firm*, the affirmations in Item 4.1 that relate to *associated persons* shall be understood to encompass every *accountant* who is a proprietor, partner, principal, shareholder, officer, or manager of the Firm and who provided at least ten hours of *audit services* for any *issuer* during the reporting period.

Item 4.2 Continuing Responsibility to the *Board* for Previous Conduct

Affirm that, for purposes of the *Board's* authority with respect to *registered public accounting firms*, including but not limited to the authority to require reporting of information and the authority to impose disciplinary sanctions, the Firm either has retained or assumes responsibility for the conduct of any predecessor *registered public accounting firm* before the change or business combination reported on this Form took effect.

Note: As used in Item 4.2 the term "*predecessor registered public accounting firm*," means (1) in circumstances not involving a transaction described in Item 3.2, the predecessor firm and (2) in circumstances involving a transaction described in Item 3.2, each *registered public accounting firm* that was involved in the business combination.

Note: The continuing responsibility in Item 4.2 includes, among other things, responsibility for reporting information on Form 2 and events on Form 3. Thus, for example, if a *registered public accounting firm* experienced a Form 3 reportable event before the event that is the subject of this Form, the Firm, as successor, has the obligation to report that event on Form 3, and bears responsibility for any failure by any predecessor to have filed a timely Form 3 to report the matter.

Note: The *Board's rules* do not require that any entity retain or assume responsibility as set forth above. In the absence of an affirmation that it retains or assumes responsibility for such conduct at least for purposes of the *Board's* authority, however, an entity cannot succeed to the *Board* registration status of any predecessor entity. See Rule 2108.



PCAOB Release No. 2008-005
July 29, 2008
Page A-17

RELEASE

PART V – CERTIFICATION OF THE FIRM

Item 5.1 Signature of Partner or Authorized Officer

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2109(d), both a signature that appears in typed form within the electronic submission and a corresponding manual signature retained by the Firm. The signer must certify that –

- a. the signer is authorized to sign this Form on behalf of the Firm;
- b. the signer has reviewed this Form;
- c. based on the signer's knowledge, this Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and
- d. either –
 1. based on the signer's knowledge, the Firm has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, with respect to the event or events being described on this Form, or
 2. based on the signer's knowledge –
 - (A) the Firm is a *foreign public accounting firm* and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form other than an affirmation required by Item 4.1 and/or an answer to Item 3.2.e.; and
 - (B) the Firm asserts that it is prohibited by non-U.S. law from providing any such withheld affirmation or response to the Board on this Form and, with respect to each such withheld affirmation or response, the Firm has made the efforts described in PCAOB Rule 2207(b) and has in its files the materials described in PCAOB Rule 2207(c).



PCAOB Release No. 2008-005
July 29, 2008
Page A-18

RELEASE

The signature must be accompanied by the signer's title, the capacity in which the signer signed the Form, the date of signature, and the signer's business mailing address, business telephone number, business facsimile number, and business e-mail address.

PART VI – EXHIBITS

To the extent applicable under the foregoing instructions, each report must be accompanied by the following exhibits:

Exhibit 99.1 Request for Confidential Treatment

Exhibit 99.3 Materials Required by Rule 2207(c)(2)–(4) – *Submit Only as an Exhibit to an Amended Form 4 in Response to a Request Made Pursuant to Rule 2207(d)*

Exhibit 99.4 Acknowledgment Concerning Registration Status in Certain Transactions

Exhibit 99.5 Statement in Support of Request for Leave To File Form 4 Out of Time.