



# PCAOB

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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announced that, on March 31, 2003, it will convene a roundtable meeting, at which interested persons can present their views on the effect and operation of Board registration and oversight of foreign public accounting firms.

## Public

Comment: Interested persons may submit written comments to the Board. Such comments should be sent to 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](mailto:comments@pcaobus.org) or through the Board's website at [www.pcaobus.org](http://www.pcaobus.org). All comments should refer to PCAOB Rulemaking Docket Matter No. 001 in the subject or reference line and should be received by the Board no later than 5:00 PM (EST) on March 31, 2003.

## Board

Contacts: Gordon Seymour, Acting General Counsel (202/207-9034; [seymourg@pcaobus.org](mailto:seymourg@pcaobus.org)) or Phoebe Brown, Special Counsel to Board Member Goelzer (202/207-9073; [brownp@pcaobus.org](mailto:brownp@pcaobus.org)).

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Section 102 of the Act prohibits persons that are not registered with the Board from preparing or issuing audit reports on U.S. public companies or from participating in these activities. Firms must register with the Board if they wish to engage in these activities after the 180-day period following the Commission's determination that the Board has the capacity to carry out the requirements of Title I of the Act and to enforce compliance therewith.<sup>1/</sup> In order to permit public accounting firms to comply with this requirement, the Board has proposed a registration system. Section A of this release summarizes the operation of the Board's registration system.

The Board's proposal requires the registration of all public accounting firms, foreign or domestic, that issue or prepare audit reports on U.S. public companies, or

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<sup>1/</sup> See Sections 101(d) and 102(a) of the Act. This determination must be made not later than April 26, 2003.

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that play a substantial role in the preparation of such audit reports. The Board recognizes that the registration of foreign public accounting firms may raise issues that are not present in the case of U.S. firms. Accordingly, the Board will convene a roundtable at which interested persons can present their views on whether the registration requirements should be modified for non-U.S. firms and on how the Board should discharge its oversight responsibilities with respect to registered foreign public accounting firms. Section B of this release outlines the questions on which the Board is requesting guidance concerning the foreign public accounting firms.

The Board seeks the views of interested persons on the proposed registration system. Section C of this release describes how comment and views may be submitted to the Board.

The Board's proposed registration system consists of nine rules (PCAOB Rules 1000, 1001, 2100 through 2105, and 2300) and a form (PCAOB Form 1). The text of these rules, and the instructions to Form 1, and a detailed discussion of each of the rules and of the requirements of Form 1, are Appendices 1, 2, and 3 hereto.

A. Overview of the Board's Proposed Registration System

1. Who must register?

Any public accounting firm that wishes to prepare or issue any audit report with respect to any issuer must register with the Board.<sup>2/</sup> In addition, any public accounting firm that "plays a substantial role in the preparation or furnishing of an audit report" with respect to any issuer must register.<sup>3/</sup> The term "issuer" means, in effect, any public company that is required to file reports with the Commission or that has filed a registration statement for a public offering of securities.<sup>4/</sup>

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<sup>2/</sup> Rule 2100(a).

<sup>3/</sup> Rule 2100(b). The phrase "plays a substantial role in the preparation or furnishing of an audit report" is defined in Rule 1001(n).

<sup>4/</sup> The term "issuer" is defined in Rule 1001(k). It should be noted that the definition of "audit report" in Rule 1001(e) is phrased to include only audit reports with

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The Board's registration requirements do not exempt foreign public accounting firms. Therefore, a public accounting firm that is organized or that operates outside the United States must register, if it wishes to prepare or issue an audit report on any issuer. In addition, such firms that wish to play a substantial role in the preparation or furnishing of an audit report on any issuer must also register, even if the firm does not itself intend to issue the audit report.<sup>5/</sup> Section B of this release discusses issues raised by the registration and oversight of foreign public accounting firms.

In general, individual accountants are not required to register. The definition of the term "public accounting firm" includes proprietorships,<sup>6/</sup> and an individual accountant who wishes to prepare or issue, in his or her own name, an audit report on an issuer would be viewed as a sole proprietor and required to register. However, individual accountants that are associated with public accounting firms are not required to register. Firms must list all individual accountants that are associated with the firm on the firm's registration application.<sup>7/</sup>

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respect to issuers. However, for clarity, this release occasionally refers to "audit reports on issuers."

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

<sup>5/</sup> Rule 2100(b).

<sup>6/</sup> Rule 1001(o).

<sup>7/</sup> See Part VII of Form 1. Foreign public accounting firms are only required to list individual accountants that participate in or contribute to the preparation of audit reports on issuers.

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2. How do public accounting firms apply for registration?

Public accounting firms that wish to apply for registration must do so by completing and submitting to the Board Form 1.<sup>8/</sup> The Board has proposed instructions for Form 1, and the text of those instructions is Appendix 2 to this release.

Form 1 will not be issued by the Board as a paper document. The form will be available only in electronic form on the Board's website (or on a dedicated registration website linked to the Board's website). Form 1 will be web-based and must be completed and submitted to the Board electronically via the internet.<sup>9/</sup> The web-based version of Form 1 and the online registration mechanism are currently in development and will be available in sufficient time for public accounting firms to register.

3. What information must applicants provide?

Form 1 consists of ten parts, subdivided into various items requiring the disclosure of particular information concerning the applicant and its associated accountants and the applicant's issuer clients. The information these items calls for is, in general, required by Section 102(b) of the Act. To the extent that Form 1 calls for information in addition to that specified in Section 102(b), the additional information is closely related to the statutory minimum requirements, and is, in the Board's judgment, reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application.<sup>10/</sup>

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<sup>8/</sup> Rule 2101. Exhibits to Form 1 must also be submitted electronically.

<sup>9/</sup> Rule 2101 authorizes the Board to require or permit the filing of registration applications by other means in special cases. For their convenience, applicants may print the screens comprising Form 1 from the website.

<sup>10/</sup> Section 102(b)(2)(H) authorizes the Board to require applicants to submit information other than the information specified in the Act. The Board has used this authority to require a limited amount of additional information. For example, Section 102(b) does not expressly require that the Board obtain office locations, contact details, and similar identifying information concerning an applicant. The Board believes that such information is necessary, and has required it in Part I of Form 1. Similarly, Section 102(b)(2)(F) of the Act requires the Board to obtain information concerning certain

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4. Will the information provided in registration applications be available to the public?

Rule 2300(a) provides that applications for registration will be public. This is consistent with Section 102(e) of the Act, which provides that applications for registration “or such portions of such applications \* \* \* as may be designated under the rules of the Board” must be available for public inspection. However, Section 102(e) also states that public availability of registration applications is subject to “applicable laws relating to the confidentiality of proprietary, personal, or other information”<sup>11/</sup> and directs the Board to “protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.” In order to prevent the disclosure of such information, Rule 2300 also provides for the confidentiality of portions of registration applications.

First, the Board will not disclose social security or taxpayer identification numbers (or comparable non-U.S. tax identifiers), provided such numbers or identifiers are properly identified and entered into the Board’s web-based registration system as such. This type of information will be routinely withheld from public disclosure, and it is not necessary for applicants to request confidential treatment of such numbers or other identifiers.<sup>12/</sup>

Second, an applicant for registration may request confidential treatment of any other portion of an application that either (i) contains non-public personal information

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pending criminal, civil, or administrative or disciplinary proceedings against the applicant or any associated person. The Board believes that it should also obtain such information with respect to proceedings that are no longer pending, and has required that information in Part V of Form 1.

<sup>11/</sup> It should be noted that the Board is not an agency or establishment of the United States Government. See Section 101(a) of the Act. Therefore, the Privacy Act, 5 U.S.C. 552a, the Trade Secrets Act, 18 U.S.C. 1905, and similar laws that restrict federal departments and agencies disclosure of personal or proprietary information, are not applicable to the Board.

<sup>12/</sup> Rule 2300(b).

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that should not be publicly available, (ii) contains information reasonably identified by the applicant as proprietary, or (iii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.<sup>13/</sup> Confidential treatment requests must contain a detailed explanation of the reasons that, based on the facts and circumstances of the request, the information for which confidentiality is sought meets one of these requirements.<sup>14/</sup> Pending a determination as to whether to grant the request for confidential treatment, the information in question will not be made available to the public.<sup>15/</sup> The Board will decide whether to grant confidential treatment requests on a case-by-case basis.

The Board anticipates that publicly available portions of registration applications will be accessible over the internet.

5. Is there a registration fee?

Applicants for registration must pay a fee.<sup>16/</sup> Section 102(f) of the Act requires that the Board set this fee at a level sufficient to recover the costs of processing and reviewing applications. The Board has not yet determined the level of the registration fee, and anticipates doing so in conjunction with the establishment of its annual budget. The Board will publicly announce the fee amount, and the payment procedure, before the registration system is operational. The Board contemplates that the amount of an applicant's fee will be determined by a formula and that registration fees will vary with the size of the applicant.

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<sup>13/</sup> Rule 2300(c).

<sup>14/</sup> Rule 2300(d). Confidential treatment requests must be filed as an exhibit to Form 1. The Board will not make public disclosure of the content of confidential treatment requests.

<sup>15/</sup> Rule 2300(e).

<sup>16/</sup> Rule 2103. Registration fees will not be refundable, regardless of whether the application is approved, disapproved, or withdrawn.

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6. What action will the Board take in response to registration applications?

After reviewing the application for registration, and any additional information obtained by the Board, the Board will determine whether to approve the application. The Board will approve an application for registration if it determines that registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. If the Board is unable to make this determination, or if the Board concludes that the application is inaccurate or incomplete, it will either request additional information from the applicant or disapprove the application.<sup>17/</sup>

7. How soon after an application is submitted will the Board decide whether or not to approve the application?

Unless the applicant consents otherwise, the Board will take action on an application for registration not later than 45 days after the date of receipt of the application by the Board.<sup>18/</sup> Rule 2102 defines the date of receipt. Unless the Board directs otherwise, the date of receipt of an application is the later of (i) the date on which the registration fee has been paid, or (ii) the date on which the application is accepted by the Board's web-based registration mechanism. The Board envisions that the registration mechanism will run certain checks to verify that all required information has been supplied before accepting an application. Firms whose applications do not meet the acceptance criteria will be notified and requested to supply the missing information and resubmit their application. Similarly, applications will not be deemed received until the required registration fee has been paid.

If the Board requests additional information, a new 45-day review period will begin when the requested information is received. If the applicant declines to provide the requested information, or fails to do so within a reasonable amount of time, the

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<sup>17/</sup> Rule 2105.

<sup>18/</sup> Rule 2105(b). As noted above, such action may consist of approval, disapproval, or a request for additional information.



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Board may deem the application incomplete (and deny it on that basis, pursuant to Rule 2105(b)(2)), may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.<sup>19/</sup>

8. Will registered firms have additional disclosure obligations?

Section 102(d) of the Act requires that registered public accounting firms file annual reports with the Board, and authorizes the Board to require periodic updating of the information contained in a registered firm's registration application. The Board will consider rules and forms to implement these provisions of the Act at a later date.<sup>20/</sup>

9. When may firms file registration applications?

The Board's registration system is expected to be ready to receive registration applications in late June or early July, 2003. Four things must occur before registration can begin. First, the Board must adopt final rules on registration. Second, the Commission must approve the Board's registration rules; Section 107(b) of the Act provides that the rules of the Board do not become effective unless and until approved by the Commission. Third, the Commission must determine, pursuant to Section 101(d) of the Act, that the Board is capable of carrying out its responsibilities and enforcing compliance with the requirements of Title I of the Act; this determination must be made by April 26, 2003. Finally, the Board must complete the construction and testing of its web-based registration mechanism.

As noted above, public accounting firms must register with the Board if they wish to prepare or issue audit reports on issuers after the 180-day period following the Commission's determination that the Board has the capacity to carry out the requirements of the Act. Therefore, firms that are subject to the registration

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<sup>19/</sup> Rule 2105(c). Disapproval of a completed registration application constitutes a disciplinary sanction, and is reviewable by the Commission. See Sections 102(c)(2) and 107(c) of the Act.

<sup>20/</sup> The Board may also consider rules and forms governing the amendment or withdrawal of pending registration applications and withdrawal from registration after approval of a registration application.

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requirements will need to be registered by approximately October 24, 2003. In light of the 45-day review period, all registration applications will have to be filed by, at the latest, early September. The Board recommends that firms that contemplate applying for registration begin to compile the information necessary to complete Form 1 as soon as possible.

**B. Registration of Foreign Public Accounting Firms**

**1. Registration Requirement**

Section 106(a) provides that non-U.S. firms are subject to the Act and to the rules of the Board “to the same extent as a public accounting firm that is organized and operates under the laws of the United States.” As noted above, the Board’s proposed registration requirements do not except foreign public accounting firms. Therefore, a public accounting firm that is organized or that operates outside the United States must register, if it wishes to prepare or issue an audit report on any issuer.

In addition, Section 106(a)(2) authorizes the Board, by rule, to determine that foreign public accounting firms that do not issue audit reports on U.S. public companies, but that play a substantial role in the preparation or furnishing of such reports, should register. The Board’s proposal exercises this authority and requires such firms to register.<sup>21/</sup>

The Board recognizes that its registration system, as proposed, will, for the first time, require foreign public accounting firms (like U.S. public accounting firms) to register with a single U.S.-based body as a condition to preparing, issuing, or playing a substantial role in the preparation or issuance of, audit reports on U.S. public companies. However, foreign accountants that participate in the audit of U.S. public companies have long been subject to various U.S. requirements. For example –

- All financial statements filed as part of reports with the Commission must be audited in accordance with U.S. generally accepted auditing standards (“GAAS”). This applies whether the report is filed by a domestic issuer or by a foreign

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<sup>21/</sup> Rule 2100(a).

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private issuer, and, if the latter, whether the financial statements are prepared according to U.S. generally accepted accounting principles (“GAAP”) or in accordance with another comprehensive basis of accounting standards, with an audited reconciliation to U.S. GAAP.<sup>22/</sup>

- All financial statements filed as part of reports with the Commission must also be audited by an auditor satisfying U.S. independence requirements. Again, this applies whether the report is filed by a domestic issuer or by a foreign private issuer.<sup>23/</sup>
- Foreign public accounting firms that participate in audits of domestic or foreign private issuers are subject to Commission enforcement action for any violation of the federal securities laws.
- The SEC Practice Section of the American Institute of Certified Public Accountants (“AICPA”) requires that its “member firms that are members of, correspondents with, or similarly associated with international firms or international associations of firms” provide the name and country of their foreign associated firms and seek adoption by those associated firms or the international organization of firms of certain policies and procedures.<sup>24/</sup>
- Among those policies and procedures are “inspection procedures” that provide for an expert in U.S. accounting, auditing, and independence requirements to review a sample of audit engagements performed by the foreign associated firm for its clients that are registrants with the Commission. The inspection procedures should include the reviewing experts determining “whether anything came to [such experts’] attention to cause them to believe that (1) the financial statements were not presented in all material respects in conformity with

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<sup>22/</sup> Rule 2-02(b) of Regulation S-X, 17 C.F.R. 210.2-02(b).

<sup>23/</sup> Rule 2-01 of Regulation S-X, 17 C.F.R. 210.2-01. The Commission has modified its auditor independence rules in some, relatively minor respects to account for conflicts with foreign laws or to account for different conditions in non-U.S. jurisdictions.

<sup>24/</sup> See AICPA SEC Practice Section Manual (“SECPS”) § 1000.08(n).

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accounting principles generally accepted in the U.S. \* \* \*, (2) the audit engagement was not performed in accordance with auditing standards generally accepted in the U.S., (3) the document(s) filed with the SEC did not comply \* \* \* with pertinent SEC rules and regulations for such filings, [and] (4) the foreign associated firm did not comply with the applicable U.S. independence standards, including independence requirements of the SEC and [Independence Standards Board] with respect to the SEC registrant.”<sup>25/</sup>

- Also among those policies and procedures are “file review” procedures that provide for an expert in U.S. accounting, auditing, and independence requirements to review certain Commission filings of the audit clients of the foreign associated firm, including the foreign accounting firm’s audit reports.<sup>26/</sup>
- With respect to foreign public accounting firms that are not affiliated with U.S. accounting firms, and thus are not subject to the SEC Practice Section requirements, the Commission staff has typically required such firms, among other things, to –
  - provide information on the size and location(s) of the firm, the type of practice it has, and its professional policies, and
  - engage a consulting accounting firm that regularly practices before the Commission to review the firm’s policies and represent to the Commission staff that the audit was properly planned and conducted in accordance with U.S. GAAS.

In light of the requirements of the Act and of the pre-existing requirements and conditions to which foreign auditors that participate in the audit of U.S. public companies have been subject, the Board has concluded that it is appropriate to require the registration of certain foreign public accounting firms.

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<sup>25/</sup> SECPS § 1000.45, App. K.01(b).

<sup>26/</sup> Id. at App. K.01(a).

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## 2. Roundtable on the Registration of Non-U.S. Auditors

The registration of non-U.S. firms may raise issues that are unique to foreign auditors. Over the course of the next few months, the Board intends to consider the appropriate scope of its oversight authority with respect to accounting firms located outside the United States. To this end, the Board intends to convene a public roundtable concerning the registration and oversight of foreign public accounting firms. At the roundtable, or by written comment, the Board seeks the views of interested persons on whether its registration requirements should be modified in the case of foreign applicants and on how it should exercise its authority with respect to registered public accounting firms in the case of foreign registrants. The date, place, and format of that roundtable will be the subject of a separate release.

With regard to the registration process, commenters are invited to address the following questions –

- Is it feasible for foreign public accounting firms to register within 180 days of the date of the Commission's determination that the Board is capable of operating? Should foreign public accounting firms be afforded some longer period (e.g., an additional 90 days) within which to register?
- Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?
- In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?
- Do any of the Board's registration requirements conflict with the law of any jurisdiction in which foreign public accounting firms that will be required to register are located?
- In the case of non-U.S. firms that are required to register because they play a substantial role in the preparation or furnishing of an audit report on a U.S. issuer, is the definition of "substantial role" in Rule 1001(n) appropriate? In particular, should the 20 percent tests for determining whether a foreign firm's services are material to the audit, or whether the foreign firm performs audit procedures with respect to a significant subsidiary, be changed? Would a 10

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percent threshold more realistically capture firms that materially participate in the preparation or furnishing of an audit report?

- Should the requirements to register be different for foreign public accounting firms that are “associated entities” (as defined in the Board’s rules) of U.S. registered public accounting firms than for foreign firms that are not associated with U.S. registered firms?

With regard to Board oversight of foreign registered public accounting firms, commenters are invited to address the following questions –

- Should registered foreign public accounting firms be subject to Board inspection? Could the Board, in some cases, rely on home-country regulation in lieu of inspection of foreign public accounting firms? If so, under what circumstances could this occur?
- Aside from Board inspection, are there other requirements of the Act from which foreign public accounting firms should be exempted? If so, under what circumstances?
- Are there requirements different from those the Act imposes on all registered public accounting firms that the Board should apply to foreign public accounting firms?
- Should the Board’s oversight of foreign registered public accounting firms that are “associated entities” (as defined in the Board’s rules) of U.S. registered public accounting firms be different than its oversight of foreign public accounting firms that are not associated entities of U.S. registered firms? Should the U.S. registered firm have any responsibility for the foreign registered firm’s compliance with the Board’s rules and standards?

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C. Opportunity for Public Comment

Interested persons are encouraged to submit their views to the Board. Written comments should be sent to 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](mailto:comments@pcaobus.org) or through the Board's website at [www.pcaobus.org](http://www.pcaobus.org). All comments should refer to PCAOB Rulemaking Docket Matter No. 001 in the subject or reference line and should be received by the Board no later than 5:00 PM (EST) on March 31, 2003.

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On the 4th day of March, in the year 2003, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ Ronald S. Boster

Ronald S. Boster  
Acting Secretary

March 4, 2003

APPENDICES:

1. Proposed Rules Relating to Registration
2. Proposed Form 1
3. Section-by-Section Analysis of Proposed Registration Rules and Form 1

**Appendix 1 – Proposed Rules Relating to Registration****RULES OF THE BOARD****SECTION 1. GENERAL PROVISIONS****1000. Application of Rules.**

The provisions of the Rules apply, according to their terms, to all public accounting firms, to all persons associated with registered public accounting firms, and to all associated entities of registered public accounting firms.

**1001. Definitions of Terms Employed in Rules.**

When used in the Rules, unless the context otherwise requires:

**(a) Accountant**

The term “accountant” means a natural person –

- (1) who is a certified public accountant, or
- (2) who holds
  - (i) an undergraduate or higher degree in accounting, or
  - (ii) a license or certification authorizing him or her to engage in the business of auditing or accounting, or
- (3) who –
  - (i) holds an undergraduate or higher degree in a field, other than accounting, and
  - (ii) participates in audits.

**(b) Act**

The term “Act” means the Sarbanes-Oxley Act of 2002.



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**(c) Associated Entity**

The term “associated entity” means, with respect to a public accounting firm –

- (1) any entity that directly, indirectly, or through one or more intermediaries, controls, or is controlled by, or is under common control with, such public accounting firm; or
- (2) any “associated entity,” as used in Rule 2-01(f)(2) of Regulation S-X, 17 C.F.R. 210.2-01(f)(2), that would be considered part of that firm for purposes of the Commission’s auditor independence rules.

**(d) Audit**

The term “audit” means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable Rules of the Board under Section 103 of the Act, in accordance with then applicable generally accepted auditing standards for such purposes), for the purpose of expressing an opinion on such statements.

**(e) Audit Report**

The term “audit report” means a document or other record –

- (1) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and
- (2) in which a public accounting firm either –
  - (i) sets forth the opinion of that firm regarding a financial statement, report or other document; or
  - (ii) asserts no such opinion can be expressed.

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**(f) Audit Services**

The term “audit services” means professional services rendered for the audit of an issuer’s annual financial statements, and (if applicable) for the reviews of an issuer’s financial statements included in the issuer’s quarterly reports.

**(g) Board**

The term “Board” means the Public Company Accounting Oversight Board.

**(h) Commission**

The term “Commission” means the Securities and Exchange Commission.

**(i) Exchange Act**

The term “Exchange Act” means the Securities Exchange Act of 1934, as amended.

**(j) Foreign Public Accounting Firm**

The term “foreign public accounting firm” means a public accounting firm that is organized and operates under the laws of a non-U.S. jurisdiction, government or political subdivision thereof.

**(k) Issuer**

The term “issuer” means an issuer (as defined in Section 3 of the Exchange Act), the securities of which are registered under Section 12 of that Act, or that is required to file reports under Section 15(d) of that Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn.

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**(l) Other Accounting Services**

The term “other accounting services” means professional services that generally only an independent accountant can reasonably provide and assurance and related services that traditionally are performed by an independent accountant.

**(m) Person Associated With a Public Accounting Firm (and Related Terms)**

The terms “person associated with a public accounting firm” (or with a “registered public accounting firm”) and “associated person of a public accounting firm” (or of a “registered public accounting firm”) mean any individual proprietor, partner, shareholder, principal, accountant, or professional employee of a public accounting firm, or any independent contractor or entity that, in connection with the preparation or issuance of any audit report –

- (1) shares in the profits of, or receives compensation in any other form from, that firm; or
- (2) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

**(n) Play a Substantial Role in the Preparation or Furnishing of an Audit Report**

The phrase “play a substantial role in the preparation or furnishing of an audit report” means –

- (1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report with respect to any issuer, or
- (2) to perform audit procedures with respect to a subsidiary or component of any issuer the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer.

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Note: For purposes of this definition, the term “material services” means services, for which the engagement hours or fees constitute 20% or more of the total engagement hours or fees, respectively, provided by the registered public accounting firm in connection with the issuance of all or part of its audit report with respect to any issuer.

Note: For purposes of this definition, the phrase “subsidiary or component” is meant to include any subsidiary, division, branch, office or other component of an issuer, regardless of its form of organization and/or control relationship with the issuer.

**(o) Public Accounting Firm**

The term “public accounting firm” means a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports.

**(p) Registered Public Accounting Firm**

The term “registered public accounting firm” means a public accounting firm registered with the Board.

**(q) Rules or Rules of the Board**

The terms “Rules” or “Rules of the Board” mean the bylaws and rules of the Board (as submitted to and approved, modified, or amended by the Commission in accordance with Section 107 of the Act) and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

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**(r) Tax Services**

The term “tax services” means professional services rendered for tax compliance, tax advice, and tax planning.

**SECTION 2. REGISTRATION AND REPORTING**

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

**2100. Registration Requirements for Public Accounting Firms.**

Effective 180 days after the date on which the Commission makes the determination pursuant to Section 101(d) of the Act, each public accounting firm that –

- (a)** prepares or issues any audit report with respect to any issuer; or
- (b)** plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer

must be registered with the Board.

Note: As set forth in Section 106(a)(1) of the Act, registration with the Board pursuant to this Rule will not by itself provide a basis for subjecting a foreign public accounting firm to the jurisdiction of the U.S. Federal or State courts, other than with respect to controversies between such firms and the Board.

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**2101. Application for Registration.**

Any public accounting firm applying to the Board for registration pursuant to Rule 2100 must complete and file an application for registration on Form 1 by following the instructions to that form. Unless directed otherwise by the Board, the applicant must file such application and exhibits thereto electronically with the Board through the Board's web-based registration system.

**2102. Date of Receipt.**

Unless the Board directs otherwise, the date of receipt of an application for registration will be the later of (a) the date on which the registration fee has been paid, or (b) the date on which the application is accepted by the Board's web-based registration system.

**2103. Registration Fee.**

Each applicant for registration must pay a registration fee. The Board will, from time to time, announce the current registration fee. No portion of the registration fee is refundable, regardless of whether the application for registration is approved, disapproved, or withdrawn.

**2104. Signatures.**

Each signatory to an application for registration (including, without limitation, each signatory to the consents required by such application) shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of seven years. Upon request, an electronic filer shall furnish to the Board or its staff a copy of all documents retained pursuant to this Rule.

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**2105. Action on Applications for Registration.**

**(a) Standard for Approval.**

After reviewing the application for registration, any additional information provided by the applicant, and any other information obtained by the Board, the Board will determine whether approval of the application for registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.

**(b) Action on Application.**

Unless the applicant consents otherwise, the Board will take action on an application for registration not later than 45 days after the date of receipt of the application by the Board.

(1) If the Board makes the determination in paragraph (a) of this Rule, the Board will approve the application.

(2) If the Board is unable to make the determination in paragraph (a) of this Rule, or if the Board determines that the application is inaccurate or incomplete, the Board will:

- (i) request more information from the applicant; or
- (ii) disapprove the application by written notice to the applicant.

**(c) Requests for More Information.**

If the Board requests more information from an applicant, and such applicant submits the requested information to the Board, the Board will treat the application, as supplemented by the requested information, as if it were a new application under paragraph (b) of this Rule requiring action not later than 45 days after receipt of the application by the Board. If such firm declines to provide the requested information, or

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fails to do so within a reasonable amount of time, the Board may deem the application incomplete for purposes of paragraph (b)(2) of this Rule, may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.

**Part 2 – Reporting**

[reserved]

**Part 3 – Public Availability Of Applications And Reports**

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

(a) Except as provided in paragraphs (b) and (c) below, applications for registration will be publicly available.

**(b) Social Security and Taxpayer Identification Numbers.**

Social Security Numbers and taxpayer identification numbers (and comparable non-U.S. tax identifiers) will be afforded confidential treatment, without the need for a request for confidential treatment.

**(c) Confidential Treatment Requests.**

A public accounting firm may request confidential treatment of any information submitted to the Board in connection with its application for registration, provided that the information as to which confidential treatment is requested –

- (1) has not otherwise been publicly disclosed, and
- (2) either (i) contains non-public personal information that should not be publicly available, (ii) contains information reasonably identified by the public accounting firm as proprietary information, or (iii) is



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protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

**(d) Application Procedures.**

To request confidential treatment of information submitted to the Board in connection with an application for registration, the applicant must –

- (1) identify in accordance with the instructions on Form 1 the information that it desires to keep confidential; and
- (2) include as an exhibit to Form 1 a detailed explanation as to why, based on the facts and circumstances of the particular case, the information meets the requirements of (c) above.

**(e)** Pending a determination by the Board as to whether to grant the request for confidential treatment, the information for which confidential treatment has been requested will not be made available to the public.

**(f)** If the Board determines to deny a confidential treatment request, the requestor will be notified of the Board's decision, and of the date on which the information in question will be made public, a reasonable time in advance of such date.

**(g)** Unless the requester consents otherwise, confidential treatment requests will be afforded confidential treatment without the need for a request for confidential treatment.

**(h)** Information as to which the Board grants confidential treatment under this rule will not be made available to the public by the Board. The granting of confidential treatment will not, however, limit the ability of the Board (1) to provide the information as to which confidential treatment was granted to the Commission, or (2) to comply with any subpoena validly issued by a court or other body of competent jurisdiction.

**Appendix 2 – Proposed Form 1****FORM 1 – APPLICATION FOR REGISTRATION****GENERAL INSTRUCTIONS**

1. Any *public accounting firm* applying to the *Board* for registration pursuant to Section 102 of the *Act* must file this form with the *Board*. See Rule 2101.
2. In addition to these instructions, the *rules* contained in Section 2 of the *Board's rules* govern applications for registration. Please read these *rules* and the instructions carefully before completing this form.
3. Unless otherwise directed by the *Board*, applicants must submit this form, and all exhibits to the form, to the *Board* electronically by completing the web-based version of Form 1. [website details to be inserted before registration system is operational]. See Rule 2101.
4. This form must be accompanied by a registration fee in accordance with Section 102(f) of the *Act*. The amount of the required fee is available at [website details to be inserted before registration system is operational]. An application for registration will not be deemed received by the *Board* until the registration fee has been paid. See Rule 2103.
5. An applicant may request confidential treatment of any portion of its application for registration that has not otherwise been publicly disclosed and that contains non-public personal or proprietary information that should not be made publicly available or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. An applicant that requests confidential treatment must identify the portion of the application that it desires to keep confidential, and include, as Exhibit 99 to the application for registration, a detailed explanation as to why, based on the facts and circumstances of the particular case, the information is proprietary and should not be made publicly available or is protected from disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information. Social Security Numbers and taxpayer identification numbers (and comparable non-U.S. tax identifiers) will be afforded confidential treatment without the need for a request for confidential treatment, provided such numbers or identifiers are properly identified and entered into the Board's web-based registration system as such. The *Board* will normally grant

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confidential treatment requests for information concerning non-public disciplinary proceedings. The *Board* will determine whether or not to grant other confidential treatment requests on a case-by-case basis. See Rule 2300(c).

6. Where this form requires disclosure of a sum of money, such amount must be stated in U.S. dollars and rounded to the nearest thousand. If such amount was received or paid in a currency other than U.S. dollars, the amount must be converted to U.S. dollars.
7. The definitions in the *Board's rules* apply to this form. Italicized terms in the instructions to this form are defined in the *Board's rules*. See Rule 1001.

## **PART I – IDENTITY OF THE APPLICANT**

### Item 1.1 Name and Identification Number of Applicant

State the legal name of the applicant; if different, also state the name or names under which the applicant (or any predecessor) issues *audit reports*, or has issued any *audit report* during the five years prior to the date of this application. If the applicant has such a number, state the applicant's federal employer identification number or (in the case of a sole proprietor) the applicant's social security number. *Foreign public accounting firms* should provide any comparable non-U.S. identifier.

### Item 1.2 Applicant Contact Information

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

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Item 1.3 Primary Contact and Signatories

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

Item 1.4 Applicant's Form of Organization

State the applicant's legal form (e.g., proprietorship, partnership, limited liability partnership) and the jurisdiction (e.g., the State of the United States or comparable non-U.S. jurisdiction) under the law of which the applicant is organized or exists.

Item 1.5 Applicant's Offices

If the applicant has more than one office, furnish, as Exhibit 1.5, the physical address (and, if different, mailing address) of each of the applicant's offices.

Item 1.6 *Associated Entities* of Applicant

State the name and physical address (and, if different, mailing address) of all *associated entities* of the applicant that engage in the practice of public accounting or preparing or issuing *audit reports* or comparable reports prepared for clients that are not *issuers*. Do not include any person listed in Items 7.1 or 7.2.

Item 1.7 Applicant's Licenses

List every license or certification number issued to the applicant authorizing it to engage in the business of auditing or accounting. For each such license or certification number, furnish the name of the issuing state, agency, board, or other authority.

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Item 1.8 Required Licenses and Certifications

Indicate whether the applicant and all individual *accountants* associated with the applicant who participate in or contribute to the preparation of *audit reports* have all licenses and certifications required by governmental (federal, state and non-U.S.) and professional organizations.

**PART II – LISTING OF APPLICANT’S PUBLIC COMPANY AUDIT CLIENTS AND RELATED FEES**

Item 2.1 *Issuers* for Which Applicant Prepared *Audit Reports* During the Preceding Calendar Year

List the names of all *issuers* for which the applicant prepared or issued any *audit report* during the calendar year preceding the calendar year in which this application is filed. In addition to the *issuer’s* name, this list must include, with respect to each *issuer* –

- a. The *issuer’s* business address (as shown on its most recent filing with the *Commission* pursuant to the Securities Act of 1933 or the *Exchange Act*).
- b. The *issuer’s* standard industry code (“SIC”), as most recently disclosed in any such filing.
- c. The date of the *audit report*.
- d. The total amount of fees billed for *audit services* for the *issuer’s* fiscal year for which the *audit report* was issued.
- e. The total amount of fees billed for *other accounting services* for the *issuer’s* fiscal year for which the *audit report* was issued.
- f. The total amount of fees billed for *tax services* for the *issuer’s* fiscal year for which the *audit report* was issued.

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- g. The total amount of fees billed for services and products provided the *issuer* other than the services covered by paragraphs (d), (e) and (f) of this item for the *issuer's* fiscal year for which the *audit report* was issued.

Note: Only fees billed by the principal accountant (i.e., the *public accounting firm* that issued the *audit report*) need be disclosed in response to this Item. For investment company issuers, the fees disclosed in response to paragraphs (e) – (g) of this Item should include all fees for services rendered to the *issuer*, to the *issuer's* investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and to any entity controlling, controlled by, or under common control with, the adviser that provides ongoing services to the *issuer*.

Item 2.2 *Issuers* for Which Applicant Prepared *Audit Reports* During the Current Calendar Year

List the names of all *issuers* for which the applicant prepared or issued any *audit report* during the current calendar year. (Do not include *audit reports* the applicant expects to prepare or issue during this calendar year, but that have not yet been issued. These are called for in Item 2.3 below.) In addition to the *issuer's* name, include, with respect to each *issuer* –

- a. The *issuer's* business address (as shown on its most recent filing with the *Commission* pursuant to the Securities Act of 1933 or the *Exchange Act*).
- b. The *issuer's* standard industry code (“SIC”), as most recently disclosed in any such filing.
- c. The date of the *audit report*.
- d. The total amount of fees billed for *audit services* for the *issuer's* fiscal year for which the *audit report* was issued.
- e. The total amount of fees billed for *other accounting services* for the *issuer's* fiscal year for which the *audit report* was issued.

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- f. The total amount of fees billed for *tax services* for the *issuer's* fiscal year for which the *audit report* was issued.
- g. The total amount of fees billed for services and products provided the *issuer* other than the services covered by paragraphs (d), (e) and (f) of this item for the *issuer's* fiscal year for which the *audit report* was issued.

Note: Only fees billed by the principal accountant (i.e., the *public accounting firm* that issued the *audit report*) need be disclosed in response to this Item. For investment company issuers, the fees disclosed in response to paragraphs (e) – (g) of this Item should include all fees for services rendered to the *issuer*, to the *issuer's* investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and to any entity controlling, controlled by, or under common control with, the adviser that provides ongoing services to the *issuer*.

Item 2.3 *Issuers* for Which Applicant Expects to Prepare *Audit Reports* During the Current Calendar Year

List the names of all *issuers* for which the applicant expects to prepare or issue any *audit report* during the calendar year in which this application is filed. In addition to the *issuer's* name, include, with respect to each *issuer* –

- a. The *issuer's* business address (as shown on its most recent filing with the *Commission* pursuant to the Securities Act of 1933 or the *Exchange Act*).
- b. The *issuer's* standard industry code (“SIC”), as most recently disclosed in any such filing.

Note: Only *issuers* for which the applicant has been engaged to prepare or issue an *audit report* need be disclosed in response to this Item.

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Item 2.4 *Issuers for Which Applicant Played, or Expects to Play, a Substantial Role in Audit*

List the names of all *issuers* not disclosed in response to Items 2.1 through 2.3 above for which the applicant *played, or expects to play, a substantial role in the preparation or furnishing of an audit report* during the preceding or current calendar year. In addition to the *issuer's* name, this list must include, with respect to each *issuer* –

- a. The *issuer's* business address (as shown on its most recent filing with the *Commission* pursuant to the Securities Act of 1933 or the *Exchange Act*).
- b. The *issuer's* standard industry code (“SIC”), as most recently disclosed in any such filing.
- c. The name of the *public accounting firm* that issued, or is expected to issue, the *audit report*.
- d. The date of the *audit report*.
- e. A brief description of the applicant's role with respect to the *audit report*.

Note: In responding to the part of this Item that asks about *issuers* for which the applicant expects to *play a substantial role in the preparation or furnishing of an audit report*, applicants need only disclose *issuers* for which the applicant has been engaged, or for which the applicant has otherwise contractually agreed, to perform the described services.

**PART III – APPLICANT FINANCIAL INFORMATION**

Item 3.1 Applicant's Revenue

- a. State the date on which the applicant's most recently completed fiscal year ended.



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- b. State the total amount of fees received by the applicant during its most recently completed fiscal year for *audit services*.
- c. State the total amount of fees received by the applicant during its most recently completed fiscal year for *other accounting services*.
- d. State the total amount of fees received by the applicant during its most recently completed fiscal year for *tax services*.
- e. State the total amount of fees received by the applicant during its most recently completed fiscal year for products and services other than the services covered by paragraphs (b), (c), and (d) of this item.

Note: The fee disclosures required by this Item are not limited to fees received from *issuers* and include fees for audits performed other than pursuant to generally accepted auditing standards.

#### **PART IV – STATEMENT OF APPLICANT’S QUALITY CONTROL POLICIES**

##### Item 4.1 Applicant’s Quality Control Policies

Furnish, as Exhibit 4.1, a narrative, summary description, in a clear, concise and understandable format, of the quality control policies of the applicant for its accounting and auditing practices, including procedures used to monitor compliance with independence requirements.

#### **PART V – LISTING OF CERTAIN PROCEEDINGS INVOLVING THE APPLICANT’S AUDIT PRACTICE**

##### Item 5.1 Criminal Actions in Connection with *Audit Reports*

- a. Indicate whether or not the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred, is a defendant in any pending criminal proceeding, or was a defendant in any such

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proceeding in which a judgment was rendered against the applicant or such person, whether by plea or after trial, during the previous ten years. In responding to this item, include only criminal proceedings involving conduct in connection with an *audit report* or a comparable report prepared for a client that is not an *issuer*.

- b. In the event of an affirmative response to Item 5.1a, furnish the following information with respect to each such proceeding:
1. The name, filing date, and case or docket number of the proceeding.
  2. The name and address of the court or tribunal in which such proceeding was filed.
  3. The names of all defendants in such proceeding who are also the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred.
  4. The name of the *issuer* or other client that was the subject of the *audit report*.
  5. With respect to each person named in Item 5.1b.3, the statutes, rules, or other requirements such person was convicted of violating (or, in the case of a pending proceeding, is charged with having violated).
  6. With respect to each person named in Item 5.1b.3, the judgment entered in the proceeding. (If no judgment has yet been rendered, enter the word "pending.")

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Item 5.2 Civil Governmental Actions in Connection with *Audit Reports*

- a. Indicate whether or not the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred, is a defendant or respondent in any pending civil or alternative dispute resolution proceeding initiated by a governmental entity (including a non-U.S. jurisdiction), or was a defendant or respondent in any such proceeding in which a judgment or award was rendered against the applicant or such person, whether by consent or otherwise, during the previous five years. In responding to this item, include only civil or alternative dispute resolution proceedings involving conduct in connection with an *audit report* or a comparable report prepared for a client that is not an *issuer*.
- b. In the event of an affirmative response to Item 5.2a, furnish the following information with respect to each such proceeding:
  1. The name, filing date, and case or docket number of the proceeding.
  2. The name and address of the court or tribunal in which such proceeding was filed.
  3. The names of all defendants or respondents in such proceeding who are also the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred.
  4. The name of the *issuer* or other client that was the subject of the *audit report*.
  5. With respect to each person named in Item 5.2b.3, the statutes, rules, or other requirements on the basis of which such person was held to be liable (or, in the case of a pending proceeding, is alleged to have violated).
  6. With respect to each person named in Item 5.2b.3, the outcome of the proceeding. (If no judgment or award has yet been rendered, enter the word "pending.")

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Item 5.3 Private Civil Actions in Connection with *Audit Reports*

- a. Indicate whether or not the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred, is a defendant or respondent in any pending civil proceeding or arbitration proceeding initiated by a non-governmental entity, or was a defendant or respondent in any such proceeding in which a judgment or award was rendered against the applicant or such person, whether by consent or otherwise, during the previous twelve months. In responding to this item, include only civil and arbitration proceedings involving conduct in connection with an *audit report* or a comparable report prepared for a client that is not an *issuer*.
- b. In the event of an affirmative response to Item 5.3a, furnish the following information with respect to each such proceeding:
  1. The name, filing date, and case or docket number of the proceeding.
  2. The name and address of the court or tribunal in which such proceeding was filed.
  3. The names of all defendants or respondents in such proceeding who are also the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred.
  4. The name of the *issuer* or other client that was the subject of the *audit report*.
  5. With respect to each person named in Item 5.3b.3, the statutes, rules, or other requirements on the basis of which such person was held to be liable (or, in the case of a pending proceeding, is alleged to have violated).
  6. With respect to each person named in Item 5.3b.3, the outcome of the proceeding. (If no judgment or award has yet been rendered, enter the word "pending.")

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Item 5.4 Administrative and Disciplinary Actions in Connection with *Audit Reports*

- a. Indicate whether or not the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred, is a respondent in any pending administrative or disciplinary proceeding, or was a respondent in any such proceeding in which a finding of violation was rendered, or a sanction entered, against the applicant or such person, whether by consent or otherwise, during the previous ten years. Administrative or disciplinary proceedings include those of the *Commission*; the *Board*; any other federal, state, or non-U.S. agency, board, or administrative or licensing authority; and any professional association or body. Investigations that have not resulted in the commencement of a proceeding need not be included. In responding to this item, include only administrative or disciplinary proceedings involving conduct in connection with an *audit report* or a comparable report prepared for a client that is not an *issuer*.
- b. In the event of an affirmative response to Item 5.4a, furnish the following information with respect to each such proceeding:
  1. The name, filing date, and case or docket number of the proceeding.
  2. The name and (if other than the *Commission* or the *Board*) address of the body before which such proceeding is or was pending.
  3. The names of all respondents in such proceeding who are also the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred.
  4. The name of the *issuer* or other client that was the subject of the *audit report*.
  5. With respect to each person named in Item 5.4b.3, the statutes, rules, professional standards or other requirements based on which such person was sanctioned or which such person was found to have violated. (or, in the case of a pending proceeding, is alleged to have violated).

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6. With respect to each person named in Item 5.4b.3, the finding or sanction in the proceeding. (If no finding or sanction has yet been rendered, enter the word “pending.”)

Item 5.5 Other Proceedings

Indicate whether or not the applicant, or any proprietor, partner, principal, shareholder, or officer of the applicant, has been a party to any case or proceeding, not listed in Items 5.1, 5.2, 5.3, or 5.4 in which such person –

- a. was, in the previous ten years, convicted of any felony or misdemeanor, or of a substantially equivalent crime however denominated under the laws of a non-U.S. jurisdiction, arising out of such person’s conduct as an accountant or that –
  1. involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, obstruction of justice, or any substantially equivalent activity however denominated by the laws of the relevant non-U.S. jurisdiction, or conspiracy to commit any such offense;
  2. involves the larceny, theft, robbery, burglary, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or any substantially equivalent activity however denominated by the laws of the relevant non-U.S. jurisdiction; or
  3. involves the violation of section 152, 1341, 1342, 1343, 1348, 1349, 1512, 1513, 1519, 1520 or chapter 25 or 47 of title 18 of the United States Code or a violation of a substantially equivalent non-U.S. statute;
- b. was censured or fined with respect to, was permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from, or was barred or suspended permanently or temporarily from engaging in, the practice of accounting or auditing.
- c. In the event of an affirmative response to Item 5.5a or 5.5b, furnish the following information with respect to each such proceeding:

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1. The name, filing date, and case or docket number of the proceeding.
2. The name and address of the court or tribunal in which such proceeding was filed.
3. The names of all defendants or respondents in such proceeding who are also the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred.
4. With respect to each person named in Item 5.5c.3, the statutes, rules, or other requirements on the basis of which such person was held to be liable (or, in the case of a pending proceeding, is alleged to have violated).
5. With respect to each person named in Item 5.5c.3, the outcome of the proceeding. (If no judgment or award has yet been rendered, enter the word “pending.”)

Item 5.6 Applicant’s Discretionary Statement Regarding Proceedings Involving the Applicant’s Audit Practice

With respect to any case or proceeding listed in response to Items 5.1, 5.2, 5.3, 5.4, or 5.5 the applicant may, at its discretion, furnish, as Exhibit 5.6, a statement or statements describing the proceeding and the reasons that, in the applicant’s view, such proceeding should not be a basis for the denial of its application for registration.

**PART VI – LISTING OF FILINGS DISCLOSING ACCOUNTING DISAGREEMENTS WITH PUBLIC COMPANY AUDIT CLIENTS**

Item 6.1 Existence of Disagreements With *Issuers*

- a. Indicate whether or not the applicant has been the former accountant with respect to any disclosure of a disagreement with an *issuer* made by such *issuer* during the current or preceding calendar year in a filing with the *Commission* pursuant to Item 304(a)(1)(iv) of Regulation S-K, 17 C.F.R. 229.304(a)(1)(iv).

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- b. Indicate whether or not the applicant has been the former accountant with respect to any filing made by an *issuer* during the current or preceding calendar year with the *Commission* containing a letter submitted by the applicant to the *Commission* pursuant to Item 304(a)(3) of Regulation S-K, 17 C.F.R. 229.304(a)(3), in which the applicant stated that it disagreed with a statement of the *issuer* in response to Item 304(a).

Item 6.2 Listing of Disagreements With *Issuers*

In the event of an affirmative response to Items 6.1a or 6.1b, furnish the following information with respect to each such filing:

- a. The name of the *issuer*.
- b. The name and date of the filing containing the disclosure of the disagreement or the applicant's letter.

Item 6.3 Copies of Filings

Furnish, as Exhibit 6.3, a copy of every filing described in Item 6.2.

**PART VII – ROSTER OF ASSOCIATED ACCOUNTANTS**

Item 7.1 Listing of *Accountants* Associated with Domestic Applicants

If the applicant is not a *foreign public accounting firm*, list the name and social security number or comparable non-U.S. identifier (if any) of all *accountants* associated with the applicant. For each such person, list every license or certification number (if any) authorizing him or her to engage in the business of auditing or accounting. For each such license or certification number, furnish the name of the issuing state, agency, board, or other authority.



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Item 7.2 Listing of *Accountants* Associated with Non-U.S. Applicants

If the applicant is a *foreign public accounting firm*, list the name and social security number or comparable non-U.S. identifier (if any) of all *accountants* associated with the applicant who participate in or contribute to the preparation of *audit reports*. For each such person, list every license or certification number (if any) authorizing him or her to engage in the business of auditing or accounting. For each such license or certification number, furnish the name of the issuing agency, board, or other authority.

Item 7.3 Number of Firm Personnel

State the –

- a. Total number of *accountants* associated with the applicant.
- b. Total number of certified public accountants, or *accountants* with comparable licenses from non-U.S. jurisdictions, associated with the applicant.
- c. Total number of personnel employed by the applicant.

**PART VIII – CONSENTS OF APPLICANT**

Item 8.1 Consent to Cooperate with the *Board* and Statement of Acceptance of Registration Condition

Furnish, as Exhibit 8.1, a statement, signed on behalf of the applicant by an authorized partner or officer of the applicant in accordance with Rule 2104, in the following form –

- a. [Name of applicant] consents to cooperate in and comply with any request for testimony or the production of documents made by the Public Company Accounting Oversight Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002.

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- b. [Name of applicant] agrees to secure and enforce similar consents from each of its *associated persons* as a condition of their continued employment by or other association with the firm.
- c. [Name of applicant] understands and agrees that cooperation and compliance, as described in the firm's consent in paragraph (a), and the securing and enforcement of such consents from its *associated persons* in accordance with paragraph (b), shall be a condition to the continuing effectiveness of the registration of the firm with the Public Company Accounting Oversight Board.

Note: Other than the insertion of the name of the applicant in paragraphs (a), (b), and (c) of this Item, Exhibit 8.1 must be in the exact words contained in this instruction. The consents required by paragraph (b) of this Item must be secured by the applicant within 45 days of submitting this application or, for persons who become *associated persons* of the firm subsequent to the submission of this application, at the time of the person's association with the firm.

## **PART IX – SIGNATURE OF APPLICANT**

### Item 9.1 Signature of Partner or Authorized Officer

The application must be signed on behalf of the applicant by an authorized partner or officer of the applicant in accordance with Rule 2104. The signer must certify that he or she has reviewed the application; that the application is, based on the signer's knowledge, complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the applicant. The signature must be accompanied by the title of the signer and the date of signature.

## **PART X – EXHIBITS**

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

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- Exhibit 1.5 Listing of Offices
- Exhibit 4.1 Statement of Quality Control Policies
- Exhibit 5.6 Discretionary Statements Regarding Proceedings Involving Audit Practice
- Exhibit 6.3 Securities and Exchange Commission Filings Disclosing Accounting Disagreements With Public Company Audit Clients
- Exhibit 8.1 Consent of Applicant for Registration
- Exhibit 99 Request for Confidential Treatment

Note: Where an exhibit consists of more than one document, each document must be numbered consecutively (e.g., Exhibit 4.1.1, Exhibit 4.1.2, Exhibit 4.1.2, etc.), and the applicant must provide a list of the title or description of each document comprising the exhibit.

### **Appendix 3 – Section-by-Section Analysis of Proposed Registration Rules and Form 1**

The registration system consists of nine rules (PCAOB Rules 1000, 1001, 2100 through 2105, and 2300) and a form (PCAOB Form 1). Each of the rules and each part of the form are discussed below.

#### **Proposed Registration Rules**

##### **Rule 1000 – Application of Rules**

Rule 1000 provides that the Board's rules apply to all public accounting firms, to all persons associated with registered public accounting firms, and to all associated entities of registered public accounting firms. The terms "associated entity," "person associated with a public accounting firm," "public accounting firm," "registered public accounting firm," and "rules" are defined in Rules 1001(c), 1001(m), 1001(o), 1001(p), and 1001(q), respectively.

##### **Rule 1001 – Definitions of Terms Employed in Rules**

Rule 1001 contains definitions of terms used in the Board's rules. Certain of the definitions are taken, or closely track, those found in Section 2 of the Act.<sup>1/</sup> Other definitions are based on those used in the Commission's rules.

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<sup>1/</sup> Certain definitions in the Board's rules that are taken verbatim from the statute or that are self-evident are not discussed below.

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*Accountant*

Although used in the Act, the term “accountant” is not defined in the Act. As used in the Act, the term refers to a natural person, as opposed to a legal entity.<sup>2/</sup> This concept of “accountant” is different from the Commission’s definition of accountant under Regulation S-X, which includes legal entities, such as a registered public accounting firm.<sup>3/</sup> Therefore, to reflect the context in which the term “accountant” is used in the Act, and to distinguish the Board’s definition from that in Regulation S-X, the Board is adopting a definition of “accountant” in Rule 1001(a) that is limited to natural persons.

The definition covers three types of natural persons: (i) those who are certified public accountants, (ii) those who hold an undergraduate or higher degree in

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<sup>2/</sup> For example, Section 102(b)(2)(E) of the Act requires disclosure of a list of “all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person \* \* \*.”

<sup>3/</sup> Under Rule 2-01(f)(1) of Regulation S-X, accountant means a “registered public accounting firm, certified public accountant or public accountant performing services in connection with an engagement for which independence is required.” Rule 2-01(f)(1) provides further that “references to the accountant include any accounting firm with which the certified public accountant or public accountant is affiliated.” See Rule 2-01(f)(1) of Regulation S-X, 17 C.F.R. 210.2-01(f)(1).

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accounting, or a license or certification authorizing him or her to engage in the business of auditing or accounting, and (iii) those who hold an undergraduate or higher degree in a field, other than accounting, and who participate in audits. The Board's definition is intended to include all natural persons, who have the requisite licensing, certification, training, and/or experience, whether obtained in the U.S. or a non-U.S jurisdiction, to be considered an accountant.

*Associated Entity*

Rule 1001(c) defines "associated entity," as "with respect to a public accounting firm (i) any entity that directly, indirectly, or through one or more intermediaries, controls or is controlled by, or is under common control with, such public accounting firm; or (ii) any "associated entity," as used in Rule 2-01(f)(2) of Regulation S-X, 17 C.F.R. 210.2-10(f)(2), that would be considered part of that firm for purposes of the Commission's auditor independence rules." This definition of "associated entity" is meant to give the term the same meaning as in the Commission's auditor independence rules.<sup>4/</sup>

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<sup>4/</sup> See Rule 2-01(f)(2) of Regulation S-X, 17 C.F.R. 210.2-01(f)(2); see also Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33-7919 (November 21, 2000), at notes 490 & 491.

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### *Audit*

In general, Rule 1001(d) defines “audit” as an examination of an issuer’s financial statements by an independent public accounting firm in accordance with the rules of the Board or the Commission for purposes of expressing an opinion on such statements. For the period preceding the adoption of the Board’s applicable rules under Section 103 of the Act, however, the term covers an examination of an issuer’s financial statements by an independent public accounting firm in accordance with GAAS. The Board has adopted the same meaning for “audit” as used in Section 2(a)(2) of the Act.

### *Audit Report*

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

### *Audit Services*

Rule 1001(f) defines “audit services” as “professional services rendered for the audit of an issuer’s annual financial statements and (if applicable) for the reviews of an

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issuer’s financial statements included in the issuer’s quarterly reports.” This definition of “audit services” is intended to capture the same category of services for which fees were required to be disclosed as "audit fees" pursuant to the Commission’s 2000 proxy disclosure rules.<sup>5/</sup>

*Foreign Public Accounting Firm*

Rule 1001(j) defines foreign public accounting firm as a “public accounting firm that is organized and operates under the laws of a non-U.S. jurisdiction, government or political subdivision thereof.” This definition, which follows closely the definition of foreign public accounting firm in Section 106(d) of the Act, is intended to clarify that the term covers accounting firms that are organized and operate in any jurisdiction outside of the United States.<sup>6/</sup>

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<sup>5/</sup> See Schedule 14A, Item 9(e)(1), 17 C.F.R. 240.14a-101; see also Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33-7919 (November 21, 2000).

<sup>6/</sup> Section 106(d) of the Act defines foreign public accounting firm as a “public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.”



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*Issuer*

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

*Other Accounting Services*

Rule 1001(l) defines “other accounting services” as “professional services that generally only an independent accountant can reasonably provide and assurance and related services that traditionally are performed by an independent accountant.” The Board has modeled its definition of “other accounting services” on concepts used in the Commission's recent revision of its auditor independence disclosure rules.<sup>7/</sup> The term is meant to capture two categories of services: 1) services the fees for which are to be disclosed as “audit fees” under the Commission's revised rules, but that were not

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<sup>7/</sup> See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003).

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previously disclosed as "audit fees," and 2) services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised rules.

The first category generally consists of those services that, while not captured as "audit services" under the Board's rules, are performed to comply with GAAS. As explained in the Commission's adopting release, certain services, such as tax services and accounting consultations, may not be billed as audit services, but are necessary to comply with GAAS.<sup>8/</sup> This category would also include "services that normally would be provided by the accountant in connection with statutory and regulatory filings or engagements" and "services that only the independent accountant reasonably can provide, such as comfort letters, statutory audits, attest services, consents and assistance with review of documents filed with the Commission."<sup>9/</sup>

In addition, the definition is meant to capture services the fees for which would be disclosed as "audit-related fees" under the Commission's revised rules.<sup>10/</sup> In general, these are fees for "assurance and related services (e.g. due diligence services) that

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<sup>8/</sup> Id. At 39.

<sup>9/</sup> Id.

<sup>10/</sup> See Schedule 14A, Item 9(e)(2), 17 C.F.R. 240.14a-101 (as amended, January 28, 2003).

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traditionally are performed by the independent accountant.” More specifically, as noted in the Commission’s adopting release, these services would include, among others, “employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, internal control reviews, attest services that are not required by statute or regulation and consultation concerning financial accounting and reporting standards.”<sup>11/</sup>

*Person Associated With A Public Accounting Firm (And Related Terms)*

The Board is adopting the same meaning for “person associated with a public accounting firm” as used in Section 2(a)(9) of the Act, with a technical modification. The word “other” has been eliminated before the terms “professional employee” and “independent contractor” to clarify that an employment or an independent contractor relationship with a public accounting firm is not required for a person to be covered by the definition.

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<sup>11/</sup> See Commission Final Rule: Strengthening the Commission’s Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), 40.

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

Rule 1001(n) defines the phrase “play a substantial role in the preparation or furnishing of an audit report” to mean “(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report with respect to any issuer, or (2) to perform audit procedures with respect to a subsidiary or component of any issuer the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer.”

The first prong of this definition (Rule 1001(n)(1)) is based on language in Section 106(b)(1) of the Act.<sup>12/</sup> The note to Rule 1001(n) explains that the term “material services” as used in this definition means services for which the engagement hours or fees constitute 20% or more of the total engagement hours or fees, respectively, provided by the registered public accounting firm in connection with the issuance of all or part of its audit report with respect to any issuer. The second prong of this definition (Rule 1001(n)(2)) is based on a similar standard used in the

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<sup>12/</sup> Section 106(b)(1) provides that foreign public accounting firms shall be deemed to have consented to produce audit workpapers and to be subject to the jurisdiction of the U.S. courts for purposes of enforcement of any request for such workpapers if the firm issues an opinion or “otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in the audit report.”

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Commission’s auditor independence rules related to partner rotation.<sup>13/</sup> As a note to the rule indicates, the phrase “subsidiary or component” is meant to include any subsidiary, division, branch, office or other component of an issuer, regardless of its form of organization and/or control relationship with the issuer.

For both the definition of material services as well as the second prong of the overall definition, the Board believes that a quantitative, as opposed to a qualitative, test imposes less of a burden on firms in determining whether or not they fall into this category. The Board has included a threshold of 20 percent, since this threshold is consistent with accounting literature on “significance” tests.<sup>14/</sup>

*Public Accounting Firm*

Rule 1001(o) defines “public accounting firm” to mean a proprietorship, partnership, incorporated association, corporation, limited liability company, limited

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<sup>13/</sup> The Commission’s adopting release provides that “the lead partner on subsidiaries of issuers whose assets or revenues constitute 20% or more of the consolidated assets or revenues are included within the definition of ‘audit partner.’” See Commission Final Rule: Strengthening the Commission’s Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), 22.

<sup>14/</sup> See Commission Final Rule: Strengthening the Commission’s Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), note 139 (citing APB Opinion No. 18, “The Equity Method of Accounting for Investments in Common Stock, and ARB No. 43, Chapter 7, “Capital Accounts.”).

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liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports. The Board has adopted the same meaning of public accounting firm as used in Section 2(a)(11)(A) of the Act. However, this definition is intended to include only legal entities, and not natural persons. An individual accountant that prepares or issues an audit report in his or her name would be a "proprietorship" and therefore fall under this definition. Under Section 2(a)(11)(B) of the Act, the Board has the authority to expand this definition and designate by rule "any associated person of any entity" described in Section 2(a)(11)(A) as a "public accounting firm." The Board has not chosen to exercise this authority at this time.

*Tax Services*

Rule 1001(r) defines "tax services" as "professional services rendered for tax compliance, tax advice, and tax planning." This definition is based on, and meant to capture the same group of services the fees for which would be disclosed as "tax fees" under the Commission's recently revised auditor independence disclosure rules.<sup>15/</sup> More specifically, as set forth in the Commission's adopting release, "tax compliance

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<sup>15/</sup> See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), 40 (footnotes omitted).

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generally involves preparation of original and amended tax returns, claims for refund and tax payment planning-services” and “[t]ax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities.”<sup>16/</sup>

### **Rule 2100 – Registration Requirements for Public Accounting Firms**

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

By introducing the “substantial role” test (defined through the quantitative test in Rule 1001(n) as described above), the rule clarifies the phrase “participate in the preparation or issuance of, any audit report with respect to any issuer” used in Section

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<sup>16/</sup> Id.

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102(a) of the Act. In so doing, the Board intends to create a bright-line test to make it easier for firms and others to determine which firms are required to register with the Board.

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

Under Rule 2100, individual accountants that are associated with public accounting firms are not required to register. As noted above, the definition of the term “public accounting firm” includes proprietorships,<sup>17/</sup> and an individual accountant that prepares or issues, in his or her own name, an audit report on an issuer would be

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<sup>17/</sup> See Rule 1001(o).



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viewed as a sole proprietor and required to register. Individual accountants that are associated with public accounting firms, however, are not required to register.

This registration requirement will be effective 180 days after the date on which the Commission makes its determination under 101(d) of the Act that the Board is capable of carrying out its responsibilities under the Act. This determination must be made by April 26, 2003.

**Rule 2101 – Application for Registration**

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

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

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**Rule 2102 – Date of Receipt**

Rule 2102 defines the date of receipt of an application for registration to be, unless the Board directs otherwise, the later of (a) the date on which the registration fee has been paid, or (b) the date on which the application is accepted by the Board’s web-based registration system. The Board plans for the electronic registration system to run certain checks to verify that all required information has been supplied before accepting an application. Firms whose applications do not meet the acceptance criteria will be notified and requested to supply the missing information and resubmit their application. Similarly, applications will not be deemed received until the required registration fee has been paid.

**Rule 2103 – Registration Fee**

Rule 2103 requires that each public accounting firm applying for registration with the Board pay a non-refundable registration fee. This rule is consistent with Section 102(f) of the Act, which provides that “[t]he Board shall assess and collect a registration fee \* \* \* from each registered public accounting firms, in amounts that are sufficient to recover the costs of processing and reviewing applications \* \* \* .”

The Board will publicly announce the registration fee amount and the payment procedure, before the registration system is operational. The Board contemplates that

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the amount of an applicant's fee will be determined by formula and that fees will vary with the size of the applicant. Once the registration system is operational, the Board will, from time to time, announce (most likely by posting on its website or by a similar form of dissemination) the current registration fee for applicants.

#### **Rule 2104 – Signatures**

Rule 2104 requires each person signing the application for registration (including any consents) to manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing of the application for registration. Such document is required to be signed before the application is electronically filed with the Board through the Board's web-based system. Further, consistent with the Act's provision on the retention of audit workpapers,<sup>18/</sup> applicants are required to retain the manually signed documents for seven years. In addition, under the rules, the Board or its staff may request a copy of any manually signed document retained pursuant to Rule 2104. The Board's rule

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<sup>18/</sup> See Section 103(a)(2)(A)(i); see also Commission Final Rule: Retention of Records Relevant to Audits and Reviews, Release No. 33-8180 (January 24, 2003) (requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements).

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tracks the Commission’s requirement on signatures for electronic filings in Regulation S-T.<sup>19/</sup>

**Rule 2105 – Action on Applications for Registration**

Rule 2105 governs the Board's approval process. In general, under this rule, unless the applicant consents otherwise, the Board is required to take action on an application for registration not later than 45 days after the date of receipt of the application. Rule 2102 defines the date of receipt. Such action may consist of approval, disapproval, or a request for additional information. Rule 2105 is consistent with Section 102(c)(1) of the Act, which provides that “[t]he Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from a prospective registrant.”

Specifically, Rule 2105(a) provides that after reviewing the application for registration, and any additional information provided by the applicant or obtained by the Board, the Board will determine whether to approve the application. The Board will approve an application for registration if it determines that registration is consistent with

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<sup>19/</sup> See Rule 302(b) of Regulation S-T, 17 C.F.R. 232.302(b).

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the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. If the Board is unable to make this determination, or if the Board concludes that the application is inaccurate or incomplete, it will either request additional information from the applicant or disapprove the application.

If the Board requests additional information, a new 45-day review period will begin when the requested information is received. If the applicant declines to provide the requested information, or fails to do so within a reasonable amount of time, the Board may deem the application incomplete (and disapprove it on that basis, pursuant to Rule 2105(b)(2)), may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.

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

Rule 2300(a) provides that applications for registration will be publicly available. This is consistent with Section 102(e) of the Act, which provides that applications for registration “or such portions of such applications \* \* \* as may be designated under the rules of the Board” must be available for public inspection.

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In order to prevent the disclosure of confidential information,<sup>20/</sup> Rule 2300 also sets forth a procedure by which applicants can request confidential treatment of any information submitted to the Board in connection with their applications for registration. Under Rule 2300(c), an applicant for registration may request confidential treatment of any portion of an application that either (i) contains non-public personal or proprietary information that should not be publicly available, (ii) contains information reasonably identified by the public accounting firm as proprietary information, or (iii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.<sup>21/</sup>

Rule 2300(d)(2) requires that confidential treatment requests contain a detailed explanation of the reasons that, based on the facts and circumstances of the particular case, the information for which confidentiality is sought meets the requirements in Rule

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<sup>20/</sup> Section 102(e) also states that the public availability of registration applications is subject to “applicable laws relating to the confidentiality of proprietary, personal, or other information” and directs the Board to “protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.”

<sup>21/</sup> Rule 2300(b) provides that social security or taxpayer identification numbers (and comparable non-U.S. tax identifiers) will be routinely withheld from public disclosure. It is not necessary for applicants to request confidential treatment of such numbers or other identifiers.

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2300(c). Rule 2300(g) states that unless the applicant seeking confidential treatment consents otherwise, confidential treatment requests will be afforded confidential treatment without the need for a request for confidential treatment. Rule 2300(e) provides that pending a determination by the Board as to whether to grant the request for confidential treatment, the information in question will not be made available to the public. Rule 2300(f) states that if the Board determines to deny a request, the applicant requesting confidential treatment will be notified of the Board's decision and of the date on which the information in question will be made public.

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

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## **Form 1**

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

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

### **Part I – Identity of the Applicant**

Part I of the Form calls for information about the identity of the applicant. The eight specific items in this part require information about the applicant's name and identification number, contact information, primary contact with the Board, form of



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organization, offices, associated entities engaged in the practice of public accounting, and professional licenses or certifications.

This Part is generally intended to elicit basic information about the applicant and its operations and to facilitate the Board's interaction with the applicant. In Item 1.1, the Form requires applicants that have such a number to disclose their federal employer identification number (or comparable non-U.S. identifier), and, in the case of a sole proprietor, the applicant's social security number. While the Board is mindful of the privacy interests of applicants, the Board decided this information was necessary so that applicants have a unique identifier. Rule 2300(c) of the Board's rules provides that this information will be afforded confidential treatment without the need for a confidential treatment request.

Item 1.4 asks for the applicant's legal form of organization and the jurisdiction under the law of which the applicant is organized or exists. Under the Board's registration system, organizations, and not natural persons, are required to apply for registration. Accordingly, among the examples given of legal forms of organizations are "proprietorship" and "partnership." This Item contemplates that natural persons practicing accounting under their own name and that are not organized as a legal entity will apply as a "proprietorship." Likewise, groups of natural persons practicing

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accounting that are not organized as another legal entity should apply as a “partnership,” whether a partnership has been legally formed or not.

Item 1.6 requires applicants to list the name and address of their “associated entities” that engage in the practice of public accounting or preparing or issuing audit reports or comparable reports prepared for clients that are not issuers. The term “associated entities” is defined in the Board’s rules in a manner consistent with the term’s use in the Commission’s auditor independence rules.<sup>22/</sup> The Board chose this term to capture certain entities that are related to the applicant, but that are not necessarily in a control relationship with the applicant. The term is presumably one public accounting firms are familiar with because of its use in the Commission’s auditor independence rules. The instruction makes clear that individual accountants associated with the applicant should not be listed in responding to this Item.

In Item 1.8, applicants are asked to state if the firm and all individual accountants associated with the firm who participate in or contribute to the preparation of audit reports have all required licenses and certifications. This Item is intended to ensure that public accounting firms applying for registration have the requisite governmental and professional licenses and certifications to audit issuers.

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<sup>22/</sup> See Rule 2-01(f)(2) of Regulation S-X, 17 C.F.R. 210.2-01(f)(2).

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## **Part II – Listing of Applicant’s Public Company Audit Clients and Related Fees**

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

The first three items require disclosures about the applicant’s issuer audit clients, including their names, identifying information, and disclosures about the fees billed the issuer by the applicant. To capture different time periods, these disclosures are divided into three items. Item 2.1 covers issuers for which the applicant prepared or issued any audit report during the previous calendar year. Item 2.2 covers issuers for which the applicant prepared or issued any audit report during the current calendar year. Item 2.3 covers issuers for which the applicant expects to prepare or issue any audit report during the current calendar year. Items 2.1 and 2.2 require the same information: the issuer’s name, business address, standard industry code, the date of the audit report, and the total amount of fees billed for audit services, other accounting services, tax

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services, and all other non-audit services. Item 2.3 asks for the same information, except that, since it refers to a future period, it does not require fee disclosures.

The required fee disclosures are specified through definitions of the terms “audit services,” “other accounting services,” and “tax services.” (Although not required by the statute, consistent with the Commission’s recent revisions to its auditor independence rules, the Board decided to also ask for disclosure of fees for tax services.) In defining these terms, the Board has, to the extent possible, used concepts from the fee disclosures required of issuers by the Commission as part of its recent revisions to its auditor independence rules. While the Board understands that issuers are not yet required to make disclosures in these categories, when the rules do apply, these disclosures will be required for the previous two fiscal years. Accordingly, the Board anticipates that some accounting firms may have begun, or will shortly have to begin, collecting this information in these categories for use by their issuer audit clients.

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

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Finally, in Item 2.4, the Form seeks information about the issuers for which the applicant played, or expects to play, a substantial role in the preparation of an audit report during the preceding or current calendar year. For these issuers, the applicant must disclose the issuer's name, business address, standard industry code, the name of the public accounting firm that issued, or is expected to issue, the audit report, the date of the audit report, and a brief description of the applicant's role with respect to the audit report.

### **Part III – Applicant's Financial Information**

Consistent with Section 102(b)(2)(C) of the Act, Part III of the Form requires disclosure of financial information about the applicant. In particular, the Part calls for disclosure of fees received by the applicant during its most recently completed fiscal year for: audit services, other accounting services, tax services, and all other products and services. The categories of services are the same as used in the disclosures required by Part II of the Form.

Since this part is meant to give a picture of the applicant's firm-wide sources of revenue, a note to the instruction states that, unlike Part II of the Form, the fee disclosures required in this part are not limited to fees received from "issuers." While the Board recognizes that public accounting firms may not be currently tracking

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revenues in these categories for all their clients, the Board chose the revenue categories because their contours have been defined with some specificity through Commission rulemaking and are presumably concepts with which public accounting firms are familiar.

#### **Part IV – Statement of Applicant's Quality Control Policies**

As required by Section 102(b)(2)(D) of the Act, Part IV requires the applicant to provide, as an exhibit, a narrative, summary description of its quality control policies for its accounting and auditing practices, including procedures to monitor compliance with independence requirements. GAAS requires accounting firms to have quality controls for their audit practices.<sup>23/</sup> The description should be in a clear, concise, and understandable format and should convey the scope and the key elements of the applicant's quality controls for its accounting and auditing practice. Technical descriptions and detailed explanations of procedures are not required. Absent unusual circumstances, the Board does not contemplate granting confidential treatment requests for this Item.

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<sup>23/</sup> See AICPA Statement on Auditing Standards (“SAS”) No. 25; AU §161; see also Statements on Quality Control Standards (“SQCS”) No. 2.

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### **Part V – Listing of Certain Proceedings Involving the Applicant's Audit Practice**

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

Part V is divided into six specific items. Items 5.1 through 5.4 require applicants to disclose proceedings pending, or concluded within a specified period, against the applicant or its associated persons that involve conduct in connection with an audit report "or a comparable report prepared for a client that is not an issuer." This phrase is meant to capture reports of audits performed for clients that are not issuers. Applicants are required to disclose such criminal proceedings for the previous ten years, civil governmental actions for the last five years, administrative and disciplinary proceedings for the last five years, and private civil actions for the previous twelve months. Item 5.5 asks about certain criminal proceedings, whether related to audit reports or not, and injunctions and bars and suspensions related to the practice of accounting or auditing. This item is based on a list of offenses that may result in revocation of a broker-dealer's

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registration under the federal securities laws,<sup>24/</sup> although some of the specific provisions have been adapted to reflect proceedings that would shed light on the fitness of an accounting firm, as opposed to a broker-dealer. For each proceeding listed in response to these five items, applicants are asked to provide basic information about the proceeding, the parties, the allegations, and the proceeding's outcome.

Finally, Item 5.6, permits, but does not require, applicants to include an exhibit describing any proceeding listed in response to this Part and giving the reasons that, in the applicant's view, such proceeding should not be a basis for the denial of its application for registration. The failure to file such an exhibit with respect to a particular proceeding will not raise any inference concerning the applicant's view of the impact of that proceeding on its application. The Board will consider any information provided pursuant to this Item in its approval process.

## **Part VI – Listing of Filings Disclosing Accounting Disagreements with Public Company Audit Clients**

As required by Section 102(b)(2)(G) of the Act, Part VI requires applicants to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in Commission filings. For each such instance in the preceding or

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<sup>24/</sup> See Securities Exchange Act of 1934, Section 15(b)(4)(B), 15 U.S.C. 78o(b)(4)(B).



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current calendar year, the applicant is required to disclose the name of the issuer, the name and date of the filing, and to submit, as exhibits, copies of the identified filings. Disagreements under this Part are specified by reference to the provisions of Regulation S-K that require such disclosures.

#### **Part VII – Roster of Associated Accountants**

As required by Section 102(b)(2)(E) of the Act, Part VII requires applicants to submit information about the accountants associated with the firm who participate in or contribute to the preparation of audit reports. The scope of this requirement is different for foreign firms than for domestic firms. Foreign public accounting firms applying for registration must list all accountants associated with the applicant who participate in or contribute to the preparation of audit reports. Domestic applicants must list all applicants associated with the applicant, whether or not they currently participate in or contribute to the preparation of audit reports.

Domestic firms are requested to list all accountants to avoid forcing these firms to choose which accountants to list on their registration application. The Board understands that auditors within domestic accounting firms may switch back and forth between working on audits of companies that are “issuers,” and audits of companies that are not “issuers.” Moreover, the Board understands that certain accountants within

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public accounting firms may not serve on any audit engagement team, but may be called upon, from time to time, to participate in or contribute to the preparation of an audit report in some way. In contrast, given the specialized knowledge required to participate in an audit of an issuer, the Board's understanding is that the number of personnel within foreign public accounting firms that participate in or contribute to the preparation of audit reports of U.S. public companies is relatively limited and well-defined.

For each accountant listed, applicants must provide the person's name, social security number (or comparable non-U.S. identifier), and all license or certification numbers (and name of issuing authority) authorizing the person to engage in the business of auditing or accounting. In addition, both domestic and non-U.S. applicants are required to disclose the total numbers of accountants and CPAs (or accountants with comparable licenses from non-U.S. jurisdictions) associated with the applicant, and the total number of personnel employed by the applicant.

### **Part VIII – Consents of Applicant**

As required by Section 102(b)(3) of the Act, Part VIII of the Form requires applicants to furnish, as an exhibit to their application, consents related to the applicant's and its associated persons' cooperation and compliance with any request for

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testimony or the production of documents made by the Board. A note to the instruction makes clear that the consent and the language in the instruction (except for insertion of the applicant's name) must be verbatim. The note also specifies that the consents from the applicant's associated persons required by paragraph (b) of the item must be secured within 45 days of submitting the application or, for persons who become associated persons of the firm subsequent to the submission of the application, at the time of the person's association with the firm. The consents must be signed in accordance with Rule 2104, which, among other things, requires the manually signed version of the statement to be retained for seven years.

### **Part IX – Signature of Applicant**

Part IX requires an authorized partner or officer of the applicant to sign the application in accordance with Rule 2104 and to certify the application's completeness and accuracy. Incomplete and inaccurate applications are subject to possible disapproval under Rule 2105(b)(2).

### **Part X – Exhibits**

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