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SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form 19b-4

Proposed Rules

By

Public Company Accounting Oversight Board

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

1. Text of the Proposed Rules

(a) Pursuant to the provisions of Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") is filing with the Securities and Exchange Commission ("SEC" or "Commission") proposed rules to implement the Board's public accounting firm registration system. The proposed rules consist of rules governing the registration process and instructions for a form to be used to apply for registration. The proposed rules are attached as Exhibit A to this rule filing.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Board

(a) The Board approved the proposed rules, and authorized them for filing with the SEC, at its Open Meeting on April 23, 2003. No other action by the Board is necessary for the filing of these proposed rules.

(b) Questions regarding this rule filing may be directed to Gordon Seymour, Acting General Counsel (202-207-9034; seymourg@pcaobus.org) or Phoebe Brown, Special Counsel to Board Member Goelzer (202-207-9073; brownp@pcaobus.org).

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

(a) Purpose

Section 102 of the Act prohibits accounting firms that are not registered with the Board from preparing or issuing audit reports on U.S. public companies or from

participating in these activities.[1/] The Act provides that firms must register during the 180-day period following the Commission's determination that the Board has the capacity to carry out the requirements of Title I of the Act and to enforce compliance therewith.[2/] The Commission made this determination on April 25, 2003. In order to permit public accounting firms to comply with this requirement, the Board has adopted proposed rules to implement a registration system. The registration system consists of eight rules (PCAOB Rules 2100 through 2105, and 2300), plus definitions that would appear in Rule 1001, and a form (PCAOB Form 1). A general description of the purpose and operation of the Board's registration system is contained in "Registration System for Public Accounting Firms," PCAOB Release No. 2003-007 (May 6, 2003), which is attached as Exhibit 4 to this Form.[3/] Each of the proposed rules and each part of the proposed form instructions is described in detail in the discussion of the proposed rules and form instructions that is Appendix 3 to Exhibit 4.

(b) Statutory Basis

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

[1/] This Form 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.

[2/] See Sections 101(d) and 102(a) of the Act.

[3/] The Exhibits to this Form are incorporated herein by reference.

4. Board's Statement on Burden on Competition

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

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

registration with the Board. Further, the Board has announced that registration fees will vary based on the size of the applicant and the number of its issuer audit clients.

Several commenters on the Board's proposed registration system suggested that requiring foreign public accounting firms to register with the Board could discourage smaller foreign public accounting firms, and foreign public accounting firms that are not affiliated with large international networks of firms, from auditing issuers. The Board has given careful consideration to the impact of its registration rules on non-U.S. firms and has taken a number of steps to minimize any such effect. In particular, as described in detail in Exhibits 3 and 4 to this filing, the Board has crafted certain changes to its original proposal to minimize, where permissible under the statute and consistent with the Board's responsibilities, the burdens on foreign public accounting firms applying for registration. Given these modifications, the Board believes that the cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms[4/] and therefore would not have a significant impact on competition. Moreover, the Board believes that the 180-day deferral of registration for non-U.S. firms should also minimize the administrative burden for smaller non-U.S. firms, also diminishing any anti-competitive effect.

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

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

The Board released its registration system proposal for public comment on March 7, 2003. See Exhibit 2(a)A. The Board received 46 written comment letters relating to its proposal. See Exhibits 2(a)B and 2(a)C. In addition, on March 31, 2003, the Board convened a public roundtable at which representatives of various foreign accounting firms, professional organizations and regulators and U.S. investors discussed the ramifications of the registration of non-U.S. accounting firms. See Exhibit 2(b).

The Board has carefully considered all comments it has received. In response to the written comments received and remarks made at the roundtable, the Board has clarified and modified certain aspects of its proposed rules and form instructions. The Board's response to the comments it received and the changes made to the rules and form instructions in response to these comments are summarized in Exhibits 3 and 4 to this filing.

6. Extension of Time Period for Commission Action

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

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

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

The proposed rules are not based on the rules of another board or of the Commission, although, as discussed in detail in Exhibit 4 to this filing, certain elements of the Board's proposed rules are based on parts of the federal securities laws and the Commission's regulations thereunder.

9. Exhibits

Exhibit A –	Text of the Proposed Rules
Exhibit 1 –	Form of Notice of Proposed Rules for Publication in the Federal Register.
Exhibit 2(a)A –	PCAOB Release No. 2003-001 (March 7, 2003).
Exhibit 2(a)B –	Alphabetical List of Comments
Exhibit 2(a)C –	Written comments on the rules proposed in PCAOB Release No. 2003-001
Exhibit 2(b) –	Transcript of the Board's Roundtable meeting on March 31, 2003.
Exhibit 3 –	Briefing Paper on Proposed Auditor Registration System (March 4, 2003).
Exhibit 4 –	PCAOB Release No. 2003-007 (May 6, 2003)

10. Signatures

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

Public Company Accounting Oversight Board

By: _____
Charles D. Niemeier
Acting Chairman

EXHIBIT A

Text of the Proposed Rules

Underlining indicates additions

RULES OF THE BOARD

SECTION 1. GENERAL PROVISIONS

1000. [Reserved]

1001. Definitions of Terms Employed in Rules.

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

(a)(ii) Accountant

The term "accountant" means a natural person –

(1) who is a certified public accountant, or

(2) who holds –

(i) a college, university, or higher professional 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 a college, university, or higher professional degree in a field, other than accounting, and

(ii) participates in audits;

provided, however, that the term "accountant" does not include a person engaged only in clerical or ministerial tasks.

(a)(iii) Act

The term "Act" means the Sarbanes-Oxley Act of 2002.

(a)(iv) 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.

(a)(v) 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.

(a)(vi) 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.

(a)(vii) Audit Services

The term "audit services" means –

(1) subject to paragraph (a)(vii)(2) of this Rule, 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.

(2) effective after December 15, 2003, professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(b)(i) Board

The term "Board" means the Public Company Accounting Oversight Board.

(c)(i) Commission

The term "Commission" means the Securities and Exchange Commission.

(e)(i) Exchange Act

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

(f)(i) 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.

(i)(iii) 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.

(n)(ii) Non-Audit Services

The term "non-audit services" means –

(1) subject to paragraph (n)(ii)(2) of this Rule, services related to financial information systems design and implementation as defined in Rule 2-01(c)(4)(ii) of Regulation S-X, 17 C.F.R. 2-01(c)(4)(ii), and

all other services, other than audit services or other accounting services.

(2) effective after December 15, 2003, all other services other than audit services, other accounting services, and tax services.

(o)(i) Other Accounting Services

The term "other accounting services" means –

(1) subject to paragraph (o)(i)(2) of this Rule, services that are normally provided by the public accounting firm that audits the issuer's financial statements in connection with statutory and regulatory filings or engagements and assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services.

(2) effective after December 15, 2003, assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services.

(p)(i) 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" or "applicant") and "associated person of a public accounting firm" (or of a "registered public accounting firm" or "applicant") mean any individual proprietor, partner, shareholder, principal, accountant, or professional employee of a public accounting firm, or any independent contractor 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 on behalf of such accounting firm in any activity of that firm;

provided, however, that these terms do not include a person engaged only in clerical or ministerial tasks or a person whom the public accounting firm reasonably believes is a person primarily associated with another registered public accounting firm.

(p)(ii) 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 the majority of the 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 necessary for the principal accountant to issue an audit report on the issuer.

Note 1: For purposes of paragraph (1) 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 principal accountant in connection with the issuance of all or part of its audit report with respect to any issuer. The term does not include non-audit services provided to non-audit clients.

Note 2: For purposes of paragraph (2) 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.

Note 3: For purposes of determining "20% or more of the consolidated assets or revenues" under paragraph (2) of this Rule, this determination should be made at the beginning of the issuer's fiscal year using prior year information and should be made only once during the issuer's fiscal year.

(p)(iii) 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.

(r)(i) Registered Public Accounting Firm

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

(r)(ii) 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.

(s)(ii) Securities Laws

The term "securities laws" means the provisions of the law referred to in Section 3(a)(47) of the Exchange Act, as amended by the Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(s)(iii) State

The term "State" means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(t)(i) 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 [Insert the date 180 days after the Commission's determination pursuant to 101(d) of the Act] (or, for foreign public accounting firms, [Insert the date 360 days after the Commission's determination pursuant to 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 1: 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.

Note 2: The issuance of a consent to include an audit report for a prior period by a public accounting firm, which does not currently have and does not expect to have an engagement with an issuer to prepare or issue, or to play a substantial role in the preparation or furnishing of an audit report with respect to any issuer, will not by itself require a public accounting firm to register under Rule 2100.

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. An applicant may withdraw its application for registration by written notice to the Board at any time before the approval or disapproval of the application.

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 submitted to the Board through its 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.

2105. Conflicting Non-U.S. Laws

(a) An applicant may withhold information from its application for registration when submission of such information would cause the applicant to violate a non-U.S. law if that information were submitted to the Board.

(b) An applicant that claims that submitting information as part of its application would cause it to violate non-U.S. laws must –

(1) identify, in accordance with the instructions on Form 1, the information that it claims would cause it to violate non-U.S. laws if submitted; and

(2) include as an exhibit to Form 1 –

(i) a copy of the relevant portion of the conflicting non-U.S. law;

(ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and

(iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

2106. 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 determine that the standard for approval in paragraph (a) of this Rule is met, or if the Board determines that the application may be materially inaccurate or incomplete, the Board will:

(i) request more information from the applicant; or

(ii) provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings, to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval. Such notice may, at the applicant's election, be treated as a written notice of disapproval for purposes of Section 102(c) of the Act.

(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 for purposes of paragraph (b) of this Rule. The Board will take action on such supplemented applications as soon as practicable, and not later than 45 days after receipt of the supplemented application by the Board. If such firm declines to provide the requested information, or 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 paragraph (b) below, an application for registration will be publicly available as soon as practicable after the Board approves or disapproves such application.

(b) 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 information reasonably identified by the public accounting firm as proprietary information, or (ii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

(c) 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 paragraph (b) of this Rule.

(d) 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.

(e) If the Board determines to deny a confidential treatment request, the requestor will be notified in writing 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.

(f) Unless the applicant requests otherwise, the exhibit containing an explanation supporting a confidential treatment request will be afforded confidential treatment without the need for a request for confidential treatment.

(g) 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. In the event the Board receives such a subpoena, the Board will notify the applicant of such subpoena, to the extent permitted by law, to allow the applicant the opportunity to object to such subpoena.

(h) Pursuant to Section 101(g)(2) of the Act, the Board hereby delegates, until the Board orders otherwise, to the Director of Registration and Inspection the Board's functions under this Rule.

FORM 1 – APPLICATION FOR REGISTRATION

GENERAL INSTRUCTIONS

1. The definitions in the *Board's rules* apply to this form. Italicized terms in the instructions to this form are defined in the *Board's rules*. See Rule 1001.

2. Any *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.

3. 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.

4. 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.

5. 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 2102.

6. An applicant may request confidential treatment of any portion of its application for registration that has not otherwise been publicly disclosed and that either contains information reasonably identified by the applicant as proprietary information 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 99.1 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 or is protected from disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information. The *Board* will normally grant 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).

7. If an applicant is prohibited by the law(s) of a non-U.S. jurisdiction from submitting to the *Board* information requested by all or a part of an Item to this form, the applicant shall so indicate by making a notation under the relevant item number of the form and furnishing, as Exhibit 99.2 to the application for registration, the following information: (i) a copy of the relevant portion of the conflicting non-U.S. law, (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the *Board* with a consent or waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

8. 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.

9. Where this form requires non-historical (i.e., current) information, applicants may submit the information as of a date not earlier than 90 days prior to submission of the application. Such information will be deemed current for purposes of this form.

10. Information submitted as part of this form, including any exhibit to this form, must be in the English language.

PART I – IDENTITY OF THE APPLICANT

Item 1.1 Name of Applicant

State the legal name of the applicant; if different, also state the name or names under which the applicant (or any predecessor for which the applicant is the successor in interest with respect to the entity's liabilities) issues *audit reports*, or has issued any *audit report* during the five years prior to the date of this application.

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. If available, state the Website address of the applicant.

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 Item 7.1.

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.

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* dated 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*).

b. The date of the *audit report*.

c. The total amount of fees billed for *audit services* for the *issuer's* fiscal year for which the *audit report* was issued.

d. The total amount of fees billed for *other accounting services* for the *issuer's* fiscal year for which the *audit report* was issued.

e. The total amount of fees billed for *non-audit services* 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. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company issuers, the fees disclosed in response to paragraphs (c) – (e) 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* dated 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*).

b. The date of the *audit report*.

c. The total amount of fees billed for *audit services* for the *issuer's* fiscal year for which the *audit report* was issued.

d. The total amount of fees billed for *other accounting services* for the *issuer's* fiscal year for which the *audit report* was issued.

e. The total amount of fees billed for *non-audit services* 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. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company issuers, the fees disclosed in response to paragraphs (c) – (e) 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* dated during the calendar year in which this application is filed. In addition to the *issuer's* name, include, with respect to each *issuer*, the *issuer's* business address (as shown on its most recent filing with the *Commission*).

Note: An applicant may presume that it is expected to prepare or issue an *audit report* for an *issuer* (i) if it has been engaged to do so, or (ii) if it issued an *audit report* during the preceding calendar year for an *issuer*, absent an indication from the *issuer* that it no longer intends to engage the applicant.

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

For applicants that did not prepare or issue an *audit report* dated during the preceding or current calendar year, and that do not expect to prepare or issue an *audit report* dated during the current calendar year, list the names of all *issuers* for which the applicant *played, or expects to play, a substantial role in the preparation or furnishing of an audit report* dated 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*).

b. The name of the *public accounting firm* that issued, or is expected to issue, the *audit report*.

c. The date of the *audit report*, if it has been issued.

d. The type of substantial role played by the applicant with respect to the *audit report*.

Note: Applicants that disclosed the name of an *issuer* in response to any of Items 2.1 – 2.3 need not respond to this Item. 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*, an applicant may presume that it is *expected to play a substantial role in the preparation or furnishing of an audit report* for an *issuer* (i) if it has been engaged to do so, or (ii) if it *played a substantial role in the preparation and furnishing of an audit report* during the preceding calendar year, absent an indication from the *issuer* or principal accounting firm that it no longer intends to engage the applicant.

PART III – [RESERVED]

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

Item 5.1 Certain Criminal, Civil and Administrative Proceedings

a. Indicate whether or not the applicant or any *associated person* of the applicant is a defendant or respondent –

   1. in any pending criminal proceeding, or was a defendant in any such proceeding in which a judgment was rendered against the applicant or such person, whether by plea or after trial, during the previous five years;

   2. in any pending civil or alternative dispute resolution proceeding initiated by a governmental entity (including a non-U.S. jurisdiction) arising out of the applicant's or such person's conduct in connection with an *audit report*, or a comparable report prepared for a client that is not an *issuer*, 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;

   3. in any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an *audit report*, or a comparable report prepared for a client that is not an issuer, 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 five 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;

b. In the event of an affirmative response to Item 5.1.a, 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, tribunal, or body 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* or comparable report.

5. With respect to each person named in Item 5.1.b.3, the statutes, rules, or other requirements such person was found to have violated (or, in the case of a pending proceeding, is charged with having violated).

6. With respect to each person named in Item 5.1.b.3, the outcome of the proceeding, including any sentence or sanction imposed. (If no judgment or award has yet been rendered, enter the word "pending.")

Note: *Foreign public accounting firm* applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

Item 5.2 Pending Private Civil Actions

a. Indicate whether or not the applicant or any *associated person* of the applicant is a defendant or respondent in any pending civil proceeding or alternative dispute resolution proceeding initiated by a non-governmental entity 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 5.2.a, 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, tribunal or body 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* or comparable report.

5. With respect to each person named in Item 5.2.b.3, the statutes, rules, or other requirements such person is alleged to have violated.

Note: *Foreign public accounting firm* applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

Item 5.3 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 or 5.2, the applicant may, at its discretion, furnish, as Exhibit 5.3, 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).

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 6.1.a or 6.1.b, 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 Applicants

List the names 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 *state*, agency, board, or other authority.

Note: For purposes of this Item, applicants that are not *foreign public accounting firms* must list all *accountants* who are *persons associated with the applicant* and who provided at least ten hours of *audit services* for any *issuer* during the last calendar year. Applicants that are *foreign public accounting firms* must list all *accountants* who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

Item 7.2 Number of Firm Personnel

State the –

a. Total number of *accountants* employed by the applicant.

b. Total number of certified public accountants, or *accountants* with comparable licenses from non-U.S. jurisdictions, employed by 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.

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 1: 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 in the exact words of Note 2 below and must be secured by the applicant not later than 45 days after 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. Consents required by paragraph (b) of this Item are not required to be furnished as an exhibit to this form.

Note 2: Other than the insertion of the name of the *associated person*, the consents required by paragraph (b) of this Item must state: [Name of *associated person*] 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. [Name of *associated person*] understands and agrees that this consent is a condition of their continued employment by or other association with [name of applicant].

Note 3: For applicants that are *foreign public accounting firms*, the term "*associated persons*" as used in this Item means all *accountants* who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

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 name of the signer, the capacity in which the signer signed the application, 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:

Exhibit 1.5 Listing of Offices

Exhibit 4.1 Statement of Quality Control Policies

Exhibit 5.3 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 99.1 Request for Confidential Treatment

Exhibit 99.2 Evidence of Conflicting Non-U.S. Law

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 4.1.3, etc.), and the applicant must provide a list of the title or description of each document comprising the exhibit.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. PCAOB-2003-03)

[Date]

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

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

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

On April 23, 2003, the Board adopted a registration system for public accounting firms. The proposed registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300), plus definitions that would appear in Rule 1001, and a form (PCAOB Form 1).

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

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any

comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

(a) Purpose

Section 102 of the Act prohibits accounting firms that are not registered with the Board from preparing or issuing audit reports on issuers, as that term is defined in the Act and the Board's rules, or from participating in these activities. The Act provides that firms must register during the 180-day period following the Commission's determination that the Board has the capacity to carry out the requirements of Title I of the Act and to enforce compliance therewith. [1/] The Commission made this determination on April 25, 2003. In order to permit public accounting firms to comply with this requirement, the Board has adopted proposed rules to implement a registration system. The registration system consists of eight rules (PCAOB Rules 2100 through 2105, and 2300), plus definitions that would appear in Rule 1001, and a form (PCAOB Form 1). Each of the rules and each part of the form are discussed below.

[1/] See Sections 101(d) and 102(a) of the Act.

Rule 1001 – Definitions of Terms Employed in Rules

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

Accountant

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

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

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

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

[5/] The definitions in proposed Rule 1001 are marked with a letter and a Roman numeral. The letter matches the first letter of the word or phrase being defined and the Roman numeral serves to distinguish the definition from other

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

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

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defined words or phrases beginning with the same letter. This system has been adopted so that the definitions within Rule 1001 will remain in rough alphabetical order.

certified public accountants often participate in the preparation or issuance of audit reports. In addition, at least one non-U.S. commenter suggested that the proposed definition's use of the term "undergraduate degree" would not be meaningful as applied to non-U.S. accountants. Accordingly, at this commenter's suggestion, the Board has decided to change this part of the definition to refer to a "college, university, or higher professional degree."

Associated Entity

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

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

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

is narrower than the Commission's interpretation of the term, in some contexts, and does not seem more definite than the SEC's interpretation.

Audit

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

Audit Report

Rule 1001(a)(vi) defines "audit report" to mean "a document or other record (1) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report or other document; or (ii) asserts no such opinion can be

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

expressed." The Board has adopted the same meaning for audit as used in Section 2(a)(4) of the Act.

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

Audit Services

Rule 1001(a)(vii)(1) defines "audit services" as "professional services rendered for the audit of an issuer's annual financial statements and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports." This definition of "audit services" is intended to capture the same category of services for which fees were required to be disclosed as "audit fees" pursuant to the Commission's 2000 proxy disclosure rules.[8/]

Several commenters suggested that the Board change the definition of "audit services" to conform to the category of fees disclosed as "audit fees" under the SEC's recently revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. As noted below in the discussion of Part II of the Form, the Board has decided not to change this definition at this time.

[8/] 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).

However, the Board has decided to add paragraph (2) to this rule, which provides that, effective after December 15, 2003, the term "audit services" will mean "professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years." This definition in paragraph (2) is intended to conform to the category of fees disclosed as "audit fees" under the SEC's recently revised auditor independence rules.

Foreign Public Accounting Firm

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

Issuer

Rule 1001(i)(iii) defines the term "issuer" to include any public company, regardless of the jurisdiction of its organization or operation, that is required to file reports with the Commission or that has filed a registration statement for a

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

public offering of securities. This definition is the same as the definition of the term "issuer" in Section 2(a)(7) of the Act.

Non-Audit Services

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

Other Accounting Services

Rule 1001(o)(i)(1) defines "other accounting services" as services that are normally provided by the public accounting firm that audits the issuer's financial statements in connection with statutory and regulatory filings or engagements and assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than "audit services." The Board has modeled its definition of "other accounting services" on concepts used in the Commission's recent revision of its auditor

independence disclosure rules.[10/] The term is meant to capture two categories of services: (1) services the fees for which are to be disclosed as "audit fees" under the Commission's revised rules, but that were not previously disclosed as "audit fees," and (2) services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised rules.

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

The term is also meant to capture services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised auditor

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

[11/] Id. At 39.

[12/] Id.

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

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

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

[14/] See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), as amended by Release No. 33-8183A (March 26, 2003), 40.

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

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

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

Rule 1001(p)(ii) defines the phrase "play a substantial role in the preparation or furnishing of an audit report" to mean "(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its

audit report with respect to any issuer, or (2) to perform the majority of audit procedures with respect to a subsidiary or component of any issuer the assets or revenues of which constitute 20 percent or more of the consolidated assets or revenues of such issuer necessary for the principal accountant to issue an audit report" on the issuer.

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

The second prong of this definition is based on a similar standard used in the Commission's auditor independence rules related to partner rotation.[17/] As

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

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

[17/] The Commission's adopting release provides that "the lead partner on subsidiaries of issuers whose assets or revenues constitute 20% or more of the consolidated assets or revenues are included within the definition of 'audit partner.'" See Commission Final Rule: Strengthening the Commission's

Note 2 to the rule indicates, the phrase "subsidiary or component" is meant to include any subsidiary, division, branch, office or other component of an issuer, regardless of its form of organization and/or control relationship with the issuer.

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

Commenters raised several concerns about this proposed definition. One commenter expressed concern that the use of the phrase "material services" in the first prong could be read to include non-audit services, such as internal audit services, provided to non-audit clients when those services are relied upon by an auditor in issuing its audit report. Several accounting firms indicated that the first prong of the proposed definition would be difficult for non-affiliated foreign public accounting firms to comply with, since they would need access to the total engagement hours and fees, and therefore favored elimination of the first prong. Other commenters, however, raised concerns that the second prong of the

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Requirements Regarding Auditor Independence, Release No. 33-8183, 22 (January 28, 2003), as amended by Release No. 33-8183A (March 26, 2003).

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

definition might capture firms that perform relatively minor services such as routine observations of inventory test counts for a subsidiary or component of an issuer the assets or revenues of which constitute 20 percent or more of the consolidated assets or revenues of the issuer. Finally, commenters raised practical concerns about when and how the assets and revenues tests of the second prong of the definition should be administered.

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

Public Accounting Firm

Rule 1001(p)(iii) defines "public accounting firm" to mean a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of

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

State

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

Tax Services

Rule 1001(t)(i) defines "tax services" as "professional services rendered for tax compliance, tax advice, and tax planning." This definition is based on, and meant to include the same group of services the fees for which would be disclosed as "tax fees" under the Commission's recently revised auditor independence disclosure rules."[19/] More specifically, as set forth in the

[19/] See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January

Commission's adopting release, "tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment planning-services" and "[t]ax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities."[20/] This definition is discussed further below in connection with the discussion of Part II of the Form.

Rule 2100 – Registration Requirements for Public Accounting Firms

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

By introducing the "substantial role" test (defined through the quantitative test in Rule 1001(p)(ii) as described above), the rule clarifies the phrase "participate in the preparation or issuance of, any audit report with respect to any issuer" used in Section 102(a) of the Act. In so doing, the Board intends to create a bright-line test to make it easier for firms and others to determine which

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28, 2003), as amended by Release No. 33-8183A (March 26, 2003), 40 (footnotes omitted).

[20/] Id.

firms are required to register with the Board. Stated differently, a firm that does not prepare or issue audit reports with respect to any issuer, but that does "participate" in the preparation of such reports, is only required to register if that participation amounts to a "substantial role," as defined in Rule 1001(p)(ii).

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

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

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

Under the Act, the 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. Since this determination was made on April 25, 2003, the rule will specify that domestic public accounting firms that wish to participate in or contribute to the preparation of audit reports must register by October 22, 2003. The Board has also decided to allow foreign public accounting firms an additional 180 days to register. Accordingly, the rule will provide that the mandatory registration date for these firms is April 19, 2004.

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

Rule 2101 – Application for Registration

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

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

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

Rule 2102 – Date of Receipt

Rule 2102 defines the date of receipt of an application for registration as, unless the Board directs otherwise, the later of (a) the date on which the registration fee has been paid, or (b) the date on which the application is submitted to the Board through its Web-based registration system. Although the

Board had initially planned to have its registration system scan applications for completeness before accepting them, this step has been eliminated for administrative reasons. Applications will not be deemed received, however, until the required registration fee has been paid.

Rule 2103 – Registration Fee

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

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

Rule 2104 – Signatures

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

Rule 2105 – Conflicting Non-U.S. Laws

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

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

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

decided to allow applicants to withhold such information from an application for registration.

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

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

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

Rule 2106 – Action on Applications for Registration

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

Specifically, Rule 2106(a) provides that after reviewing the application for registration, and any additional information provided by the applicant or obtained by the Board, the Board will determine whether to approve the application. The Board will approve an application for registration if it determines that registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. If the Board is unable

to determine that this standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings, to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval and may, at the applicant's election, be treated as a written notice of disapproval for purposes of Section 102(c) of the Act.

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

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

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

received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.

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

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[27/] See Section 102(c) of the Act.

a sole proprietor might not warrant disapproval of the application of a large public accounting firm if the accountant was one of many employees of the firm, however. Accordingly, the Board has determined to retain the current standard and make an evaluation based on the facts and circumstances of whether each application meets the criteria in Rule 2106(a).

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

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

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

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

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

Rule 2300(c)(2) requires that confidential treatment requests contain a detailed explanation of the reasons that, based on the facts and circumstances of the particular case, the information for which confidentiality is sought meets the requirements in Rule 2300(b). Rule 2300(f) states that unless the applicant seeking confidential treatment consents otherwise, confidential treatment requests themselves will be afforded confidential treatment without the need for a

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

request for confidential treatment. Rule 2300(d) provides that pending a determination by the Board as to whether to grant the request for confidential treatment, the information in question will not be made available to the public. Rule 2300(e) states that if the Board determines to deny a request, the applicant requesting confidential treatment will be notified of the Board's decision in writing and of the date on which the information in question will be made public.

Under Rule 2300(g), the information as to which the Board grants confidential treatment under Rule 2300 will not be made public. The Board anticipates that a notation in the application that is made publicly available will appear in the place of the information for which confidential treatment was granted. However, the granting of confidential treatment will not limit the Board's ability to provide this information to the Commission or to comply with any subpoena issued by a court or other body of competent jurisdiction, nor will it prevent the Board from making use of this information in connection with the execution of its responsibilities under the Act. For example, the information may be used in the Board's inspection program and investigations, as well as in any resulting proceedings, subject to the applicant's right to seek a protective order in such a proceeding. In the event the Board receives a subpoena, the Board will notify the applicant of such subpoena to allow the applicant an opportunity to object to the subpoena. Finally, Rule 2300(h) delegates the Board's functions under this Rule to the Director of Registration and Inspection.

Commenters made several suggestions to improve the Board's proposed confidentiality rule. One commenter suggested the Board delegate the function

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

Form 1

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

Form 1 consists of general instructions and nine parts, subdivided into various items requiring the disclosure of particular information concerning the

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

General Instructions

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

Many non-U.S. commenters suggested that the disclosure of certain information required by the Form, as originally proposed, would violate non-U.S. laws, particularly related to confidentiality, data protection and privacy. In response to these comments, the Board added General Instruction 7, which allows an applicant to withhold information from its application where disclosure of the information would cause the applicant to violate non-U.S. laws. General Instruction 7 specifies that an applicant claiming that submitting information would cause it to violate non-U.S. laws must so indicate by making a notation under the relevant item number of the Web-based form, and furnish as exhibits – (i) a copy of the relevant portion of the conflicting non-U.S. law, (ii) a legal opinion

supporting the applicant's position, and (iii) an explanation of the applicant's efforts to seek consents or waivers, if applicable, and a representation that the applicant was unable to obtain such consents to eliminate the conflict.

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

Part I – Identity of the Applicant

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

In Item 1.1, applicants are required to state the legal name of the applicant and, if different, the name or names under which the applicant currently, or in the

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

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

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

organized as a legal entity will apply as a "proprietorship." Likewise, groups of natural persons practicing accounting that are not organized as another legal entity should apply as a "partnership," whether a partnership has been legally formed or not.

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

One commenter suggested that Item 1.5 be limited to offices that issue audit reports, as that term is defined in the Act and the Board's rules. In addition, several commenters suggested that Item 1.6 be limited to only associated entities that issue audit reports or that the term "associated entities" be defined differently or limited to entities within one particular country. After considering these comments, the Board has decided to leave these Items as proposed. The Board chose the term "associated entities" to capture certain entities that are related to the applicant, but that are not necessarily in a control relationship with the applicant. The term is presumably one public accounting firms are familiar with because of its use in the Commission's auditor independence rules. The

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

instruction makes clear that individual accountants associated with the applicant should not be listed in responding to this Item. The Board believes that obtaining information on all the applicant's offices and those associated entities of the applicant that engage in the practice of public accounting or preparing or issuing audit reports, or comparable reports prepared for clients that are not issuers, strikes the appropriate balance between the Board's need for information about the applicant's operations and the need to avoid overburdening applicants for registration.

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

As proposed, Item 1.8 would have required applicants to state if the firm and all individual accountants associated with the firm who participate in or contribute to the preparation of audit reports have all required licenses and certifications. This Item was intended to ensure that public accounting firms applying for registration have the requisite governmental and professional licenses and certifications to audit issuers. Although one commenter supported and suggested expanding this Item, a number of both large and small public accounting firms suggested that, for various reasons, they could not affirmatively

answer this question despite their good faith efforts to ensure that the firm and all its associated accountants maintained all required licenses. In light of these concerns, and because information on the applicant's and its associated accountants' licenses or certifications is still required through Items 1.7 and 7.1, the Board has decided to eliminate Item 1.8.

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

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

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

To capture different time periods, these disclosures are divided into three items. Item 2.1 covers issuers for which the applicant prepared or issued any

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

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

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

Commenters expressed a number of practical concerns about compiling the necessary information to respond to Part II of the Form as proposed. In particular, a number of commenters suggested that the fee disclosures track the

categories used in the SEC's revised auditor independence disclosure rules and pointed out that a number of issuers that will be required to disclose fees in those categories have not previously been required to publicly report these fees.

In response to these comments, the Board has modified the definitions of "audit services," "other accounting services," and "non-audit services" to make clear that, once the revised SEC rules are effective, the Board intends to use these categories for the fee disclosures required by Part II of the Form.

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

Specifically, until December 15, 2003, the term "audit services" will be defined to mean the same category of services for which fees are required to be disclosed as "audit fees" pursuant to the Commission's 2000 proxy disclosure rules.[32/] Section 102(b)(2)(B) of the Act specifically requires applicants to disclose fees for "other accounting services," which are not required to be

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

disclosed under the existing proxy disclosure rules. Accordingly, the Board has defined "other accounting services" by reference to concepts from the SEC's revised auditor independence disclosure rules. As explained in greater detail above in connection with the discussion of the definition of "other accounting services," until December 15, 2003, this term will include two categories of services: 1) services the fees for which are to be disclosed as "audit fees" under the Commission's revised rules, but that were not previously disclosed as "audit fees," and 2) services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised rules.

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

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

category of services the fees for which are disclosed as "all other fees" under the Commission's revised auditor independence rules.

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

In response to other comments received, the Board has simplified and clarified Part II of the Form in several other respects. First, the Board has eliminated the requirement to provide the issuer's standard industry code ("SIC"). Second, the Board has slightly modified the wording of Items 2.1 through 2.3 to make clear that the disclosure requirements pertain to audit reports *dated* during the relevant time period. Third, the Board has added language to the Notes to

Items 2.2 and 2.3 to further clarify when applicants can "expect to prepare or issue" an audit report for an issuer. Specifically, those Notes now provide that an applicant may presume that it is expected to prepare or issue an audit report for an issuer (i) if it has been engaged to do so, or (ii) if it issued an audit report during the preceding calendar year for an issuer, absent an indication from the issuer that it no longer intends to engage the applicant.

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

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

Part III – Applicant's Financial Information

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

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

Part IV – Statement of Applicant's Quality Control Policies

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

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

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

Part V – Listing of Certain Proceedings Involving the Applicant

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

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

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

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

against the applicant or person during the previous five years) in three types of proceedings:

1. any pending criminal proceeding;

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

3. any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer.

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

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

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

provide basic information about the proceeding, the parties, the allegations, and the proceeding's outcome.

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

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

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

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

To clarify an issue raised by a few commenters, an applicant is only required to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in such issuers' Commission filings. Therefore, if an issuer did not disclose a disagreement in a Commission filing or if such disclosure is not required by a Commission filing,[36/] the applicant of that issuer audit client need not disclose such disagreement in Form 1.

Several commenters suggested that the Board obtain information required by Part VI from the Commission's Edgar system or require applicants to provide only a hyperlink to or a Central Index Key ("CIK") number for a particular filing, as opposed to providing copies of the actual filings. While the Board recognizes that the information requested in this Item is or will be publicly available through Edgar, Section 101(b)(2)(G) of the Act specifically requires that an applicant submit "as part of its application for registration * * * copies of periodic or annual

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

disclosure filed by an issuer with the Commission * * * ." Moreover, this information is not organized by the public accounting firms involved in the disclosed disagreements in the Commission's Edgar system.

Part VII – Roster of Associated Accountants

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

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

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

Many commenters indicated that the disclosure required by Items 7.1 and 7.2, as originally proposed, was administratively burdensome and suggested that

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

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

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

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

Part VIII – Consents of Applicant

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

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

Further, to accommodate privacy restrictions related to employment in certain non-U.S. jurisdictions, the Board has added Note 3 to this Item, which

narrows the scope of "associated persons" from whom non-U.S. applicants are required to secure consents. As revised, for non-U.S. applicants, the term "associated persons" as used in this item covers only those accountants who are partners or managers and who provided at least 10 hours of audit services for any issuer during the last calendar year.

In addition, some commenters noted that Part VIII, as originally proposed, did not specify the language to be used in the consents that the applicant is required to secure from its associated persons. In response to this comment, the Board has added Note 2 to this item, which sets forth the exact language to be used in the associated persons' consents. Moreover, in response to the suggestion that the Board extend the 45-day deadline for securing consents from associated persons in order to ease the administrative burden for larger firms, the Board has clarified that applicants must secure such consents not later than 45 days after submitting their applications. In other words, an applicant does not have to wait until its application is submitted to the Board to secure such consents, but can begin obtaining these consents as soon as possible. Further, many commenters objected to the blanket consent used in Part VIII and suggested that the Board amend its proposal to include a reservation in the consent form, to only require applicants to use their best efforts to secure the associated person consents, to clarify that the consent would only apply prospectively to independent contractors, and/or to limit the consents to cover only reasonable, and not simply any, requests by the Board. Section 102(b)(3) of

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

Part IX – Signature of Applicant

Part IX requires an authorized partner or officer of the applicant to sign the application in accordance with Rule 2104 and to certify the application's

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

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

completeness and accuracy. Incomplete and inaccurate applications are subject to possible disapproval under Rule 2106(b)(2).

Part X – Exhibits

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

(b) Statutory Basis

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

B. Board's Statement on Burden on Competition

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

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

Several commenters suggested that requiring foreign public accounting firms to register with the Board could discourage smaller foreign public accounting firms, and foreign public accounting firms that are not affiliated with large international networks of firms, from auditing issuers. The Board has given careful consideration to the impact of its registration rules on non-U.S. firms and has taken a number of steps to minimize any such effect. In particular, as described in Section II.A above, the Board has crafted certain changes to its original proposal to minimize, where permissible under the statute and consistent with the Board's responsibilities, the burdens on foreign public accounting firms applying for registration. Given these modifications, the Board believes that the

cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms,[40/] and therefore would not have a significant impact on competition. Moreover, the Board believes that the 180-day deferral of registration for non-U.S. firms should also minimize the administrative burden for smaller non-U.S. firms, also diminishing any anti-competitive effect.

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

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

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

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

The Board has carefully considered all comments it has received. In response to the written comments received and remarks made at the roundtable, the Board has clarified and modified certain aspects of its proposed rules and form instructions. The changes made to the proposed rules and form instructions in response to these comments are summarized in Section II.A.a. above.

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

Some commenters expressed concerns about registration of non-U.S. public accounting firms, including that the Board's registration of non-U.S. public accounting firms (1) would be duplicative of existing or planned home-country auditor oversight programs, (2) would require information, the disclosure of which would violate foreign laws on confidentiality, data protection and privacy, (3) would require information that does not have clear equivalents in non-U.S.

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

jurisdictions, (4) would require accumulation of information not already compiled and not readily available, and (5) would lessen competition among public accounting firms by discouraging some firms from registering.

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

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

Furthermore, in light of concerns with respect to conflicts with confidentiality, data protection, and privacy laws, the Board has eliminated or

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

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

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

those used in the Commission's recently revised auditor independence disclosure rules, with which foreign private issuers will be required to comply for periodic annual reports filed after December 15, 2003.

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

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

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

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

common programmatic interest, such as annual reporting, inspection, and discipline.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents the Commission will:

(a) by order approve such proposed rules; or

(b) institute proceedings to determine whether the proposed rules should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the

Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB-2003-03 and should be submitted within [ ] days.

By the Commission.

Secretary

PCAOB

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

1666 K Street NW, 9th Floor
Washington, DC 20006
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PROPOSAL OF REGISTRATION SYSTEM FOR PUBLIC ACCOUNTING FIRMS	PCAOB Release No. 2003-1 March 7, 2003
ANNOUNCEMENT OF ROUNDTABLE ON THE REGULATION OF REGISTERED FOREIGN PUBLIC ACCOUNTING FIRMS	PCAOB Rulemaking Docket Matter No. 001

Summary: The Public Company Accounting Oversight Board ("Board" or "PCAOB") has proposed a registration system for public accounting firms. All public accounting firms must register with the Board if they wish to prepare or issue audit reports on U.S. public companies, or to play a substantial role in the preparation or issuance of such reports, after the 180-day period following the determination of the Securities and Exchange Commission ("Commission") that the Board has the capacity to carry out the requirements of the Sarbanes-Oxley Act of 2002 ("Act"). The proposed registration system consists of nine rules (PCAOB Rules 1000, 1001, 2100 through 2105, and 2300) and a form (PCAOB Form 1). The Board is seeking comment on its proposed rules by March 31, 2003. The Board will then consider the comments, modify its proposal as it deems appropriate, and submit the proposal to the Commission for its approval pursuant to Section 107 of the Act. The Board's registration rules and form will not take effect unless and until approved by the Commission.

The proposed registration rules do not contain an exemption for non-U.S. public accounting firms. The Board recognizes that the registration of non-U.S. firms will raise special issues. Accordingly, the Board has also

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 or through the Board's website at 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) or Phoebe Brown, Special Counsel to Board Member Goelzer (202/207-9073; 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.[1/] 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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[1/] See Sections 101(d) and 102(a) of the Act. This determination must be made not later than April 26, 2003.

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.[2/] 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.[3/] 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.[4/]

[2/] Rule 2100(a).

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

[4/] 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

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.[5/] 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,[6/] 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.[7/]

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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.

[5/] Rule 2100(b).

[6/] Rule 1001(o).

[7/] 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.

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.[8/] 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.[9/] 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.[10/]

[8/] Rule 2101. Exhibits to Form 1 must also be submitted electronically.

[9/] 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.

[10/] 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

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"[11/] 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.[12/]

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.

[11/] 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.

[12/] Rule 2300(b).

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.[13/] 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.[14/] 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.[15/] 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.[16/] 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.

[13/] Rule 2300(c).

[14/] 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.

[15/] Rule 2300(e).

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

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.[17/]

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.[18/] 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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[17/] Rule 2105.

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

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.[19/]

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.[20/]

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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[19/] 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.

[20/] 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.

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.[21/]

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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[21/] Rule 2100(a).

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.[22/]

- 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.[23/]

- 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.[24/]

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

[23/] 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.

[24/] See AICPA SEC Practice Section Manual ("SECPS") § 1000.08(n).

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."[25/]

- 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.[26/]

- 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.

[25/] SECPS § 1000.45, App. K.01(b).

[26/] Id. at App. K.01(a).

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

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 or through the Board's website at 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

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PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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.

(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.

(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.

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.

(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

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

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.

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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

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.

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.

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.

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.

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

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:

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).

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.

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.

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.

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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.[1/] Other definitions are based on those used in the Commission's rules.

[1/] 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.[2/] 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.[3/] 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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[2/] 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 * * *."

[3/] 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).

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.[4/]

[4/] 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.

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

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.[5/]

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.[6/]

[5/] 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).

[6/] 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."

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

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.[8/] 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."[9/]

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.[10/] In general, these are fees for "assurance and related services (e.g. due diligence services) that

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[8/] Id. At 39.

[9/] Id.

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

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 statue or regulation and consultation concerning financial accounting and reporting standards."[11/]

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.

[11/] See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 20003), 40.

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.[12/] 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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[12/] 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."

Commission's auditor independence rules related to partner rotation.[13/] 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.[14/]

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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[13/] 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.

[14/] 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.").

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."[15/] More specifically, as set forth in the Commission's adopting release, "tax compliance

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

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."[16/]

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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[16/] Id.

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,[17/] 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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[17/] See Rule 1001(o).

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

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,[18/] 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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[18/] 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).

tracks the Commission's requirement on signatures for electronic filings in Regulation S-T.[19/]

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

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.

In order to prevent the disclosure of confidential information,[20/] 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.[21/]

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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[20/] 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."

[21/] 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.

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

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

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.[22/] 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.

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

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

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.

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

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.[23/] 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.

[23/] See AICPA Statement on Auditing Standards ("SAS") No. 25; AU §161; see also Statements on Quality Control Standards ("SQCS") No. 2.

PCAOB

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

PCAOB Release No. 2003-1
Appendix 3 – Section-by-Section Analysis
of Proposed Registration Rules and Form 1
March 7, 2003
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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

registration under the federal securities laws,[24/] 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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[24/] See Securities Exchange Act of 1934, Section 15(b)(4)(B), 15 U.S.C. 78o(b)(4)(B).

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

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

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.

Exhibit 2(a)

Tab Number	Comment Source
1	American Bar Association, April 8, 2003
2	American Institute of Certified Public Accountants, March 31, 2003
3	ASSIREVI, April 17, 2003
4	Australian Treasury, March 28, 2003
5	BDO International B.V., March 31, 2003
6	BSC Securities, L.C., March 31, 2003
7	Canadian Public Accountability Board, March 28, 2003
8	Compagnie Nationale des Commissaires aux Comptes, March 28, 2003
9	Commission des Opérations de Bourse, March 28, 2003
10	Commissione Nazionale per le Società e la Borsa, March 27, 2003
11	Crowe Chizek, March 25, 2003
12	Deloitte & Touche, March 31, 2003
13	Department of Trade and Industry, March 28, 2003
14	Department of Trade and Industry, April 13, 2003
15	Ernst & Young, March 31, 2003
16	European Commission, April 2, 2003
17	European Commission, April 11, 2003
18	Fédération des Experts, Comptables Européens, March 31, 2003
19	Financial Services Agency, Government of Japan, March 28, 2003
20	Financial Services Agency, Government of Japan, March 31, 2003
21	Grant Thornton International, March 31, 2003
22	Henjes, Conner, Williams & Grimsley, LLP, March 30, 2003
23	The Institute of Chartered Accountants in England & Wales, March 31, 2003
24	The Institute of Chartered Accountants in England & Wales, April 7, 2003
25	The Japanese Institute of Certified Public Accountants, March 31, 2003
26	KPMG, LLP, March 28, 2003
27	The Leading Edge Alliance, March 31, 2003
28	Linklaters, March 31, 2003
29	Mazars & Guérard, March 31, 2003
30	McGladrey & Pullen, LLP, March 31, 2003
31	Mohler, Nixon & Williams, March 18, 2003
32	Moss Adams LLP, March 31, 2003
33	National Association of State Boards of Accountancy, March 27, 2003
34	NIVRA – Koninklijk Nederlands Instituut van Registeraccountants, March 27, 2003
35	O'Brien, Patrick J., CPA, March 13, 2003
36	OECD (Organisation for Economic Co-operation and Development), April 29, 2003
37	PKF, March 17, 2003
38	PricewaterhouseCoopers, March 31, 2003

39	Radin, Glass & Co., LLP, April 3, 2003
40	RSM International, March 31, 2003
41	RSM Salustro Reydel, March 31, 2003
42	Spence, Marston, Bunch, Morris & Co., March 31, 2003
43	The State of Wisconsin Investment Board, March 31, 2003
44	Swiss Institute of Certified Accountants and Tax Consultants, March 27, 2003
45	United States Senate, Committee on Governmental Affairs, Permanent Subcommittee on Investigations, Senator Carl Levin, Author, March 21, 2003
46	Wirschaftsprüferkammer and the Institute der Wirtschaftsprüfer, March 31, 2003

Defending Liberty Pursuing Justice

ABA

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April 4, 2003

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

Re: PCAOB Rulemaking Docket Matter No. 001

Dear Sir or Madam:

This letter is submitted on behalf of the Committee on Law and Accounting of the American Bar Association's Section of Business Law (the "Committee") in response to the request by the Public Company Accounting Oversight Board (the "Board") for written comments on its proposed registration system for public accounting firms (the "Proposal"). The Board issued the Proposal in response to Section 102(a) of the Sarbanes-Oxley Act of 2002 (the "Act"), which states that public accounting firms must register with the Board within 180 days of the date on which the Securities and Exchange Commission (the "Commission") determines that the Board is capable of fulfilling its responsibilities under the Act.

The comments expressed in this letter represent the views of the Committee only and have not been approved by the American Bar Association's House of Delegates or Board of Governors and therefore do not represent the official position of the Association. In addition, this letter does not represent the official position of the ABA Section of Business Law, nor does it necessarily reflect the views of all members of the Committee.

Various members of our Committees represent public accounting firms, and some members represented clients in connection with the legislative activity that led to the Act. In preparing this comment letter, we have directed our comments to issues on which we have professional expertise.

I. General Comments

Section 102(b) of the Act establishes a series of specific requirements for the contents of registration forms that public accounting firms will be required to file with the Board. Within this framework, however, the Board has considerable discretion to specify the level of detail required in registration forms filed by public accounting firms.

The Committee supports the establishment of a registration system and believes that the Board's registration system should be designed to ensure that accounting firms - whether within or outside the United States - that audit SEC-registered issuers are both equipped to provide audit services and subject to effective Board oversight. At the same time, the Committee urges the Board to minimize the burdens imposed on accounting firms under the registration process and to recognize that accounting firms located outside the United States may face unique challenges in complying the Board's proposals.

We set forth below our comments with respect to specific aspects of the Board's proposed registration system.

II. Specific Observations

A. Standard for Approving Registration

The Board's proposed registration system consists of nine rules and a new Form 1. Under proposed Rule 2105(a), the Board will determine whether approval of an 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."

While the Committee believes that this is an appropriate standard, it is also quite open-ended. Insofar as the consequences to an SEC registrant would be quite significant if the Board were to decline to register its accounting firm, or another firm that had played a "significant role" in its annual audit, we urge the Board to provide additional guidance as to the types of factors that might lead the Board to exercise its discretion and decline to approve a registration application.

B. Withdrawal of Applications

Although proposed Rule 2105 establishes a timetable pursuant to which the Board would act on a registration application, it does not set forth procedures for an applicant to withdraw a pending registration application. There are circumstances, however, in which a public accounting firm might desire to withdraw or defer its application to register with the Board. For example, subsequent to the filing of an application with the Board, but prior to the Board's acting on the application, a firm might cease to audit or play a significant role in the audit of any SEC registrants. Another example of a situation where a firm might seek to withdraw its registration application might occur if the Board were to advise the applicant that it was not prepared to extend confidential treatment to portions of the firm's application pursuant to proposed Rule 2300.

While the Committee believes that the proposed rules would allow the Board to permit a public accounting firm to withdraw a pending registration application, we recommend that the rules expressly establish a procedure for a firm to notify the Board that it is withdrawing a pending application prior to Board action on the application.

C. Fee Disclosures

Parts II and III of Form 1 require applicants to provide a considerable amount of fee-related information to the Board, both with respect to each SEC-registered audit client (an "Issuer") and generally.

The proposed fee disclosures relating to specific Issuers are set forth in proposed Part II of Form 1. This section of the Form would require the disclosure of fees received by a public accounting firm from each Issuer during both the preceding and current calendar year for audit services, other accounting services, tax services and all other non-audit services. Each of the terms "audit services," "other accounting services" and "tax services" is defined in the Board's proposed rules. These definitions are similar to, but vary in important respects from, the fee disclosure categories contained in the Commission's recently amended auditor independence rules, which govern the disclosures required in proxy statements or annual reports filed by Issuers with the Commission.[1]

In particular, the Board stated that its proposed 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" (emphasis added). The Board proposes to define "other accounting services," in turn, to capture "two categories of services: 1) services the fees for which are to be disclosed as 'audit fees' under the Commission's revised rules, but that were not previously disclosed as 'audit fees,' and 2) services the fees for which are to be disclosed as 'audit-related fees' under the Commission's revised rules." As a result, the Board's proposed definitions of fees for "audit services" and "other accounting services" would differ from the Commission's definitions of "audit fees" and "audit related fees," as amended earlier this year.

It is unclear whether these differences were intentional or inadvertent. For example, the Board's release states that "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." This language suggests that the Board intended to model its fee disclosure categories after those contained in the Commission's revised rules. As noted, however, the actual fee disclosure categories proposed by the Board differ in various respects from the Commission's revised definitions.

Absent clarification, registered public accounting firms would have to track fees for services rendered to Issuers separately for purposes of (1) registration with (and, presumably, periodic reporting to) the Board and (2) providing information to Issuers for inclusion in their

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[1] Strengthening the Commission's Requirements Regarding Auditor Independence, Exchange Act Release No. 34-47265 (Jan. 28, 2003) (to be codified at 17 C.F.R. pts. 210, 240, 249, 275).

proxy statements filed with the Commission. In our view, such separate categories are not required under the Act and would impose an unnecessary burden on public accounting firms. Accordingly, we recommend that the Board revise its proposed fee disclosure categories to parallel those set forth in the Commission's revised independence rules.

In addition, Part III of proposed Form 1 would require accounting firms seeking to register with the Board to state their total revenues, whether or not derived from services rendered to Issuers, in the most recently completed fiscal year for audit services, other accounting services, tax services and all other non-audit services. As noted above, the Board's definitions of the various service categories differ from the definitions set forth in the SEC's current independence requirements. Moreover, some firms may be unable or find it quite burdensome to furnish such information to the Board for prior fiscal periods, particularly with respect to services rendered to clients that are not Issuers. Accordingly, while the Board might require firms that can readily assemble such data to include it in their registration applications (subject, of course, to Board procedures for requesting confidential treatment of proprietary information), we believe that the Board should also allow firms to report such data using alternative revenue categories, so long as they provide an explanation of the differences between the revenue categories that they are using and the Board's categories in their applications.

D. Issues Affecting Foreign Accounting Firms

Firms located outside the United States, however, may face unique challenges in complying the Board's registration requirements, particularly where they conflict with obligations or restrictions imposed on the firms under the laws of foreign jurisdictions. The Board's release indicates that the Board is sensitive to such considerations, and we support the Board's decision to convene a roundtable meeting on March 31, 2003 to obtain additional information regarding the impact of Board registration and oversight on foreign public accounting firms. We urge the Board to give careful consideration to comments received during the roundtable session and have identified below some of the issues that we believe merit additional consideration.

Registration of Foreign Accounting Firms that Do Not Issue or Prepare Audit Reports on Issuers. The Board proposes to exercise its discretion under the Act to require the registration not only of foreign accounting firms that issue or prepare audit reports on Issuers, but also those non-U.S. firms that play a "substantial role" in the preparation or furnishing of such reports with respect to Issuers. Proposed Board Rule 1001(n) would establish two quantitative tests for determining whether a firm had played a "substantial role" in the preparation or furnishing of an audit report.

While foreign accountants that participate in the audit of U.S. public companies may already be subject to various U.S. requirements, the Board has proposed, for the first time, that foreign accounting firms register with a single U.S. regulator, as condition to preparing, issuing or playing a substantial role in the preparation or issuance of audit reports on Issuers. As a practical matter, we believe that the Board should consider deferring any requirement for foreign accounting firms that do not themselves issue or prepare audit reports for Issuers to register with the Board, until it has gained experience administering the Act's registration, periodic reporting

and oversight requirements with respect to those foreign accounting firms that must register under the Act. Deferring the registration of such other firms at the present time would allow the Board to "fine tune" its requirements before extending them to a broader universe of foreign accounting firms, but would not prevent the Board from requiring such firms to register, or comply with other Board requirements, at a later date. Moreover, it would allow the Board to focus its resources at this early stage of its operations on those accounting firms that play a more significant role in the audits of Issuers.

Listings of Disciplinary Proceedings. Part V of Form 1 would require public accounting firms to disclose information relating to prior or pending criminal, civil governmental, private civil or administrative and disciplinary actions against the firms or their "associated persons" that involve conduct in connection with an audit report. While the primary focus on only audit-related proceedings is consistent with Section 102(b)(2)(F) of the Act, compliance with the Board's proposed requirements may pose special challenges for foreign public accounting firms.

For example, in some jurisdictions, a prior or pending administrative or disciplinary proceedings against an accounting firm or one of its employees may be considered confidential or non-public. In such situations, a required disclosure of the proceeding in a Board registration statement may contravene foreign law. We urge the Board to gather additional information regarding the likelihood of such conflicts before finalizing its registration requirements.

In other situations, the proposed disclosures would be difficult for foreign accounting firms subject to registration to interpret. In particular, proposed Item 5.5(a)(3) of Form 1 would require an applicant to disclose whether it, or any of its proprietors, partners, principals, shareholders or officers, had been a party to a case or proceeding, not otherwise disclosed pursuant to the Board's requirements, in which such person:

> 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 * * * involves the violation of section 152, 1241, 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.

To comply with this complex requirement, a foreign firm, at a minimum, would need to (1) familiarize itself with a host of U.S. statutory requirements, (2) attempt to identify all foreign laws that were "substantially equivalent" to the U.S. requirements, (3) determine whether either the firm or any of its "associated persons" had violated any of the foregoing laws over the past 10 years and (4) evaluate whether the disclosure of any such proceedings would implicate any privacy or confidentiality laws under the laws of non-U.S. jurisdictions. In our view, this would likely impose a significant burden on foreign accounting firms. Accordingly, we recommend that the Board provide a clearer explanation as to the types of non-U.S. legal proceedings that it believes should be disclosed in a foreign accounting firm's registration statement pursuant to Item 5.5.

Consents of Associated Persons. The Board has proposed in Part VIII of Form 1 that public accounting firms registering with the Board must both consent to cooperate in and comply with any request for testimony or the production of documents made by the Board pursuant to its statutory authority and responsibilities under the Act and agree to secure and enforce similar consents from each of its "associated persons" as a condition of his or her employment or other association with the firm.

This requirement is generally consistent with Section 102(b)(3) of the Act. We would urge the Board, however, to recognize that laws in some countries may limit the ability of accounting firms to obtain or enforce consents of their employees to cooperate with a request from a regulator in another country for testimony or documents. In particular, a requirement that an accounting firm condition an employee's initial or continued employment on his or her willingness to provide information to the Board may violate labor or employment laws in some jurisdictions.

* * *

We appreciate the Board's consideration of the Committee's comments. Members of the Committee would be pleased to meet with representatives of the Board to discuss our comments.

Respectfully submitted,

Thomas L. Riesenberg, Chair
Committee on Law & Accounting

Drafting Committee:
Anthony Costantini
David B. Hardison
Richard H. Rowe
Thomas L. Riesenberg

March 31, 2003

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

Re: PCAOB Rulemaking Docket Matter No. 001

Members and Staff of the Public Company Accounting Oversight Board:

The SEC Practice Section ("SECPS" or the "Section") of the American Institute of Certified Public Accountants ("AICPA") respectfully submits the following written comments on the Public Company Accounting Oversight Board's ("PCAOB" or the "Board") proposed rules regarding the registration system for public accounting firms. The AICPA is the largest professional association of certified public accountants in the United States, with more than 350,000 members in business, industry, public practice, government and education. The AICPA bylaws require, among other things, that all members that engage in the practice of public accounting with a firm auditing one or more SEC clients as defined by AICPA Council are required to be members of the SECPS. For more than twenty years, the Section has imposed various membership requirements to help assure that SEC registrants are audited by member firms with effective quality control systems. There are approximately 1,100 firms that are members of the SECPS, which consists of approximately 750 firms that audit registrants that file financial statements with the U.S. Securities and Exchange Commission (the "Commission") and approximately 350 firms that have joined voluntarily. All of the Section's member firms are U.S. domiciled accounting firms. Neither the AICPA nor the SECPS has the jurisdictional authority to require firms domiciled outside the U.S. to join as members.

With the enactment of the Sarbanes-Oxley Act of 2002 (the "Act"), SECPS member firms that audit issuers will be required to register with and follow the rules of the Board. The SECPS seeks to assist its member firms in fulfilling its responsibilities required under the Act. To that extent, the SECPS appreciates the opportunity to comment on the proposed rules of the Board's registration system. However, the SECPS considers it unfortunate that the timing and brevity of the comment period may not allow sufficient time for many of the Section's member firms to adequately comment on the proposed rules. The majority of the Section's member firms have been concurrently involved in reviewing their SEC clients' Forms 10-K, many of which have the same deadline as the Board's comment period on its proposed rules.

Overall, the SECPS supports the proposed rule regarding the PCAOB's registration system. However, we believe that the rule could be clarified and improved in several respects and offer general comments as well as more specific comments pertaining to the proposed rules of the Board and the proposed application form. Our comments are as follows:

GENERAL COMMENTS

Need for Flexibility in Initial Registration

Complying with the proposed reporting requirements will be challenging for member firms of the Section. Registering with the Board is a new undertaking for public accounting firms, few of which, if any, have previously sought to compile much of the information that would be required under the proposal. We believe it is consistent with the public interest and the Act for the Board to facilitate registration by adopting a system that is initially as flexible as possible, and transitions over time to more definitive requirements. During this transition period, applicants would be able to develop processes and procedures necessary to complete information in a more consistent format. Flexibility during the transition period is extremely important in light of the tight deadlines applicants will have to prepare their registration forms. Failure for firms to meet such tight and difficult deadlines would have catastrophic effects on firms and their public company clients.

Need to Consider Confidentiality and Privacy Issues

The Board's proposed rules would require applicants to provide the social security numbers of their accountants, as well as information about legal proceedings involving certain personnel. Applicants would also be required to disclose information about their clients and the fees billed for services provided to those clients. The Board should address these issues by stating clearly its view of its authority to require such disclosures or by otherwise tempering such requirements by only demanding such information "to the extent permitted by law." With respect to social security numbers, we suggest the Board require applicants use the accountant's CPA license number or some other numerical identifier in order to protect the individual's privacy.

Need to Establish Due Process Procedures

The Board's proposed rules, in certain areas, do not provide for due process procedures whereby a firm can challenge a ruling by the Board to not deny an application or to deny confidential treatment. We believe that the Board should establish formal, fair procedures for applicants to seek and obtain review of a disapproval decision.

SPECIFIC COMMENTS PERTAINING TO THE PROPOSED RULES OF THE BOARD

Rule 1001 - Definitions of Terms

- *Accountant* – For purposes of firm registration with the PCAOB, the definition of accountant appears overly broad. For example, it includes any accountant who possesses either an undergraduate or higher degree in accounting, regardless of whether such person provides audit or other professional services to an issuer audit client. We believe the definition should be limited to certified public accountants who have the authority to sign a firm's name to an audit opinion. This would limit the definition of "accountant" to audit partners, and prevent firms from having to supply information about hundreds or even thousands of individuals who, although licensed or certified, are not empowered to bind

the firm by signing an audit opinion. Additionally, it would prevent firms from having to continually update such listing because of frequent staff turnover. We understand the need to obtain information about accountants through the Board's inspection and discipline activities, and believe that registered firms should provide that information to the Board as needed, but consider the costs to outweigh the benefits in requiring this information in a firm's registration form.

If the Board retains the definition of "accountant" as currently drafted, the SECPS recommends that the Board clarify what is meant by "participate" in an audit in Rule 1001(a)(3)(ii). The language is vague and the Board should provide clear guidance to accounting firms.

- *Associated Entity* - In the Section-by-Section Analysis, the PCAOB indicates that the definition of associated entity is meant to give the same meaning as in the Commission's auditor independence rules. However, the term "associated entity" is not defined in either Regulation S-X or the Commission's independence rules. The Board should define the term without reference to the Commission's rules. The SECPS recommends that the term be defined as an entity domiciled inside or outside of the United States and its territories that is a member of or similarly connected with an international firm or association of firms with which the applicant holds itself out as being associated.

- *Audit Report* – The definition of "audit report", as drafted, broadly includes any "document or other record" that is "prepared following an audit…in which a public accounting firm…sets forth the opinion of that firm regarding a financial statement, report or other document." We believe that this definition will be confusing to applicants and should be refined to encompass only those audit reports that express an opinion on an issuer's financial statements, and are then made public.

- *Persons Associated with a Public Accounting Firm* – The term "persons associated with a public accounting firm" is overly broad, and we recommend that the PCAOB narrow and clarify the definition, as the SEC has done in analogous circumstances. The proposed definition covers any individual who is a proprietor, partner, shareholder, principal, accountant or professional employee of an accounting firm, as well as any independent contractor or entity that, in connection with the preparation or issuance of an audit report, shares in the firm's profits, receives compensation from the firm, or participates as an agent or otherwise on the firm's behalf in any activity. The Section-by-Section analysis states however 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." The definition of "persons associated with a public accounting firm" would be particularly burdensome for accounting firms in the context of Part V of proposed Form 1, which requires applicants to provide information about associated persons that are defendants or respondents in criminal actions, governmental and private civil actions, and administrative and disciplinary actions, involving conduct in connection with an audit report. It would also be onerous in the context of Part VIII of proposed Form 1, which would require

applicants to obtain, within 45 days of submitting an application for registration to the Board, signed consents from all of the applicant's associated persons.

We believe that the definition of "persons associated with a public accounting firm" should be narrowed and clarified. Accordingly, we urge the Board to specify that the term "persons associated with a public accounting firm" extend only to individual proprietors, shareholders, principals, accountants, professional employees, and independent contractors and entities, whose work for the accounting firm has some meaningful relationship to auditing, accounting and reporting issues that affect issuer financial statement preparation. With respect to independent contractors and entities, we suggest that a materiality standard be incorporated into the definition. Such a standard could be based on the relative contribution of the contractor to the overall audit effort in terms of hours or fees. In addition, we urge the Board to exercise its exemptive authority under Section 2(a)(9) of the Act to exempt persons that are "engaged only in ministerial tasks."

- *Plays a Substantial Role in the Preparation or Furnishing of an Audit Report* – The term should be clarified to establish that the phrase does not include non-audit services, including internal audit services, provided to non-audit clients. This could be achieved by limiting the "services" that are considered in calculating whether a firm has performed "material services" that an issuer's principal accountant "uses or relies on in issuing all or part of its audit report with respect to any issuer" to audit services only. In the absence of such clarification, any number of firms that have no relationship to the accounting profession could be subject to the Board's registration requirements. The "plays a substantial role" definition is also implicated by the Item 2.4 fee disclosure requirements.

  In addition, because of the provisions of the proposed rules, there appears to be an unintended consequence that would result in requiring firms to register with the Board that would otherwise have no intent or need to do so. For instance, firms that perform procedures such as routine observations of inventory test counts might be required to register with the Board because the inventory test counts were performed for a subsidiary or component of an issuer the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer. We encourage the Board to revisit this area so that such firms would not be required to register with the PCAOB.

  It is also unclear whether firms would have to register when they are performing work for a primary auditor and individually the firms do not meet the 20% materiality threshold in terms of engagement hours or fees, but exceed the threshold in the aggregate. The Section recommends that the materiality test should only be applied on a firm-by-firm basis.

Rule 2100 – Registration Requirements for Public Accounting Firms

The proposed rule imposes the requirement of registering with the Board on each public accounting firm that "prepares or issues any audit report with respect to any issuer" or "plays a substantial role" in the preparation or furnishing of such a report. This could be read to require registration of firms that have issued audit reports for issuers covering prior periods, but that do not currently have, and do not expect to have, an engagement with an issuer to prepare or issue, or play a substantial role in the preparation or issuance of, an audit report. We recommend that Rule 2100 be clarified, or an exemption created, to establish that the issuance of an audit report prior to October 24, 2003 (the expected deadline for registering with the Board) does not trigger the registration provisions.

In addition, it is unclear whether a firm that issued an audit report that is included in an initial public offering would be required to register with the Board, even though the firm is not serving as primary auditor-of-record and does not currently have, and does not expect to have, an engagement with an issuer. We recommend that an exemption be created so that such firms would not be required to register with and be subject to the rules of the Board.

Rule 2101 – Application for Registration

The rule, as proposed, requires applicants to file their applications and exhibits thereto electronically with the Board through the Board's web-based registration system. Although firms will not be registered by the Board until the application has been accepted, it is unclear whether firms' applications will be publicly available from the time the application is submitted. The Section recommends that the application, excluding confidential information, only become public when a firm is officially registered with the Board.

Additionally, the Board should consider how functional the registration system will be and how much technological understanding applicants must possess to complete their submissions effectively. As firms proceed through the application process, technical questions will undoubtedly arise. The Board should consider instituting a dedicated help-line to respond to technology-based questions.

Rule 2103 – Registration Fee

The proposed rule provides that each applicant must pay a registration fee and that the Board will announce the registration fee from time to time. While the Board has not yet established the registration fee amount, the Board has indicated that an applicant's fee amount will be determined by a formula and that registration fees with vary with the size of the applicant. The Section agrees with the concept of such a formula, because the Section assesses its dues based on the number of CPAs in a firm as well as the number of the SEC clients a firm serves as primary auditor. If the Board uses a formula similar to SEC client or issuer data, the Board should be careful about not double-counting the number of issuers as more than one firm may be involved in an audit of an issuer. We believe that it is critical that the process for determining registration fees be as equitable as possible. To facilitate this result, we believe that the Board should publish its suggested approach and afford a reasonable time for public comment on that approach.

Rule 2105 – Action on Applications for Registration

The proposed rule provides that the Board will take action on a registration within 45 days of its receipt. At that time, the Board will approve the application, request more information from the applicant, or disapprove of the application by written notice to the applicant. The Board's proposal does not, however, contemplate due process procedures through which a rejected applicant can seek review of the Board's determination or otherwise seek the Board's reconsideration. We believe that the Board should establish formal, fair procedures for applicants to seek and obtain review of a disapproval decision.

Rule 2300 – Public Availability of Applications and Reports

The proposed rule provides for the nondisclosure of certain confidential information. We agree with the Board's intent to treat certain information confidential and believe the availability of such treatment is essential to the registration process. However, the proposal does not appear to provide the applicant with due process procedures in the event that the Board determines that certain information will not be treated confidentially. We believe that the Board should establish formal, fair procedures for applicants to seek and obtain review of a disapproval decision.

In addition, for the information that the Board has granted confidential treatment, the Board has stated it will provide that information to the Commission or to comply with a subpoena validly issued by a court or other body of competent jurisdiction. The Section clearly understands and supports the close relationship between the Board and the Commission; however, we are concerned that without more protection there will be an increased likelihood that the information will lose its confidential character. Further, once the information is provided to the Commission, the information might be deemed subject to disclosure under the Freedom of Information Act ("FOIA"). The Section recommends that to help ensure confidentiality for the party with the ultimate interest in maintaining such confidentiality, the Board expressly state in its final rule its intention to provide the Commission with any necessary information about the person on whose behalf it is seeking confidential treatment and that it will, in any event, notify the relevant applicant of any FOIA request for access to an applicant's information.

In addition to information provided to the Commission, the Section is concerned with the Board's intent to provide confidential information in response to a subpoena. The Section is concerned that the Board will become a third-party witness in multitudes of civil litigation, and that firms' confidential information will quickly become public. Accordingly, the Section recommends that the Board only respond to subpoena requests in criminal matters.

SPECIFIC COMMENTS PERTAINING TO THE APPLICATION FORM

Part 1 – Identify of the Applicant

- *Item 1.1 – Name and Identification Number of Applicant* – This requirement could be construed to require each applicant to scrutinize all of its acquisitions within the past five years and identify each of the names under which its "predecessors" conducted audits. We recommend that the Board define the term "predecessor" because it is unclear whether the term includes every entity from which an applicant has acquired assets (including personnel), or those from which the applicant has assumed liabilities. We recommend that the Board define the term to apply only to acquired firms (or firm name changes), and to exclude entities as to which the applicant has acquired no liability.

- *Item 1.8 – Required Licenses and Certification* – The Board's proposed rules require 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 and professional organizations." This proposed rule requires clarification in the following areas:
    - It is unclear whether the question will require a "yes/no" answer or whether the Board is requiring the applicant to supply a detailed listing of license and certification information. If requiring a "yes/no" answer, one infraction out of 10,000 employees could trigger a "no" answer for the entire firm. Again, we suggest that the definition of "accountant" for registration purposes be only applicable to those that have the authority to sign a firm's name.
    - It is unclear whether the question seeks information on all licenses, even if they are not required. For instance, some individual accountants may have CPA licenses in several states, although it is not required. It is not clear if a registering firm should provide information only on the required license or for all licenses held.
    - It does not recognize that some accountants will not have licenses yet. In many U.S. states, an accountant may not apply for a license until he or she has a certain level of accounting experience (such as a 2-year experience requirement). These individuals would be appropriately labeled as "accountants" although they would not maintain a CPA certification.

  In order to avoid confusion, we suggest that the Board eliminate this entire section and focus on certifications and licenses of the applicant (as requested in Item 1.7).

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

In the Section-by-Section Analysis to the proposing release, the Board states that it has, "to the extent possible," used concepts from the fee disclosures required of issuers under the revised proxy disclosure rules recently adopted by the Commission. The fee disclosures proposed by the Board, however, differ significantly from those required under the Commission's new rules. The Section has long-recognized the difficulty of its member firms to provide extensive fee information. We believe the Board should reconsider the need for

applicants to provide extensive fee information as currently outlined in Part II of proposed Form 1. Issuers are already required to disclose substantially similar information about fees paid to their outside auditors under the Commission's proxy rules, and this information is publicly available through the Commission's EDGAR system.

To the extent the Board determines that it is appropriate to require the enhanced level of disclosure reflected in its proposal, we believe the Board's proposed rules should be harmonized with the fee disclosures required under the Commission's revised proxy disclosure. Further, the Board should recognize that categorizing fees for both the current and prior year would pose challenges to the firms as they would be required to recast fee information using different sets of rules. It is also unclear what is meant by current and prior years. We assume this is based on the date of the audit report itself and not on the date of the financial statements covered by that report. Thus, if a firm registers during calendar year 2003, the "preceding calendar year" would be 2002 and thus an audit report issued in early 2002 for December 31, 2001 year-end financial statements would be listed.

The fee related questions also call for registering firms to provide information as to issuers for which audit reports are prepared or issued during the specified calendar year. If a firm registering has merged with another firm, acquired another firm, or divested a segment of its firm, during or subsequent to the period covered, it is unclear how the acquiring firm should report audit report fee information by its predecessor, acquired or divested firms.

The fee information sections call for registering firms to provide the SIC code of the issuer as the issuer has "most recently disclosed" in its filings with the Commission. We suggest allowing the registering firms to provide the SIC code from the filing that contains the audit report being covered. Some registrants change their businesses over time, are acquired by other entities, divest of operations, and so on, any of which may change the SIC code for the issuer.

For the reasons enumerated above, the Board should also allow applicants sufficient time to prepare the fee information. We believe that this will most certainly necessitate time beyond the anticipated application submission deadline of early September 2003. As previously mentioned, the Section has long-recognized the difficulties encountered by firms in obtaining fee information as it often requires enormous resources. Accordingly, we suggest the Board consider some type of transitional provision to enable this information be provided at a later date.

Additionally, proposed Item 2.4 sets forth a requirement that applicants provide information regarding issuers for which an 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. This goes beyond the requirements of the Act and we believe that the Board should carefully consider whether the costs of requiring applicants to compile and provide this information are justified by the resulting benefits. Of particular concern is the requirement for the applicant to provide a "brief description of the applicant's role with respect to the audit report." We believe there are legal exposures for firms in answering this question, which are not

necessary. We believe it is sufficient for firms to solely indicate those issuers for which they played a substantial role in the audit.

In addition, throughout Part II, the Board requests the date of the audit report as relevant information. We suggest that the Board request the date of the issuer's fiscal year-end, as it is a more relevant date. It also eliminates confusion in including the audit report date when an audit report has been dual-dated.

Part III – Applicant Financial Information

The proposal requires disclosure of financial information that goes beyond what is mandated by the Act, and the Section does not consider it appropriate or relevant to extend the requirements in this area. Further, the Section does not consider it necessary to impose on firms the substantial additional burden of compiling and reporting information with respect to non-issuers.

If, however, the Board determines that it is appropriate to obtain information about non-issuers, and further determines that the Board has the authority to do so, we believe that the information should be limited to fees for audit services, and applicants should be permitted to provide percentage calculations showing the relative proportions of audit fees received from issuers and non-issuers.

Other areas requiring clarification are as follows:

- The section calls for the registering firm to provide fee information as to "fees received." Information as to "fees received" appears to be cash collection, and will not match with proxy disclosures which are fees billed.
- The section is not clear as to how firms should provide historical information with respect to mergers, acquisitions of another firm or divestures of a segment of a firm.

Part IV – Statement of Applicant's Quality Control Policies

The Board's proposal in this area would require a registering firm to furnish 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." Without clarification surrounding the parameters of the information the Board is seeking, we anticipate applicants providing a range of information from little to none to voluminous statements.

We suggest that this section should be revised to require disclosure as to whether the applicant follows the quality control standards of the AICPA or another professional body. For non-U.S. applicants who are foreign associated firms of the U.S. SECPS member firms, this could also include disclosure of the adoption of the quality control procedures under Appendix K of the Section's membership requirements.

We also suggest that the Board ask the applicant to make reference to its most recent peer review report. (Peer review reports of all SECPS member firms are publicly available on the AICPA's website at http://www.aicpa.org).

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

The Board's proposal in this area seeks to expand upon the Act by requiring applicants to provide information about proceedings that are no longer pending and about proceedings not related to the firm's audits of public companies. We believe that the final rule should be more aligned with the Act, as the additional information is not necessary and it is burdensome to obtain. We also have comments in the following areas:

- The proposal sets forth different time periods ranging from the last twelve months to ten years for which applicants are required to report prior adverse proceedings. We recommend that these periods be harmonized with each other, and limited to the last three years. The Board likely determined that different time periods were appropriate because of its perception that some types of proceedings were more serious than others. We understand that viewpoint, but believe that divergent disclosure rules will be confusing and will hamper applicants' ability to collect accurate information from their partners and employees.
- Applicants should not be required to provide information about proceedings unrelated to audit reports. The breadth of the proposed reporting requirement would impose a substantial burden on the applicant to collect the necessary information and the resulting benefit would be minimal.
- The proposal requires information about administrative and disciplinary actions in connection with audit reports. The proposal makes reference to any professional association or body. The AICPA has two Committees that perform investigations – the SECPS Quality Control Inquiry Committee and the AICPA Professional Ethic Executive Committee. The majority of findings by these bodies are confidential, or certainly do not disclose the level of information that is proposed by the Board. In the interest of protecting both individuals and firms, we recommend that disclosure only be required to the extent that such findings have already been made public.

Finally, the Board's proposal permits an applicant to describe 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. The Board should specify the reasons why a firm would not be registered based on litigation. Given the current litigious environment in the U.S., accounting firms are often named as defendants in class action and other lawsuits. The premise of "innocent before proven guilty" should be recognized by the Board, and a firm should not be tainted because it has been served with litigation.

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

The Board's proposal would require an applicant to identify instances in which its audit clients have disclosed disagreements with the applicant and furnish specified information about those instances. The Commission requires issuers to disclose such disagreements under Item 304(a) of Regulation S-K. Because issuers already report this information pursuant to Commission rules, we believe the Board should reconsider whether it is necessary to require applicants to provide the level of detail as currently proposed.

In addition, the Board should recognize that some registering firms may have reported disagreements with issuers where they nevertheless remain the auditor. The proposal appears to require reporting only those disagreements where the registering firm is no longer the auditor, and to exclude other disagreements.

Part VII – Roster of Associated Accountants

The Board's proposal would require U.S. firms to provide much more data than is required by the Act by demanding information regarding "all accountants associated" with the firm. Requiring U.S. firms to provide a list of all accountants associated with the firm – even those who do not participate in or contribute to the preparation of audit reports – does not seem to have any direct relationship to the Board's tasks, and would be exceptionally burdensome for firms. Instead of requiring the disclosure of all accountants, we believe that the best manner in which to streamline the proposed reporting obligations into a simpler form is to refine the definitions for "accountant" and "audit reports." Therefore, only audit partners, who have the ability to bind the firm and sign audit reports, should be listed on this form. Finally, as previously stated, we recommend that the Board should not require firms to provide their accountants' social security numbers.

Part VIII – Consents of Applicant

The proposal requires applicants to secure consents within 45 days of submitting the application for registration. This time period may not allow enough time to reasonably obtain these consents. A number of such individuals may currently be away on military service, may work only during certain months, may be on maternity leave or may be on extended vacation. We suggest increasing the time limit and also allowing consents to be obtained when a person returns to active employment.

If further information is also required by the Board before an application is accepted, it may happen that consents will become more than 45 days old and have to be renewed again. We suggest that the Board extend the 45-day period to a 90-day period so that firms do not have to go on a paper chase trying to ensure consents are current.

CONCLUSION

We acknowledge the enormous effort put forth by the members and staff of the PCAOB to implement the provisions of the Act. The effective registration of public accounting firms is critical to the Board's mission to oversee the audits of public companies. We appreciate the

opportunity to provide comments concerning the Board's proposed system of registration. We are firmly committed to working with the PCAOB in accomplishing the timely and effective implementation of the Act, including that of the registration system, and would welcome the opportunity to meet with you to clarify any of our recommendations.

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Sincerely,

Robert J. Kueppers
Chair
SECPS Executive Committee

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Questions connected the provisions of Italian Data protection regulations with respect to the registration system proposed by PCAOB for public firms

This memorandum discusses the main issues connected with Italian Data Protection regulations with respect to the registration system proposed by the Public Company Accounting Oversight Board ("the Board") for public accounting firms wishing to prepare or issue audit reports on US public companies, or to play a substantial role in the preparation or issuance of such reports.

According to this registration system, the public accounting firms must disclose personal and sensitive information regarding third parties.

In Italy, all personal and sensitive data regarding third parties must be handled pursuant to Law no 675/96 (the "Law"), issued, in line with EU Directive 95/46, to ensure that the processing of personal data is carried out protecting the rights, fundamental freedoms and dignity of natural and juridical persons.

With regard to application for registration, we would like to point out the following issues:

- as per Article 28 of the Law [1], personal and sensitive data regarding third parties can be transferred by the "Controller" (in this case the public accounting firms) to a foreign country only if it guarantees an adequate level of protection of the privacy of the parties involved. In the United States, unlike in Italy and the rest of the European Union, the protection of sensitive data regarding third parties is largely based on self-regulation. For the US, the European Commission therefore issued Decision 2000/520/EC, which establishes the criteria on which "adequate levels of protection" are based. According to the Decision, to reach this level, the data must be transferred to US entities that declare (even through self-certification) that they adhere to the Safe Harbor Privacy Principles, as well as to the FAQs, as published by the United States Department of Commerce on 21 July 2000.

  Therefore, in order to ensure that data transferred to the US are adequately protected, the public accounting firm must, as the Controller of such information, verify whether or not the Board is among those companies that meet such requirements or, in any case, if it possesses the appropriate means to guarantee that the data will be processed according to a protection level that is equal to that provided by Italian laws. Indeed, if damages are claimed by one or more of the data subjects [2], it is up to the public accounting firm to provide evidence that it acted with the utmost diligence and that it did everything in its power to avoid the offence.

  Appraisals of the adequacy of the level of protection provided by the destination country are subject to evaluation by the Italian supervisory authority ("Garante") to which, pursuant to Article 28 of the Law, the public accounting firm must give notice **in advance** of its intentions to transfer personal and judicial information to the United States. Should the Garante deem for whatever reason that the intended method of data processing could compromise the adequacy of the level of data protection, it may prohibit the transfer. It follows that the public accounting firm cannot disclose any information to the Board until it obtains authorization from the Garante. In addition, in order to obtain authorization, the public accounting firm must supply the Garante with detailed information as to the type of

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[1] According to **Article 28 of the Law,** "The cross-border transfer of personal data undergoing processing, temporarily or not, in any form and by any means whatsoever, shall have to be notified in advance to the *Garante* if the country of destination is not a Member State of the European Union. Said transfer may be carried out no earlier than fifteen days after the date of notification; the term shall be twenty days where the transfer concerns any of the data as per Articles 22 and 24. The transfer shall be prohibited where the laws of the country of destination or transit do not ensure an adequate level of protection of individuals. Account shall also be taken of the methods used for the data transfer and the proposed processing, of the purposes thereof, the nature of the data and the relevant security measures."

[2] Persons or entities whose data are handled.

data it intends to transfer and the purposes for which the data will be handled. The public accounting firm must therefore be informed beforehand of how the Board will use such data. However, the Board reserves the right to decide whether or not to accept applicants' requests for the confidential treatment of their data only after it has received such data (see PCAOB Release no 2003-1 Appendix 1-Proposed Rules Relating to Registration - Page A1-ix, point c). Under Italian law, this is not possible since the Garante cannot grant authorization unless it is first informed of the use that will be made of the data once they are transferred abroad.

- **Information requirements and consent.** In view of the above, and in compliance with Articles 11, 20 and 28 of the Law, personal data may be transferred from Italy to the United States only if the data subject has expressly given consent. Such consent must be specific and informed (*ie*, the data subject must be aware of the purposes for which the data is being transferred to the US entity) and, where the transfer concerns judicial or sensitive data, must be given in writing. This obligation also applies to public accounting firms when they request the confidential treatment of information by the Board. Therefore, even in this case the data subject would have to be informed before the transfer of the purposes for which the Board intends to use such information. Consequently, the public accounting firm will not be able to disseminate the information until the Board has guaranteed that it will treat the data confidentially. Should the Controller fail to comply with this obligation, it could commit the crime described in Article 35 of the Law, namely the unlawful processing of personal data. Unless the offence is more serious, any person who, with a view to profiting himself or another, or with intent to cause harm to another, discloses personal data without having received prior consent from the data subject, is punishable by imprisonment for between three months and two years. Finally, we wish to point out that, from a practical point of view, though it is possible to inform and obtain the consent of parties with which the public accounting firm, at the moment of its registration application, has dealings (*eg*, current clients and employees), it is unlikely that this would be possible with regard to former employees or clients with whom relations are no longer maintained.

- **Relevant and not excessive use of personal data.** In light of the above, even if all the conditions making the transfer of personal data regarding third parties by the public accounting firm to the US entity are legitimately met, the data must still be transferred in compliance with Article 9 (1) (d) of the Law. This provision states that personal data undergoing processing must be " relevant, complete and not excessive in relation to the purposes for which they are collected or subsequently processed". Thus, in the case in hand, it would be necessary to make sure that the data, requested by the Board from the applying public accounting firm, is legitimate and not excessive to the purposes for which the request was made (*eg*, requests regarding various judicial information on any data subject that is in any way linked to the public accounting firm).

17 April 2003

To summarize:

1) to transfer personal data to the US, the entity to which the data is sent must adhere to the Safe Harbour Privacy Principles or show that it provides a protection level that is equal to that provided by Italian laws;

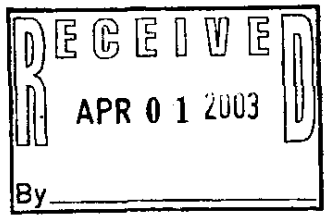
2) the public accounting firms can not communicate data to the Board without prior guarantee that such data shall be treated confidentially;

3) to transfer "standard" personal data (*eg*, name, address), the data subject's consent must be informed, express and specific;

4) in transferring judicial data (criminal records and current charges), the data subject's consent must not only be informed, express and specific, but must also be in writing.

We remain at your disposal for any further clarifications or information you may need.

Yours faithfully



SUBMISSION

BY THE AUSTRALIAN TREASURY

TO THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

28 MARCH 2003

REGISTRATION AND OVERSIGHT OF FOREIGN PUBLIC ACCOUNTING FIRMS

Introduction

This paper is provided in response to the 4 March 2003 invitation by the Public Company Accounting Oversight Board for written comments on its proposals for the registration of foreign public accounting firms and on the appropriate scope of the Board's oversight of such firms. It was prepared by the Australian Treasury in consultation with the Australian Securities and Investments Commission.

2. The paper is also aimed at assisting discussion of these issues at a public round-table meeting to be hosted by the Board on 31 March 2003.

Australian institutional framework

3. Briefly, oversight of the audit profession in Australia is a co-regulatory responsibility of the profession and the Government.

4. Government involvement in this area is a matter for the Treasury portfolio through:

- the Treasurer, the Hon Peter Costello, MP and the Parliamentary Secretary to the Treasurer, Senator the Hon Ian Campbell;

- the Department of the Treasury — responsible for advising the Government on relevant policy;

- the securities regulator, the Australian Securities and Investments Commission (ASIC) — responsible for enforcement of the financial reporting and audit provisions of the *Corporations Act 2001,* including the registration and supervision of individual company auditors. There is currently no registration of audit firms in Australia. ASIC also refers disciplinary matters relating to individual auditors to the Companies Auditors and Liquidators Disciplinary Board;

- the Companies Auditors and Liquidators Disciplinary Board (CALDB) — a body established under the *Australian Securities and Investments Commission Act 2001* to hear disciplinary cases against individual auditors. The CALDB can cancel or suspend an auditor's registration, censure an auditor, or require him or her to undergo additional training, but, as an administrative rather than a judicial body, cannot impose fines or custodial sentences.

5. The accounting profession, through the professional bodies (The Institute of Chartered Accountants in Australia, CPA Australia, and the National Institute of Accountants), operates a self-regulatory framework to maintain high professional standards for accountants.

- Features of this framework include high entry standards, requirements for continuing professional education, and comprehensive professional rules and standards. Auditors in Australia must follow professional ethical rules issued by the International Federation of Accountants which are promulgated in Australia by the professional accounting bodies.

- The professional accounting bodies run quality assurance programs which review each practice periodically to ensure that quality control policies and procedures are maintained. Reviews include an examination of professional independence, client evaluation, professional development, guidance and assistance, conduct and supervision, internal inspection and review, assignment of personnel to engagements, and employment and promotion.

- The professional accounting bodies also operate formal complaints and disciplinary procedures in relation to the conduct of their members.

Recent policy developments

6. The Government recently undertook a wide-ranging review of corporate disclosure issues in the light of developments overseas and domestically. On 18 September 2002, it released a policy proposal paper, *Corporate Disclosure. Strengthening the financial reporting framework*, as part of its ongoing program of corporate law economic reform.

7. The paper (copies of which have been provided to Board staff) includes proposals aimed at strengthening auditor independence — for example, by tightening rules governing employment and financial relationships between auditors and their clients, mandating audit committees for larger listed companies, requiring better disclosure of audit and non-audit fees, requiring audit committees to explain why certain non-audit services do not compromise independence, and requiring audit partner rotation after 5 years.

8. The paper also proposes a strengthening of corporate disclosure through listing rules of the Australian Stock Exchange and changes to Australia's continuous disclosure regime.

9. In addition, the paper proposes that an existing Government agency, the Financial Reporting Council (FRC) — which currently provides oversight of the accounting standard setting process in Australia — assume new responsibilities for:

- overseeing auditing standard setting arrangements, with the standard setter becoming a Government agency rather than a body established and funded by the accounting profession; auditing standards will also be given the force of law;

- monitoring and reporting on the nature and adequacy of the systems and processes used by audit firms to deal with issues of auditor independence;

- monitoring and reporting on the response of companies in complying with audit-related disclosure requirements;

- advising the Government and accounting profession on continuing steps to enhance auditor independence;

- monitoring and assessing the adequacy of the disciplinary procedures of the accounting bodies; and

- promoting and advising on the adequacy of the teaching of professional and business ethics by the professional accounting bodies and tertiary institutions.

10. It is not envisaged that the FRC would have regulatory responsibilities. This would remain a matter for ASIC as the securities regulator. However, the FRC would have a key role in understanding and reporting to the Government (and the public) on audit firm processes and auditor independence issues more generally. For that purpose, it would be given appropriate powers to require reports and information from audit firms. The FRC would also work with the professional accounting bodies to review and where necessary strengthen their quality assurance programs and disciplinary procedures.

11. The Government has considered submissions from stakeholders on these proposals and is currently examining implementation issues. Exposure draft legislation is being developed for release by June 2003, with legislation expected to be enacted by December 2003 with a likely effective date in early 2004.

12. In summary, while changes to the Australian regime for the regulation and oversight of the audit profession remain under consideration, the general approach set out in the policy proposals paper represents the current thinking of the Australian Government.

13. This is a necessarily brief overview of Australian arrangements. We would be glad to provide additional information if required.

14. The Treasury, FRC and ASIC look forward to establishing a constructive working relationship with the PCAOB and would be willing, where relevant, to explore mechanisms such as memoranda of understanding to help underpin operational aspects of this relationship.

PCAOB proposals for registration and oversight of foreign public accounting firms

15. Australia has a robust corporate governance framework and most audits are conducted professionally and competently, with full regard to the interests of shareholders, the need for independence, and professional ethical rules. The United States and Australia share the same regulatory objectives in this area. Our regulatory, oversight and enforcement mechanisms will inevitably differ. However, we see a common interest in avoiding regulatory overlap and duplication wherever possible. ASIC is active in policing compliance with financial reporting and auditor obligations under the Corporations Act.

16. Australia has around 34 companies which are SEC registrants. While they include some of Australia's largest listed companies, their debt and equity raisings in the United States result in comparatively minor exposure for US investors.

17. From a United States perspective, there may be advantages, particularly given scarce regulatory resources, in reaching understandings with the relevant Australian authorities that would allow "equivalent regime" recognition, enabling Australian firms which audit SEC registrants to be exempted from Board rules. The FRC's annual reporting requirements for Australian audit firms could be developed in consultation with the Board, with information-sharing between the FRC and the Board covered by a memorandum of understanding.

18. Such an approach would also reduce compliance costs for Australian audit firms in meeting the detailed registration and periodic reporting requirements expected to be imposed by the Board, and undergoing triennial Board investigations. These costs would represent a larger compliance burden in the context of the Australian capital market than in the United States, bearing in mind also that an Australian audit firm may only audit 6 or 7 SEC registrants.

19. We understand that Australian arms of the 'Big 4' audit firms would favour an approach along these lines (although we also understand that the 'Big 4' are approaching these issues on a global basis).

20. We note that, in light of the requirements of the Sarbanes-Oxley Act and existing US rules applying to foreign audit firms that participate in audits of US public companies, the Board has concluded that foreign audit firms will be required to register with it. If this position is confirmed, exemption for Australian audit firms could relate to updating of registration information, periodic reporting, and inspections.

Questions

21. Answers to some of the questions posed in the Board's briefing paper of 4 March 2003 are provided below.

The registration process

(1) 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 (eg, an additional 90 days) within which to register?

- Treasury and ASIC do not have a clear sense whether the 180 day period is feasible. This is more a matter for Australian audit firms, which we understand will be represented at the 31 March meeting. While we understand that information requirements for US firm and foreign firm registration are equivalent, it is not clear whether they have the same starting point — ie, if US firms already have certain information readily accessible due to current US regulatory requirements.

(2) Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-US applicants?

- None obvious from a policy or regulatory viewpoint. However, Australian audit firms may have views on the feasibility of providing certain information, or on whether the information sought will be meaningful in all cases.

(3) In addition to the information required by Form 1, is there any additional information that should be sought from non-US applicants?

- See answer to question (2).

(4) 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?

- While there have been concerns expressed in Australia about the extra-territorial reach of the Sarbanes-Oxley Act and rules made under the Act, we are not aware of any conflict of law issues in relation to the audit oversight provisions.

(5) In the case of non-US firms that are required to register because they play a substantial role in the preparation and furnishing of an audit report on a US issuer, is the Board's definition of "substantial role" in Rule 1001(n) appropriate? In particular, should the 20 per cent 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 per cent threshold more realistically capture firms that materially participate in the preparation or furnishing of an audit report?

- Audit firms would be in a better position to comment on whether 20 per cent of total engagement hours or fees is the appropriate threshold for 'material services' provided by one audit firm to another. With respect to the size of subsidiaries and other component entities of issuers, a decision on the materiality threshold would appear to depend mainly on Board and

SEC assessments of appropriate regulatory effort to achieve desired investor protection outcomes.

(6) Should the requirements to register be different for foreign public accounting firms that are "associated entities" (as defined in the Board's rules) of US registered public accounting firms than for firms that are not associated with US registered firms?

- We understand that the Australian arms of the Big 4 accounting firms are independent separate legal entities from their US and international counterparts.

Board oversight of foreign registered public accounting firms

(1) 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?

- See discussion in paragraphs 15-20 above.

(2) 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?

- See discussion in paragraphs 15-20 above.

(3) 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?

- See discussion in paragraphs 15-20 above.

(4) Should the Board's oversight of foreign registered public accounting firms that are "associated entities" (as defined in the Board's rules) of US registered public accounting firms be different than its oversight of foreign public accounting firms that are not associated entities of US registered firms? Should the US registered firm have any responsibility for the foreign registered firm's compliance with the Board's rules and standards?

- We understand that the Australian arms of the Big 4 accounting firms are independent separate legal entities from their US and international counterparts.

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MEMORANDUM

To

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

Date

31 March, 2003

From

Frans Samyn

Dear Sirs,

Board Rulemaking Docket Matter No. 001

BDO is a global network of independent professional accounting firms in 100 countries worldwide. This letter is the response of BDO International B.V., on behalf of all our BDO Member Firms, to your request for comment regarding the matter detailed above.

Introduction

Let us first say that we share your concerns and support your efforts in helping to restore public confidence in financial reporting and in capital markets. We recognise the particular importance of restoring confidence in the U.S. capital markets, given their size. We therefore would like to work in a cooperative fashion with you and with other key national regulators that are striving towards the same goals.

We thank you for the opportunity to comment on these proposed rules of your registration system. It is unfortunate that the timing and brevity of the comment period do not allow us sufficient time to formulate additional and/or more constructive comments on the proposal. Nevertheless, given the significant issues involved, we feel that it is important not to forego the opportunity to comment, based on our analysis to date.

Whilst the focus of your ten questions outlined in Section B of the Release No. 2003-1 is directed at our non-U.S. Member Firms, many of the issues identified are equally relevant to our U.S. Member Firm and we comment on their behalf as well. We address your questions in order of those involving the registration process, its timing and information sought, the definition and application of "substantial role", the legal conflicts in foreign jurisdictions, and the role of the U.S. firms and international networks.

The Registration Process, Its Timing and Information Soughtand the Need for Flexibility

Much of the information the Board proposes to require is not readily available and will necessitate significant time and expense to prepare. We believe it is consistent with the public interest and the Sarbanes-Oxley Act ("the Act") for the Board to facilitate registration by adopting a system that (1) is initially as flexible as possible and (2) over time transitions to more prescriptive requirements. During this transition period, applicants would be able to develop procedures necessary to compile information in a more consistent format. Flexibility during the transition period is extremely important in light of the tight deadlines applicants will have to meet to prepare their initial registration forms and the catastrophic effect of a failure to meet that deadline.

We comment below on some of the specific information requested, where clarity is required and how the Board might introduce flexibility into the registration process.

Part I – Identity of the Applicant

This section requests the names and addresses of all of the applicant's associated entities. We request clarification from the Board on whether each Member Firm would need to file details of its associated entities within their country of operation only, or whether this information needs to be global for all firms. The latter would seem to be excessive and unnecessarily duplicative.

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

This section requires applicants to provide information about those issuer clients for which they have *prepared* or issued any audit report. We do not understand the reference to the word "prepared" and suggest that the rule would be clearer if it were removed.

Part II requires an auditor to compile information based on reports issued (or prepared) during a calendar year. As we understand it, the process for preparing this information would consist of (1) identifying the relevant issuers, (2) accumulating fee information from each issuer's proxy statement (if the issuer is subject to the proxy rules), and (3) adjusting that fee information by determining and reclassifying certain "other" fees reported in the proxy statement disclosure that need to be reported as fees for "other accounting services" in the Form.

The period covered and the categorisations are different from the approach firms have used in the past for accumulating and providing fee information in annual reports to the SEC Practice Section of the AICPA. For SECPS purposes, a firm reports fees earned or billed during its fiscal year. In addition, amounts that the proposed rules would require to be categorised as fees for other accounting services are categorised as audit services for SECPS reports.

We assume the purpose of requiring fee information is to provide a "picture" of the firm and its public company practice. We believe that the picture will not look materially different whether an applicant paints a picture of its practice (1) based on the calendar-year period in the proposed rule or the fiscal-year period reflected in the SECPS report or (2) by reflecting fees for other accounting services separately or including them in audit fees.

The fee classifications will pose difficulties for many of our non-U.S. Member Firms, who will not have programmed their information systems to report fees by the broad categories of audit, accounting, tax and other services provided, as they have not needed to make such disclosures before. These Firms would need to reconstruct much of this information on a client-by-client and office-by-office basis. Furthermore, for those Firms who have recently gained clients by merging, the historical information may even be impossible to reconstruct.

In the interest of expediting the registration process and avoiding unnecessary expense and the severe penalties on firms and their clients for failure to meet the deadline, we suggest that the Board adopt a transitional period, where U.S. applicants would be permitted to report fees in the manner in which they have previously reported them to the SECPS. Because the data are being requested for informational, rather than investment, purposes, we believe that this categorisation and reporting of fees will present an equally valid picture of a firm. For non-U.S. applicants, the Board should consider waiving the requirement to disclose fees billed to clients by such classifications during this transitional period.

In addition, we note that soon registrants will begin reporting fee information using categories that are different than those in the proposed rules. We suggest that the Board plan to modify its rules at

some point to require firms to categorise fees in a manner consistent with the way issuers will report them. We believe this will make the reporting process easier and provide more useful information.

Part III – Applicant Financial Information

Part III requires applicants to prepare fee information on the basis of when the fees were *received* (i.e., based on the dates clients paid their bills). Preparing the information in this manner would be an extreme burden for most of our Member Firms and we think it would provide less useful information to the Board than if the information is based on fees billed. We strongly encourage the Board to adopt a fees billed approach, similar to the approach in Part II.

Part IV – Statement of Applicant's Quality Control Policies

Item 4.1 requires an applicant to provide information regarding its quality control policies. While we agree that applicants should be allowed significant judgement and flexibility in what they provide, we recommend that the Board be clearer in regard to the information that needs to be provided. We urge the Board to do so in order to reduce the risk that applicants may need to re-file their applications. In that regard, we note that footnote 25 to the proposal refers to SAS 25 and SQCS 2. We suggest that the Board indicate that providing information that addresses all of the elements of quality control covered by those standards will be sufficient.

Part V – Listing of Certain Procedures Involving the Applicant's Audit Practice

Items 5.1 and 5.5 call for information about criminal proceedings against the applicant or associated persons during the previous ten years. Due to the length of the period covered, it may be difficult, if not impossible for many firms to obtain information about proceedings that are no longer pending. Ten years is excessive because the information pertaining to such proceedings may not be available from the courts or from the persons named. We strongly encourage the Board to reconsider its need for information that is ten years old and to reduce the reporting period to five years. We do not believe that this reduction of information will impact the Board's ability to determine an applicant's fitness for registration.

Part VII – Roster of Associated Accountants

In Item 7.1, applicants are required to list the names of all accountants associated with the applicant. It is not clear to us whether this list must include accountants of other registered firms, when those firms are associated with the applicant. We assume that accountants associated with other registered firms would not have to be included and that they would instead be included in their firms' applications. If that is not the Board's intent, we recommend that the Board reconsider its approach. It would be difficult, if not impossible, to obtain all relevant information and consents from individuals who are not employed by the applicant.

Periods/Dates for which Information is Required

In certain places, the Form requests information, but it is not clear to us whether the information is to be provided for the most recent year, as of the most recent year-end, as of some other date, or for the upcoming year. Examples include Item 1.6, *Associated Entities*, Item 7.1, *Roster of Accountants Associated with Domestic Applicants*, and Item 7.3, *Number of Firm Personnel*. The Board should reconsider each of these requirements and make sure the rules are clear.

Disproportionate Cost Consequences for Non-U.S. Firms

The relative cost of registering and resources required will be much higher for our Member Firms outside the U.S., who naturally have far fewer audit clients who are US. issuers. For instance, some Member Firms will issue an audit report, or play a substantial role in such, for fewer than 5 issuers, but will nevertheless need to register hundreds of accountants. This could prove to be a prohibitive administrative and financial burden.

As this will be the first time that much of this information has ever been requested, it will involve the development of new systems and processes by most Firms, on a national or even global level. To ensure the required degree of reliability, completeness and accuracy, these new systems will need to include detailed checking procedures. For example, Items 5.5 requests information about crimes, misdemeanors or activities that are "substantially equivalent however denominated by the laws of the relevant non-U.S. jurisdiction". Determining whether a crime, misdemeanor or activity is "substantially equivalent" to those specifically identified in the rule would require a legal opinion and would place an undue hardship on non-U.S. firms. Furthermore, each Firm will need to respect its own local employment regulations and sensitivities. For example, some accountants may wish to seek independent legal advice before agreeing to sign the consents required by Item 8.1(b).

Accordingly, we strongly recommend a one year deferral of the due date for providing certain of the information required by the registration process. Even with such a relaxation, we predict that some of our firms will discontinue existing engagements, and/or forego the opportunity to accept engagements, that would expose them to the requirement to register with the Board. As the leading alternative to the "Big 4", we are particularly concerned about the likelihood that these registration requirements will lead to further concentration of the market for audit services worldwide.

The Filing Process

To expedite the filing and review process, we recommend that the Board permit applicants to file sections of Form 1 as they complete those sections, rather than requiring the entire Form to be complete before an applicant can submit it. Unlike information about a registrant that is provided in an SEC filing, much of the information Form 1 requires is discrete, so the Board should be able to effectively evaluate it even if all of the other information is not yet available.

In addition, we suggest that the provision for the Board to take action on a re-submitted application not later that 45 days after the date of its receipt should be modified to require action to be taken as soon as is practicable and consistent with the nature of information submitted, but in any event no later than 45 days. Otherwise, resubmission of a minor amount of information could result in use of a full 45 day review period. With the difficulty in providing the required information and the ambiguity in certain of the proposed provisions, such delays could result in a denial of a registration by the prescribed deadline.

The Board also needs to consider and provide rules stating how current the information in Form 1 needs to be. In a Securities Act registration statement, financial statements generally need to be only as current as 134 days prior to the filing date. Similarly, the Board's rules need to provide applicants with an appropriate amount of time to gather information and ensure that it is complete and accurate.

Conclusion

Allowing a transitional period of flexibility, for both U.S. firms and non-U.S. firms, will not compromise the Board's objectives or the interests of the public. It would allow Firms to properly develop the required new systems and processes of information gathering and detailed checking

procedures. It would also presumably assist the Board by staggering the review of an enormous volume of data contained in hundreds of applications.

The particular concerns of non-U.S. firms, especially those which audit a small number of U.S. issuers or their components, demand commensurate consideration. We believe the Board has the ability to draft the rules in a way that exempts certain or all non-U.S. firms altogether, either directly or by the definition or application of "substantial role". It is important to avoid raising market-entry barriers to reputable, highly capable auditors.

The Substantial Role

We believe there are a number of implementation issues regarding the definition of "substantial role".

How and When Significance of a Subsidiary Should be Measured

Item 2.4 addresses issuers for which an applicant plays or expects to play a "substantial role". The Board should clarify when and how an applicant should determine whether its role is substantial.

Proposed Rule 1001(n) is silent as to when an accounting firm should determine if it plays a substantial role in preparing or furnishing an audit report. The Rule must take into consideration that the significance of a subsidiary or component can change from one year to the next. In addition, the Board should also consider the fact pattern where a firm reasonably concludes that it will not play a substantial role in the audit of an issuer and therefore concludes that it does not need to register, but the situation changes during the course of the audit and it turns out that the firm does play a substantial role. To provide a practical approach to these issues, we believe the rules should permit an applicant to determine this at the outset of an engagement.

We recommend that the Board adopt an approach where the 20% tests are performed at the beginning of the issuer's fiscal year using prior year information. We further recommend that the test be performed only once during an issuer's fiscal year. We do not believe the Board should require a reconsideration of significance, regardless of changing circumstances, until the next fiscal year. Such an approach would be similar to the one used in applying new Rule 2-01(f)(7)(ii)(D) of Regulation S-X relating to partner rotation requirements.

Applying the Rule to Auditors Who Perform Material Services for Non-Client Issuers

In situations where firms that audit an issuer are part of a single worldwide network, we believe it is practicable for those firms to share hours and fees information and apply this rule. In situations where an auditor performs audit procedures, and the issuer is audited by another firm, we believe the "material services" portion of the test should not apply. We believe the test is not workable because the auditors of both the parent and the subsidiary may not have access to information about total engagement hours and fees.

How Fees From Significant Subsidiaries Should be Reported

It is not clear to us how an applicant should report its fees in certain situations. For example, if an applicant audits and issues a report on a significant subsidiary, and does not audit the issuer, it is not clear to us whether the fees for that audit should be reported under Item 2.1, 2.2, or 2.4. We urge the Board to clarify these reporting requirements.

Firms that Only Play a Substantial Role

We suggest that the Board consider having two categories of registered firms: (1) those that audit issuers and (2) those that only play a substantial role. Many of our non-U.S. Member Firms do not audit any issuers and will be required to register only because they play a substantial role in the audit of one or more issuers. If the Board does not decide to exempt such firms, we suggest that it consider whether its information needs with respect to these firms are less than its requirements for firms that audit issuers and whether it can permit these firms to provide abbreviated information in their applications.

The Legal Conflicts in Foreign Jurisdictions and Problems of Dual Regulation and Oversight

Our information and communications with Member Firms have identified potential problems in a number of jurisdictions. The profession's large firms commissioned the international law firm, Linklaters, to review the Act and consider what issues may arise under domestic legislation in certain European jurisdictions, and their report of 2 October 2002[1] also identified significant potential conflicts. These may be summarised as follows:

Data Protection

We understand that much of the information requested upon registration would be considered "personal data" under European Union (EU) legislation (refer EC Directive 95\46\EC). This personal data would include such information as the details of all accountants associated with the applicant and information relating to criminal, civil or administrative actions or disciplinary proceedings pending. Informed and specific consent must be given by each accountant, as well as all other "data subjects", such as clients and other employees or associated persons, before the application can be made.

Moreover, EU legislation prohibits the transfer of personal data to countries outside the EU, unless there is an agreed transborder data flow in line with the EC Directive. It would appear that the Board (or U.S. regulators) and the European Commission (or EU regulators) would need to strike a formal agreement which would provide an adequate level of data protection, as required by the Directive, while allowing the inclusion of sufficient information, as required by the Board.

Public disclosure of some information requested upon registration could be seriously prejudicial to both the accounting firm and individual partners. Such potentially sensitive information includes data requested about any criminal, civil, government or administrative and disciplinary action or other proceedings brought against individuals within the last ten years. This information may not previously have been on the public record, especially where the case is pending, and may not even be relevant to the Board if the individual concerned does not participate in or contribute to the preparation of an audit report of an issuer.

These factors mean that Member Firms may be forced to strike a balance between fulfilling disclosure requirements and not revealing information which could damage their prospects in defending current or future proceedings.

Access to Documents and Consent to Provide Testimony

In some countries, it would be illegal for our Member Firm to give consent to the Board to access documents or provide testimony, as required by Item 8.1 of Form 1. This obstacle often cannot be overcome by gaining prior client or individual consent.

[1] entitled "Sarbanes-Oxley Act 2002, Conflicts with Domestic Legislation in Key European Jurisdictions"

For example, in France, inspection by a foreign regulator is simply not permitted under French law. Whilst audit working papers and other information must be supplied to both the local regulator and the domestic securities regulator in the event of legal or professional proceedings, these rules do not apply to any foreign regulator. This is also the case in Italy where client consent could not override the client confidentiality provisions set out in the Italian Civil Code (which regulates audits of limited liability companies).

In Switzerland, audit working papers are protected by the Secrecy Obligation of Article 730 of the Swiss Code of Obligations and Article 321 of the Swiss Penal Code. These provisions not only protect the confidentiality interests of the audited company but also the confidentiality interests of various third parties affected. Obtaining the consent of clients to release papers would not prevent a breach of the Code, as this would not protect the third parties affected.

This is also a specific issue in Germany. The constitutional right in Germany of individuals not to give self-incriminating testimony could never be waived by our Member Firm (as the applicant), as the right does not belong to the Firm, but rather to the individual. In order to address issues of client confidentiality and secrecy, as required by the German Commercial Code, specific consent would be required. Whilst issuers might have little choice but to provide consent if they are not themselves to breach U.S. rules, it is by no means certain that individual employees of the Firm could be forced to give consent, particularly if they are not themselves involved in the audit of issuers.

Problems with Dual Regulation and Oversight

Different Interpretations and Approaches

It is probable that the Board's powers will be challenged in different jurisdictions as accountants seek guidance from their domestic courts to clarify their competing obligations. As a matter of private international law, the Board will not generally be able to enforce its powers within a country without the intervention of the courts in that country. Further, it is questionable whether local regulators would be prepared, in circumstances where their own system of regulation provides an equivalence of protection to investors, to accommodate the extra territorial reach of the Board in this manner. There is a risk of inconsistent decisions by the different courts, leading to different approaches emerging in different countries.

Double Jeopardy

The disciplinary system envisaged by the Act creates a double jeopardy for many auditors who will also be subject to national disciplinary systems. This would contravene the principles of natural justice enshrined in domestic laws as well as under the Universal Declaration of Human Rights (to which the U.S. is not party). Whilst the U.S. is party to the International Covenant on Civil and Political Rights which provides that no-one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedures of each country, this would not help accountants, who would possibly be subject to regulatory rather than criminal sanction. Thus, an accountant may indeed find himself sanctioned twice for the same violation, or even more bizarrely, exonerated under one investigation and sanctioned in another investigation for the same alleged violation.

Dual Standards

Our non-U.S. Member Firms will have to operate two sets of auditing, quality control and ethical standards. This may involve many changes in practice and we expect considerable confusion and uncertainty as to what will be the requisite standard for meeting their duty to clients.

Sensitivities

The Board's requirements fail to respect adequately the national sovereignty of countries outside the US.. We believe that the Board needs to be mindful of the different but equivalent ways in which accounting firms are regulated around the world. Besides the legal difficulties already mentioned, dual oversight is inefficient, costly and inconsistent with the recognised principle of "positive comity", which acknowledges mutual respect for the laws and regulations of other states.

Conclusion

We believe it to be appropriate for direct oversight of foreign accounting firms to continue to be exercised by competent national regulatory authorities, rather than the Board. The Board needs to have a detailed understanding, as do US. investors, of the oversight and monitoring processes, together with investigation and disciplinary procedures, already in operation at a national level. The Board should enter into constructive dialogues with the regulatory authorities responsible for foreign applicants, in order not only to assess their competency, but also to develop a clear understanding of the different regulatory regimes that exist around the world.

We believe it should be possible to work towards (where appropriate) a system of mutual recognition, where reliance may be placed on the monitoring systems of other jurisdictions. We understand that efforts are already underway in this regard in Canada. This respects the national sovereignty of non-U.S. countries and also addresses some of the practical problems that would arise with direct Board oversight (e.g., the fact that working papers will be maintained in a foreign language).

For the reasons stated above, the Board should consider exempting foreign accounting firms from having to provide testimony to the Board or access to their audit working papers. Again, it should be for the domestic regulatory agencies to exercise oversight in these areas. Where necessary, the Board may wish to enter into a series of bilateral dialogues with foreign regulators to establish proper lines of communication.

The Role of the U.S. Firm and the International Network

As mentioned above, when the only role of a non-U.S. firm is one of "substantial role", we believe that the registration information required (should the firm indeed be required to register) should be on an abbreviated basis. Moreover, we believe there is scope for some comfort to be taken from an applicant's membership of a recognised international network of accounting firms. All our Member Firms have met our membership requirements and are bound to comply with our technical and ethical standards. This compliance is monitored by regular international quality control reviews.

Also, we believe that where our U.S. Member Firm is the principal auditor of an issuer, it would make sense for them to oversee compliance with the Board's rules and standards by the non-U.S. Member Firm. Where our U.S. Firm is not the principal auditor of a foreign private issuer, we would strongly encourage the continuation of the system of SECPS Appendix K requirements.

Thus, should the Board conclude that it is necessary to carry out oversight of firms in foreign jurisdictions, this involvement of the U.S. firm, and membership of a recognised international network, should affect the scope of the Board's inspection programme.

Conclusion

There are compelling reasons for the Board to adapt its registration process. There should be a transition period, introducing flexibility into what information is requested, the format in which it is presented and the timing of its presentation. Many items need to be clarified prior to the rules being adopted.

There are additional considerations that are unique to non-U.S. accounting firms. We believe the Board should seriously consider utilising its power to grant exemptions to certain non-U.S. accounting firms from its registration and/or oversight system. Otherwise, the application of the definition of "substantial role" should be modified to reduce the registration and oversight requirements applicable to those non-U.S. firms which need to register only because they audit components of one or more U.S. issuers, and which are members of a recognised international network of accounting firms, and which are affiliated with a U.S. firm that is involved in such engagements.

Given all of the difficulties and uncertainties surrounding the Board's reach to foreign jurisdictions, it is essential that time is allowed for continuing dialogue between the Board and other regional and national regulators. The Board's unilateral actions may be seen to work against the objectives of many of the world's accounting professions and market regulators, who are working towards harmonisation and convergence of financial reporting standards, points of auditing and corporate laws.

Efforts should be made to find ways of achieving the Board's objectives by means which do not conflict with local laws and professional standards or incur considerable additional time and expense. Avenues to be explored include (where appropriate) a system of mutual recognition, as well as an extension of the current SECPS Appendix K regime.

Please feel free to contact us should you have any queries about us, our international network of firms, or our comments.

Yours faithfully,
BDO International B.V.

Frans Samyn
Chief Executive Officer

From: Larry Quinn [lquinn@bscsecurities.com]
Sent: Monday, March 31, 2003 11:34 AM
To: Comments
Subject: Docket No. 001

Gentlemen:

This comment is directed specifically to registration requirements for public accounting firms that audit only private broker/dealers that deal only in secondary markets and do not issue research reports.

Overall I am in full support of increased scrutiny for audits of publicly held companies (issuers) and the public accounting firms that audit them. I would not like to see regulations go to the extreme and cause increased regulatory burdens which lead to increased costs for the smaller firms (both auditing and broker/dealers) that do not have any impact on the primary markets or persuade public opinion through the use of analyst's recommendations or research reports.

If an auditing firm is engaged in auditing only private broker/dealers as described in the first sentence, it seems reasonable to require a limited scope registration and a smaller fee for registration. At the same time, their audit of a private broker/dealer would ascertain that the private broker/dealer was indeed only dealing in secondary markets and not issuing research reports or had analysts working for the broker/dealer which they would certify in their opinion attached to the audit report of the private broker/dealer.

In summary, please consider stratifying into two classes the registration and fees required by those firms that have different auditing obligations. A complete registration and oversight by the board for those firms auditing "issuers" or broker/dealers that engages in investment banking practices such as underwriting or selling in primary markets and preparing analysts' research reports. A second tier of registration that is limited in scope and content for those firms that audit only private broker/dealers that do not participate in any area of primary markets or preparing/issuing research reports on "issuers".

Thank you for the opportunity to express my opinion with respect to the proposed Release No. 2003-001.

Larry Quinn, CPA
Vice Pres & CFO
BSC Securities, L.C.
Member NASD, SIPC
Tel 903-295-4250

March 28, 2003

Office of the Secretary
PCAOB
1666 K Street, N.W.
Washington, D.C.
20006-2803

Dear Sir,

Re: PCAOB Rulemaking Docket Matter No. 001

Thank you for the opportunity to respond to the proposed rules on the "Registration System for Public Accounting Firms".

Over the past year, Canada has initiated reforms to enhance the framework for corporate governance and financial reporting, all with the goal of fostering investor confidence. These reforms have been designed as an integrated solution that achieves the same objectives as the Sarbanes-Oxley Act and other related reforms in the United States. The reforms address the following key areas: auditor independence; corporate responsibility; enhanced financial disclosures; review of periodic disclosures by reporting issuers; real time issuer disclosures; oversight of accounting and auditing standards-setting; and corporate accountability. Further details on these initiatives are provided in a copy of a letter from David Brown, Chair of the Ontario Securities Commission, which is attached in Appendix 1.

Among these reforms, the creation of the Canadian Public Accountability Board ("CPAB") has been a critically important initiative. This initiative, announced on July 17, 2002, has involved the establishment of an independent, not-for-profit organization to oversee auditors of Canadian public companies. The mission of the CPAB is to contribute to public confidence in the integrity of financial reporting of Canadian public companies by promoting high quality, independent auditing.

The CPAB will establish a rigorous program of oversight for public company auditors in Canada. The CPAB will establish a practice inspection unit that will be led by a full-time CEO and will have its own dedicated staff. This unit will have sufficient resources to review major Canadian audit firms on an annual basis, and smaller audit firms at least once every three years. All audit firms subject to CPAB oversight will be required to adhere to rigorous auditing, quality control and independence standards, which will be broadly similar to those being developed in the United States. Canadian securities regulators are working to develop a rule that would require all Canadian public company auditors to register with the CPAB and be subject to its practice inspection program.

The CPAB will have the ability to impose sanctions on audit firms subject to its inspection and oversight process. In addition, the CPAB will be able to refer disciplinary matters to the provincial institutes of professional accountants, which are established by provincial statute and can impose additional penalties, including disbarment from the profession. The CPAB will report to the public on its inspection program. The inspection process is scheduled to begin later this year.

A majority of the directors on the board of the CPAB are from outside of the accounting profession, which ensures its independence from the profession. In addition, the CPAB is subject to oversight from a Council of Governors comprising the Chair of the Canadian Securities Administrators, the Chairs of the Ontario Securities Commission and the Commission des valeurs mobilières du Québec, the Superintendent of Financial Institutions and the President and CEO of the Canadian Institute of Chartered Accountants (CICA). The Council is responsible for appointing the Chair and other directors of the CPAB, and will periodically review the effectiveness of the CPAB and take any action as necessary to improve its effectiveness.

We believe that this new system of oversight for public company auditors, combined with the existing provincial systems of oversight of public accountants, complies with the recently released IOSCO *Principles for Auditor Oversight*. Further details on the proposed structure, activities, and responsibilities of the CPAB are outlined in Appendix 2. We note that the IOSCO principles encourage IOSCO members to explore approaches to enhance cooperation among jurisdictions.

In establishing the CPAB, Canadian regulators adopted a system that shares the same objectives as the PCAOB. Both institutions aim to impose high quality standards, a rigorous inspection process, and meaningful disciplinary measures for public company auditors. In light of these similarities we believe that the PCAOB should be able to exempt firms registered with the CPAB from its proposed oversight function. Consequently, we hope that a close and cooperative arrangement could be reached between the two institutions to minimize duplication and allow each institution to effectively use its resources. A number of practical and legal difficulties associated with the registration process are discussed in Appendix 3.

In closing, I want to thank you again for the opportunity to comment on the PCAOB's proposal and underscore that we look forward to continuing the constructive relationship between Canadian and US regulators on this very important issue

Yours truly,

Gordon Thiessen (signed)

Gordon Thiessen
Chair, Canadian Public Accountability Board

Encl: Appendix 1: Letter from OSC to Gordon Thiessen
Appendix 2: CPAB
Appendix 3: Responses to Specific Questions

Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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APPENDIX 1

March 27 2003

Mr. Gordon Thiessen
Chair
Canadian Public Accountability Board
C/o Office of the Chief Accountant
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario
M5H 3S8

Dear Gordon:

As you begin the work of leading the Canadian Public Accountability Board (CPAB), I thought it would be helpful to share with you a summary of some of the other key initiatives being undertaken to foster investor confidence in our Canadian capital markets. While I focus in this letter on the perspective of the OSC, it is important to emphasise that requirements imposed by the OSC apply to all companies listed on the Toronto Stock Exchange (TSX) and to a large percentage of the companies listed on the TSX Venture Exchange (TSX-V), including all of the largest of these companies.

Implementation by the CPAB of a rigorous system of public oversight of auditors of Canadian reporting issuers is critical to strengthening investor confidence in the quality of financial reporting. It is, however, only one element of the integrated approach to which we are committed in order to reassure investors as to the integrity of all elements of our Canadian capital markets. In this respect, we have carefully assessed our initiatives against the objectives sought by the United States Congress and the SEC in implementing the Sarbanes-Oxley Act. In every case, we have sought to achieve objectives consistent with those set out in the Sarbanes-Oxley Act. A key goal in implementing changes is to avoid subjecting Canadian companies to unnecessary or duplicative regulation, particularly where those companies raise capital in U.S. markets.

For the convenience of those who may be particularly familiar with the primary elements of the Sarbanes-Oxley Act, I have organized this summary of our initiatives by reference to some of the main headings in that Act.

Auditor Independence

The Canadian Institute of Chartered Accountants (CICA) is in the process of adopting new independence standards for auditors. The proposed new standards incorporate the rules on provision of certain non-audit services adopted by the SEC prior to the Sarbanes-Oxley Act within the principles-based framework for independence adopted by the International Federation of Accountants (IFAC). The CICA is currently considering public comments on its proposals and is also evaluating the specific provisions of the Sarbanes-Oxley Act as implemented in recently revised SEC rules on auditor independence. The CICA and the Ontario Securities Commission are committed to achieving independence standards in Canada that are appropriately aligned with requirements for auditors of SEC registrants. If necessary, the OSC will exercise its explicit rule-making authority in this area to supplement standards issued by the CICA. The new Canadian independence standards are expected to be issued in final form later this year, effective for audit engagements commencing after December 31, 2003.

Specific matters addressed within the new standards include:

- limitations on scope of services provided to audit clients;
- rotation of audit partners; and
- potential conflicts of interest arising from senior executives of a reporting issuer having been previously employed by the issuer's auditor.

Matters relating to audit committee pre-approval of provision of audit and non-audit services will be addressed in an OSC rule governing audit committees described below. Matters relating to auditor reports to audit committees are currently addressed in auditing standards that are required by securities legislation to be followed by auditors of reporting issuers.

Corporate responsibility

Audit Committees

Recent revisions to securities legislation passed by the Ontario government provide the OSC with power to make rules requiring the appointment of audit committees and prescribing requirements for such committees. The OSC is currently formulating a rule that will require listed companies to have an audit committee and will prescribe the composition and responsibilities of such a committee. In preparing the draft rule, OSC staff are carefully analyzing all relevant features of the Sarbanes-Oxley Act and requirements of the New York Stock Exchange and the NASDAQ, as well as existing Canadian requirements. We expect to publish for comment in June of this year a proposed rule based on the relevant U.S. requirements, including:

- responsibilities relating to oversight of a company's audit relationship;
- independence of the audit committee; and
- the funding and authority required for the audit committee to perform its functions.

I should note that certain non-substantive differences from the Sarbanes-Oxley Act will be required with respect to auditor appointment, compensation and oversight to ensure consistency with requirements of Canadian corporate law and federal financial institution statutes. The statutes generally provide for the shareholders to appoint the auditor and allow shareholders to fix the auditor's compensation and remove the auditor.

Independence of the Board of Directors

OSC staff are developing a Canadian approach to Board independence that will specify a definition of Director independence and Board composition requirements. We expect to implement this approach through either a Commission Policy or a direction to the Toronto Stock Exchange. Our goal is to achieve implementation by the end of September of this year.

Compensation and Nominating Committees

OSC staff are developing proposals that regulate the requirement for a Compensation Committee and a Nominating Committee and will establish requirements relating to their composition and responsibilities. We expect to implement such proposals through either a Commission Policy or a direction to the TSX. Again, our goal is to complete this work by the end of September of this year.

Certification of financial reports

Revisions to securities legislation passed recently by the Ontario government provide the OSC with the power to make rules requiring reporting issuers to maintain systems of internal and disclosure controls and procedures, and requiring Chief Executive Officers and Chief Financial Officers to provide certifications relating to those controls, as well as defining auditing standards for reporting on management's assertions. Previously existing rule-making authority provided the OSC with the power to require certification of financial reports. OSC staff are currently developing a proposed rule that will require CEO/CFO certification of both financial reports and internal controls in a manner consistent with the provisions of the Sarbanes-Oxley Act and the subsequent SEC rules. We are also working with the Canadian Assurance Standards Board to develop appropriate standards for auditor reporting on the design and effectiveness of internal and disclosure controls. We expect to publish a draft rule for public comment in June of 2003.

Standards of professional conduct for lawyers

Standards of professional conduct similar to the "up-the-ladder" reporting obligations under the Sarbanes-Oxley Act and proposed SEC Rule 205 exist currently under the Law Society of Upper Canada's Rules of Professional Conduct. In addition, however, we are working with the Law Society to explore ways of clarifying standards of professional conduct by lawyers representing public companies.

Enhanced financial disclosures

Canada's accounting standards-setter, the Accounting Standards Board (AcSB), with input from its public oversight body, the Accounting Standards Oversight Council, has reviewed existing accounting standards addressing matters such as off-balance sheet transactions and arrangements, including guarantees, and identified certain areas in which further guidance is required. In December 2002, the AcSB approved new guidelines requiring entities to disclose key information about guarantees that require payment contingent on future events. These guidelines are consistent with standards developed by the U.S. Financial Accounting Standards Board (FASB). The AcSB also continues to work on new standards governing the circumstances in which special purpose entities would be consolidated. The AcSB has been closely coordinating its work with that of the FASB and expects to finalize at its April meeting, new standards that will be substantially consistent with those issued recently by the FASB.

In December of 2002, the AcSB issued for public comment, proposed standards dealing with stock-based compensation that will require recognition of an expense in determining net income when a company issues stock options to its employees. After considering public comments, the AcSB expects to implement these new standards later this year, ideally in parallel with similar changes proposed by the International Accounting Standards Board.

With respect to presentation of proforma or "non-GAAP" earnings information, OSC staff issued in early 2002, guidance designed to ensure that presentation of such non-GAAP information is not misleading to the investing public. Our assessment of practices by reporting issuers in the period since this guidance was issued, suggests a marked improvement. Nevertheless, OSC staff are currently evaluating recently issued SEC rules governing presentation of non-GAAP earnings measures and considering the need for similar rules in Canada. Our assessment of these issues will be completed later this year.

Review of periodic disclosures by reporting issuers

The OSC and other Canadian securities regulators have, for some time, been developing and enhancing their systems for review of continuous disclosure filings by reporting issuers. The OSC's goal is to review issuers based in Ontario once every four years on average. To date, this goal has been met or exceeded. A significant element of this system has been to refine the risk-based criteria used to identify those companies that should be the focus of comprehensive and in-depth reviews with the result that they are subject to more frequent review. Indeed, some issuers are currently subject to ongoing monitoring of their disclosures at the time they are filed. We have also completed recently continuous disclosure reviews of the TSX 100 companies. These companies include the vast majority of Canadian companies that are listed on the New York Stock Exchange. For the future, OSC staff will be considering how we might cooperate with SEC staff to integrate our reviews of interlisted companies and avoid unnecessarily duplicative and burdensome demands on those companies.

Real time issuer disclosures

When a reporting issuer in Canada experiences a material change in its affairs, securities legislation has, for some years, required immediate issuance of a press release followed within ten days by filing of a report with securities regulatory authorities. We believe this goes beyond current U.S. requirements that are limited by reference to a list of specified events.

More broadly, the Canadian Securities Administrators have released for public comment revised draft rules on continuous disclosure by reporting issuers. These rules enhance existing disclosure requirements in a variety of respects, including incorporating specific provisions on MD&A that are similar to recently introduced SEC requirements. Final continuous disclosure rules are expected by the end of 2003.

Oversight of accounting and auditing standards-setting

The Accounting Standards Oversight Council, which provides independent public oversight of the Canadian Accounting Standards Board (AcSB), has worked with the AcSB in carrying out a review of its structure, role and relationships with The Canadian Institute of Chartered Accountants. These matters were discussed at public meetings of the oversight council held in September of 2002 and January of 2003. The Council, which comprises 21 prominent business and government leaders, has concluded that the AcSB is responding appropriately to the implications of recent U.S. failures in relation to accounting standards. In addition, the Council has completed an evaluation of the overall operations of the AcSB.

With respect to oversight of auditing and assurance standards-setting, a separate oversight council was recently created with a mandate to provide input, strategic direction and the perspective of users of audit services into the setting of auditing and assurance standards in Canada. The Council comprises a majority of members from outside the accounting profession and is chaired by James Baillie, a former Chairman of the Ontario Securities Commission. I am a member of the Council, representing the CSA. In common with the Accounting Standards Oversight Council, the Auditing & Assurance Standards Oversight Council will report publicly on its activities and its assessment of the performance of the Assurance Standards Board.

Corporate accountability

Regulators and governments across Canada are considering whether enhanced enforcement powers are required. In Ontario, legislation has been amended recently to provide the OSC with the power to order fines and to order disgorgement of profits illegally obtained and to increase the maximum fine and jail term that a court can impose for securities violations. In addition, we expect the Ontario legislature to enact legislative changes to provide investors with broader rights to sue if issuers make misleading or untrue statements or fail to give full and timely information.

The role of the CPAB in enhancing public confidence in the performance of auditors and the integrity of financial reporting is crucial to maintaining the integrity of Canada's capital markets. If you and your Board need any further information about the broader package of reforms that we are pursuing, my staff and I will be happy to provide it. I can assure you that the Board will have my full support in implementing a rigorous and effective program of inspection of public accounting firms that audit entities raising capital in our markets.

Yours sincerely,

David A. Brown

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APPENDIX 2

CANADIAN PUBLIC ACCOUNTABILITY BOARD

Summary

The independent system of oversight of public accounting firms that audit public companies is administered and enforced by the Canadian Public Accountability Board ("CPAB"). The CPAB was established and directors are appointed by a Council of Governors who will periodically review the effectiveness of the system.

The CPAB carries out its mission by:

- establishing appropriate criteria for membership;
- designing and implementing a rigorous program for the inspection of public company auditors;
- imposing sanctions and referring matters to the appropriate regulator; and
- recommending modifications to professional standards as appropriate.

All Canadian public accounting firms that audit public companies will be required to register with the CPAB.

Establishment of the Board

The CPAB is an independent not-for-profit corporation established to contribute to public confidence in the integrity of financial reporting of Canadian public companies by promoting high quality, independent auditing.

Duties

The CPAB has the following responsibilities:

- Register public accounting firms that audit public companies;
- Promote, publicly and proactively, high quality external audits of public companies;
- Establish and maintain the membership requirements of public accounting firms that audit public companies;
- Conduct inspections of public accounting firms that audit public companies to ensure compliance with professional standards and membership requirements;
- Receive and evaluate reports and recommendations of the inspection process and of provincial accounting institutes on inspection results of public accounting firms that audit public companies;
- Impose sanctions on and require remedial action by public accounting firms that audit public companies;
- Refer matters to provincial accounting institutes for discipline purposes;
- Refer matters, as appropriate, to regulators;

- Provide comments and recommendations on accounting standards, assurance standards and governance practices to relevant standards-setting and oversight bodies;
- Provide recommendations to regulators; and
- Establish the budget and manage the operations of the CPAB and its staff.

Membership

The CPAB has 11 voting directors. Seven directors - including the Chair - are from outside the accounting profession. Of the remaining four from the accounting profession, three are the CEOs of the provincial accounting institutes in the three provinces with the largest number of public company audits.

Members of the Board of Directors of the CPAB are to:

- possess several years of experience as a director of a public company, a public-sector organization or a not-for-profit organization or charity, including, preferably, service as a member of the audit committee;
- be well-informed about corporate governance and business issues;
- be credible trustees of and advocates for the public; and
- have a breadth and diversity of business experience, insight and judgment

Current directors of the CPAB are:

- Gordon Thiessen, Chair, former Governor of the Bank of Canada
- Raymond Bachand, managing partner and CEO of SECOR
- Bob Bertram, Executive Vice President, Investments, Ontario Teachers Pension Plan Board
- Brian Canfield, Chairman, TELUS
- Wendy Dobson, Director, The Institute for International Business, University of Toronto's Joseph L. Rotman School of Management
- Ron Gage, Former Chairman and CEO, Ernst & Young
- Jacques Menard, Chairman of BMO Nesbitt Burns and President of BMO Financial Group
- Ted Newall, O.C., Chairman of the Board, Nova Chemicals Ltd.
- Gérard Caron, President, CEO and Secretary General of the Ordre des comptables agréés du Québec
- Steve Glover, Executive Director, The Institute of Chartered Accountants of Alberta
- Brian Hunt, President and CEO, The Institute of Chartered Accountants of Ontario

Reporting

The CPAB issues regular reports to the public on the means taken to oversee the auditors of public companies and the results achieved.

Registration with the CPAB

The CPAB requirements will apply to all public accounting firms that audit public companies. All such firms will be required to register with the CPAB. Initially the focus will be on the major public accounting firms that audit approximately 85% of Canadian public companies.

Auditing, Quality Control and Independence Standards

The CPAB assesses compliance with:

- auditing and quality control standards established by the Assurance Standards Board; and
- independence standards.

The independent Auditing and Assurance Standards Oversight Council oversees and provides strategic direction and the perspective of users of audit services to the Assurance Standards Board.

The CPAB recommends improvements to auditing, quality control and independence standards to the independent Auditing and Assurance Standards Oversight Council.

Inspection of Public Accounting Firms

The CPAB conducts a continuing program of practice inspection of public accounting firms that audit public companies, to assess compliance with professional standards and membership requirements.

Major public accounting firms that audit public companies are subject to annual inspection.

Investigations and Disciplinary Proceedings

The CPAB has the authority to impose sanctions on participating firms and to require remedial action. Sanctions could include, for example, limiting the ability of the public accounting firm, or an individual within the firm, to audit public companies. Any such actions will also be reported to regulatory bodies for appropriate follow-up. The CPAB will also, as appropriate, refer matters to provincial accounting bodies for discipline purposes.

Oversight of the CPAB

The CPAB is overseen and the directors are appointed by a five-member Council of Governors comprised of:

- Chair of the Canadian Securities Administrators (who is currently the Chair of the British Columbia Securities Commission)
- Chairs of the Ontario Securities Commission and the Commission des valeurs mobilières du Québec
- Superintendent of Financial Institutions Canada
- President and CEO of The Canadian Institute of Chartered Accountants (CICA)

The Council selects its own Chair from among the four non-CICA Governors. The current Chair is Ontario Securities Commission Chair, David Brown. Each Governor is entitled to one vote and decisions are by majority vote.

The Council appoints the Chair and directors of the CPAB and has the power to remove a director. The Council will also periodically review the effectiveness of the system and can take appropriate action, as necessary, to improve its effectiveness.

Funding

The CPAB has the authority and responsibility for establishing a budget for its operations and setting fees. It is expected that the cost of operating the CPAB will be double what is currently spent on practice inspection in Canada.

APPENDIX 3

RESPONSES TO SPECIFIC QUESTIONS IN THE RELEASE

Questions relating to the registration process

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?

As noted in the body of our letter, we believe the PCAOB should be able to exempt public accounting firms registered with the CPAB from the PCAOB's oversight function. However, if Canadian public accounting firms were required to assemble all the information required by Form 1 in order to register with the PCAOB, we understand that it would require considerable effort and time since most of the information is not currently readily available and systems to maintain it are not in place. In addition, some of the information will require detailed research by individuals knowledgeable about complex issues, for example, details of litigation. Consequently, if the CPAB were to require Canadian public accounting firms to provide for Canadian registration purposes all of the information currently proposed by the PCAOB, we believe it would be necessary to allow more than 180 days to ensure the reliability of the information.

Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?

In discharging its mandate, the CPAB will implement a system for identification of Canadian listed companies and registration of public accounting firms that audit such entities to ensure that appropriate information is captured for identification, tracking and monitoring. In considering the type of information that should be captured for effective operation of the CPAB oversight process, we will carefully weigh the benefits of collecting such information against the costs associated with capturing, cataloguing and maintaining the information.

We likely would not request all of the information contained in Form 1 related to accountants associated with the applicant. For example, because of the privacy issues associated with the information, we would not request the social security number of all accountants associated with the applicant who participate in or contribute to the preparation of audit reports.

In addition, in determining what information should be captured for effective operation of the CPAB oversight process, we will consider carefully the costs and benefits of requiring collection of information on a retroactive basis. Some of the information the PCAOB proposes to require would not need to have been captured by Canadian public

accounting firms in order to comply with existing Canadian disclosure requirements. Accordingly, we will consider requiring certain information on a prospective basis only.

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?

The proposed PCAOB registration requirements raise some issues that would need to be resolved should Canadian public accounting firms be required to register with the PCAOB and submit the information contained in Form 1. For example, to date, we have identified the following issues:

- Item 8.1 states "[name of applicant] agrees to secure and enforce similar consents from each of its associated persons as a condition of the continued employment by or association with the firm." For existing employees this would necessitate a revision of terms of employment. Consideration would need to be given to whether such a change in an employment contract would be legal even if "reasonable" prior notice is given to the employee. In addition, consideration needs to be given to whether such a change would be legally enforceable given that PCAOB requirements are not Canadian law.
- Item 8.1 includes consents from any independent contractor that, in conjunction with the preparation or issuance of any audit report, participates as agent or otherwise on behalf of such accounting firm "in any activity of that firm". It would appear that, because the disclosure is not limited to only accounting or other professional services, it would require consents from independent contractors that provide ancillary services such as courier or photocopying services.
- Item 8.1 requires consent to comply with "any request for testimony or the production of documents made by the PCAOB in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002". Under Canadian law a Canadian auditor cannot disclose protected information (other than information about the SEC-registered issuer or the public accounting firm itself) to a non-governmental agency. An example of protected information would include information that an accountant learned in his or her capacity as an inspector under a provincial practice inspection scheme, which by statute (in most provinces) must be kept confidential. Consideration could be given to restricting the scope to information concerning the registered public accounting firm, any registered issuer and such information as may be disclosed under applicable laws in Canada.
- Item 5 requires disclosures with respect to persons no longer associated with the applicant. As a practical matter it might not be possible to obtain consent from these individuals. In addition, disclosures with respect to non SEC registrants might be contrary to confidentiality requirements in the provincial Rules of Professional conduct.

Questions related to oversight of foreign registered public accounting firms

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?

The need for international cooperation to ensure effective and efficient regulation of domestic markets becomes more critical as domestic securities markets are increasingly integrated into a global market. Given that the CPAB is an integral part of a set of initiatives designed to achieve the same overall objectives as the Sarbanes-Oxley Act, the oversight by the CPAB of Canadian public accounting firms that audit public companies will be comparable to the oversight that PCAOB will exercise over U.S. public accounting firms that audit public companies. We believe that you will be able to rely on the oversight of Canadian public accounting firms that will be provided by the CPAB. Consequently, we would request that PCAOB exempt from its oversight processes firms that are registered with the CPAB.

Summary

We trust that a close and cooperative arrangement can be reached between the two organizations to minimize duplication and allow each organization to maximize effective use of its resources.

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

March 28, 2003

Dear Mr Secretary,

Rulemaking Docket Matter No. 101

We are very pleased to have the opportunity to express our comments regarding the registration process of accounting firms around the world as described in the Public Company Accounting Oversights Board's (hereafter "PCAOB") proposed rules, issued on March 7, 2003 in connection with Section 102 of the Sarbanes Oxley Act 2002. We enclose our detailed comments as Appendix 1.

We are conscious of the objectives of the Sarbanes Oxley Act and we fully agree that improvements in the quality of financial reporting, in the corporate governance framework, and in the definition of the role and responsibilities of the audit profession are in the public interest.

The oversight of the accounting profession is, at the moment, a preoccupation in France. As you may be aware, the French government is finalizing "La Loi de Sécurité Financière" (the law on financial security). This law responds to many of the issues addressed in the Sarbanes Oxley Act.

The French auditing profession is committed to playing to the fullest extent appropriate its role in all of the world's capital markets and its leaders and members appreciate that this role carries with it significant responsibilities, not least in terms of ethics. Accordingly, while we are committed to ensuring that French firms meet the requirements of the PCAOB, we would not wish such compliance to be at the expense of non-compliance with our local laws and regulations. In order to work with you to avoid such a risk, we would strongly recommend that the PCAOB consider the French regulatory environment with regard to its registration and oversight process.

In particular, we are concerned that there are significant, specific legal obstacles which would prevent French professionals from complying with the registration process in its current form.

We would suggest that in addition to the ongoing discussion with the European Commission, full co-operation with the French government bodies and, in particular, the French Ministry of Justice and Ministry of Finance is essential to identify solutions to the issues raised.

The extremely tight time-frame for response has not enabled us to examine in detail the possible solutions to these issues at this date. However, we provide in Appendix 1 to this letter our initial analysis of the obstacles which we have identified so that we can work with you and the PCAOB to find appropriate remedies satisfactory to all parties and compliant with the regulatory frameworks in both our countries.

We share your concern regarding the transparency and stability of financial markets around the world and we confirm our firm intention to work closely with you towards a satisfactory resolution of the above issues.

Yours sincerely,

Michel Tudel
President,
Compagnie Nationale des Commissaires aux Comptes

Enclosures:
PCAOB registration: Issues concerning the French profession Appendix 1

PCAOB registration: Issues concerning the French profession Appendix 1

The following document summarises the primary concerns of the profession in France in response to the questions raised in the PCAOB briefing paper dated March 4, 2003 (pages 4 and 5).

This information has been gathered primarily by the "Comité APE" (the listed companies section of the Compagnie Nationale des Commissaires aux Comptes), the equivalent body in France of the SEC section of the AICPA.

Question 1 - 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?

- From our discussions with the firms and given that such information has never been requested to date it is essential that extensions be granted for French firms in order to address both the legal obstacles (see below) and practical aspects (e.g. systems, compilation and review of data to be submitted). Given the importance of the legal issues a period of one year to register would be reasonable.

Question 2 - Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?

- There are no sections that are inapplicable *per se*. However, compliance with a number of requirements as currently set out would be illegal under French law. Please see response to question 4 below.

Question 3 - In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?

- No.

Question 4 - Do any of the Boards registration requirements conflict with the law of any jurisdiction in which foreign public accounting firms that will be required to register are located?

The application of the proposed registration system will potentially lead to conflicts and in some instances will be illegal. In France, although not exhaustive, the following legal issues have been identified:

Client confidentiality

In France, legal issues would arise if audit work papers or other information (i.e. testimony) were required to be disclosed and communicated to the Board as part of the registration process. Articles L.225-240 of the French Commercial Code provides that audit firms are

prohibited from communicating to a third party any information gained by the auditor in the course of his engagement. There are criminal (e.g. up to one year imprisonment) and disciplinary sanctions as well as possible civil liabilities for violation of this provision. Client consent could allow the auditor to waive any civil liability but not the criminal liability associated with transmission of any such information.

Current French legal provisions provide for a release from professional confidentiality obligations to the benefit, *inter alia*, of the French market regulator (i.e. Commission des opérations de bourse (COB)). However, no specific French legal provision provides such a waiver for the benefit of a foreign controlling authority such as the Board. Therefore, any disclosure and/or communication to the Board would amount to a breach of client confidentiality.

We emphasise the importance of this point.

Data privacy and protection

The registration process requires transmission of accountants' names, social security numbers and diplomas. While this may seem straight forward to the Board, stringent conditions are placed on the gathering and transmission in electronic form of data relating to individuals in France (as for all countries within the European Union). In this respect, it shoud be noted that the law dated January 6, 1978 ("Loi informatique et liberté") requires private entities to make a prior declaration to the Commission Nationale Informatique et Libertés ("CNIL"), an independent administrative authority, before such entity carries out any automatic processing of personal data. In addition, the trans-border flow of personal data could be subject to a prior authorization. Details on criminal, civil or administrative actions or disciplinary proceedings pending against the employees of a firm would fall into the "sensitive personal data" category and would be subject to further restrictions.

Confidentiality and legal issues associated with information on criminal, civil and disciplinary proceedings

French corporate law characterize as a criminal offence a wide range of minor facts or events which would not be characterized as such under several foreign legislations (e.g. the fact that statutory auditors do not report to the appropriate authority that a company has been delayed in the preparation and approval of its statutory accounts is subject to a criminal penalty under French law). Hence, it is likely that criminal proceedings be disclosed and communicated to the PCAOB although the underlying facts of such proceedings would not constitute a criminal offence under US laws. We believe that reporting of such proceedings is beyond the scope of what the PCAOB requires for oversight purposes.

Certain criminal sanctions can be waived under certain circumstances. Reporting an individual's name for a criminal penalty in the last ten years which has been waived would potentially make the public accounting firm liable for legal and criminal consequences.

Civil proceedings and disciplinary actions: This information may not be public or is published on an anonymous basis. As such collection and completion of the data could prove difficult. As mentioned above, the publication of the data and transfer outside of the

EU would prove to be difficult in France because of data privacy protection law. It would be impossible to obtain information for cases still pending.

In addition, it is worth noting that the President of the French Republic is empowered to grant amnesty in relation to certain criminal and disciplinary sanctions. Further to such amnesty, any reference to an amnestied sanction would constitute a criminal offense under French law.

We believe any information on criminal, civil or disciplinary cases should be strictly limited to those instances, relative to an Issuer, which are in the public domain.

Disclosure of information of an economic, commercial, industrial, financial or technical nature

French law prohibits communications of certain information of an economic, commercial, industrial, financial or technical nature to a foreign authority, without having obtained the appropriate authorization from the relevant ministry. This procedure could be extremely cumbersome in practice. Further restrictions could apply to information in sensitive industries with national security implications.

Question 5 - In the case of non-U.S. firms that are required to register because they play a substantial role in the preparation and furnishing of an audit report on a U.S. issuer, is the Board's definition of "substantial role" appropriate?

- The definition is clear.

Question 6 - 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?

- No comment.

Question 7 - 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?

- To enable the Board to respond to this issue it is important to have a full understanding of the organization and structure of the accounting profession in France.

- The accounting profession is currently self-regulated. The Companie Nationale des Commissaires aux Comptes (the "CNCC"), the over-arching authority representing all auditors registered in France, has created jointly with the COB the *Comité de Déontologie de l'Indépendance* (the "CDI"). The aim of the CDI is to guarantee the independence and objectivity of auditors auditing listed companies.

- A well organized peer review system, reporting to the COB, for listed companies has existed for a number of years. The annual results of these reviews are public.

- In addition, a new law called the "Loi de Sécurité Financière"(law on financial security) is currently in the final stages of discussion and approval by the French Parliament. This law, which addresses corporate governance and financial marketplace issues, also includes significant provisions relating to the organization and governance of the accounting profession in France. It creates a board comprised of independent members (including judges, government representatives, the President of the stock exchange, a renowned panel of experts, a university professor, and three designated accounting professionals), who will be responsible for the control of the accounting profession. Registration as statutory auditor, determination of auditing standards, independence rules, quality control and disciplinary procedures of the profession will fall under the responsibility of this board. Conceptually, many aspects of this law are similar to the provisions of the Sarbanes Oxley Act. The PCAOB should consider to what extent the provisions of this law satisfy some of their requirements.

- Furthermore, French corporate law provides criminal sanctions for pursuing an engagement as auditor if not independent and participation or association by an auditor with the publication of false or misleading financial information. Corporate law also renders the withholding of significant information from auditors a criminal offence. These aspects of corporate law are very much in line with the objective of certain provisions of the Sarbanes Oxley Act.

- Under French law, any company preparing consolidated accounts (and therefore all listed companies) is required to have a joint statutory audit.

- Although the French accounting profession has been to some extent self regulating to date, the role of the auditor and his responsibilities are clearly set out in corporate law. The statutory auditor has specific legal responsibilities, and is required to report to the French equivalent of the district attorney if he discovers fraud or other specific violations of corporate law.

- Licences to practice are granted by the court under the authority of the Minister of Justice. An individual can only obtain a practising licence if he does not have a criminal record when applying for such a licence.

- Given the above factors we believe that there is potential for the PCAOB to rely on French regulations and control instead of foreign inspection

Question 8 - 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?

- We refer you to the issue described above on client confidentiality. The PCAOB may wish to enter into an agreement with the French regulatory authorities on this issue.

- We reiterate as follows: Sections 102, 105, and 106 of the Act require audit firms to disclose information, documents or audit work papers to the SEC or to the Board when

required by them to do so. These provisions are problematic under French Law, because audit firms are subject to specific confidentiality (i.e. non-disclosure) requirements in France. Article L.225-240 of the Code provides that auditors are prohibited from communicating to a third party any knowledge gained by them in the course of their engagement. Any breach of such obligation may entail a one-year imprisonment sentence and/or a fine of 15,000 euros (article 226-13 of the French Criminal Code). Since there is no express provision under French law authorizing the disclosure of confidential information by auditors to the SEC or to the Board, auditors cannot disclose information, documents or audit work papers without breaching confidentiality obligations under French law. In addition, please note that Article 66 of the Decree dated August 16, 1969 lists entities (including courts) to which audit workpapers may be disclosed. Neither the SEC nor the Board are included in this list..

In addition, please note that the SEC has entered into a cooperation agreement with the COB pursuant to which such parties have undertaken to assist each other and exchange information regarding investigations on the breach of laws and regulations in both countries. In addition, France and the U.S. are party to the Den Haag Treaty since 1974 and 1972, respectively. Such treaty provides for rules regarding the exchange of information in civil and commercial investigations among the countries part to it. The prolongation or application of such agreements needs to be considered by the PCAOB.

- The disciplinary system envisaged by the Act could potentially be difficult and complicated to enforce as described under French law.

Question 9 - 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?

- See above.

Question 10 - 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?

- No specific comment on this matter.

RÉPUBLIQUE FRANÇAISE

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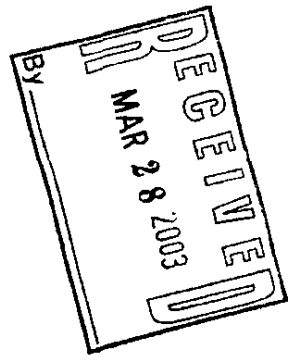


COB

Mr Bill GRADISON
The PCAOB
1666 K Street NW
WASHINGTON DC 2006

(By telefax : 202 862-8430)

Paris, March 28, 2003

Le Chef
du Service
des Affaires
Comptables

Re: Roundtable discussions on a proposed PCAOB rule on registration of non-US public accounting firms

Dear Mr Gradison,

I refer to your letter dated 20th March, 2003, inviting the Chairman of the COB to participate in the roundtable discussions organized by your Board in Washington, DC on March 31st.

We have carefully considered your invitation and we acknowledge that the subject matter is of utmost importance to the financial markets. As a stock market regulatory authority, we welcome your initiative to hold such roundtable discussions given the far reaching implications of your proposed rules. We have however concluded that their implications should be assessed at the governmental level insofar as they involve possible conflicts with existing or upcoming national and European legislations. We understand that high level European Commission representatives will participate in your roundtable and will represent all 15 member states. They will be accompanied by representatives of our diplomatic representation in Washington DC. We trust that the European Commission will convey the european concerns that we totally share.

We will follow up with the highest interest the outcome of these discussions and we welcome the opportunities for future cooperation with your Board as the need may develop.

Yours sincerely.

Philippe DANJOU
Chief Accountant

Cc : Mr David Wright – European Commission

C O N S O B

Commissione Nazionale
per le Società e la Borsa

Rome, March 27, 2003

ISSUERS DIVISION
Corporate Controls Office

International Relations Office

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

Reference no.: 3019738

Case no.: 2062709

Subject: PCAOB Rulemaking Docket Matter No. 001.

In this letter the competent Offices of Consob (Commissione Nazionale per le Società e la Borsa) set out their comments on the proposed registration system for public accounting firms, issued pursuant to section 102 of the Sarbanes-Oxley Act.

Consob has carefully followed the work of Congress and the SEC, leading to the enactment of the Sarbanes-Oxley Act and the consequent intense regulatory activity and to the setting up of the Public Company Accounting Oversight Board, as the body responsible for the supervision of the activity of public accounting firms in their dealings with listed companies. It is in complete agreement with the basic principles underlying the reform.

In Italy the issues addressed in the above-mentioned reform have been and are being addressed by Consob, which has always played a pivotal role in the system regulating the financial markets with a view to ensuring their proper functioning, a role that was strengthened in 1998 with the enactment of Legislative Decree 58/1998, the Consolidated Law on Financial Intermediation ("Consolidated Law").

The Consolidated Law comprehensively revised all the legislation specifically concerned with the regulation of Italy's financial markets and includes a series of provisions intended to guarantee the transparency of financial information and safeguard the interests of the investing public, objectives that are identical to those being pursued in the reform under way in the United States.

As regards statutory audit activity, in Italy for many years now this has been subject to rigorous supervision based on a system of registration of all the persons subject thereto. Specifically, Italian law

provides for two distinct systems of registration and supervision, linked together by the establishment of some points of contact and entrusted to two authorities with different competences: Consob and the Ministry of Justice.

The Consolidated Law states that the statutory audit of listed companies and their subsidiaries and of entities that are of significant public interest in view of the nature of their activity, such as, among others, insurance companies and investment firms, must be carried out by an auditing firm entered in the Special Register kept by Consob.

Entry in the Special Register implies that an auditing firm is subject to supervision by Consob, which is entrusted with the task of verifying the independence and technical adequacy of registered firms.

The fundamental features of the present system were defined in 1975, shortly after the establishment of Consob, in Presidential Decree 136/1975. In 1998 the Consolidated Law basically confirmed the key principles of the system of supervision under Consob and took over nearly all the provisions of the 1975 decree.

The statutory audit of all other companies is performed by persons entered in the Register of Auditors kept by the Ministry of Justice pursuant to Legislative Decree 88/1992. Natural persons and auditing firms that satisfy certain requirements may be entered in this register. The supervision of such natural and legal persons is entrusted to the Central Commission for Auditors established at the Ministry of Justice, of which Consob is one of the participants. The Register of Auditors was introduced by Legislative Decree 88/1992 in implementation of Directive 84/253/EEC on the approval of persons responsible for carrying out the statutory audits of accounting documents.

Auditing firms entered in the Special Register kept by Consob must satisfy all the requirements specified in Legislative Decree 88/1992 and the additional requirements specified in the Consolidated Law. Details of the working of the system of registration and supervision of the auditing firms entered in Consob's Special Register are given in the annex enclosed with this letter.

Reference should be made to the annex for a more detailed description of the system, of which the main aspects are summarized below.

- at the time of auditing firms' entry in the Special Register, Consob verifies that they satisfy the formal and substantial requirements, with special reference to their technical adequacy;
- as a consequence of auditing firms' registration, Consob is required to supervise their activity, so as to ensure ongoing compliance with the requirements of independence and technical adequacy. If irregularities are found, Consob can adopt measures affecting auditing firms' operations forbidding further activity by natural persons and firms; it calibrates the penalty according to the seriousness of the irregularities committed;
- lastly, Consob draws up regulations, provides guidance and issues recommendations concerning the principles and standards to be adopted in audits.

Everything considered, we are convinced, after more than twenty years of experience with this system, that the guarantees and safeguards it provides are equivalent to those that the Sarbanes-Oxley Act and the related SEC and PCAOB rules are intended to establish and that they are capable of achieving the same ends as the new US legislation.

C O N S O B

We therefore consider that the conditions exist for total exemption to be granted from the registration system proposed by the Board and the consequent oversight of foreign public accounting firms that will be introduced.

This request for exemption is based on section 106 (c) of the Sarbanes-Oxley Act, which states that the SEC and the PCAOB (subject to the approval of the SEC) may, where they deem it necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, exempt any foreign public accounting firm from the provisions of the Sarbanes-Oxley Act or the rules of the Board or the Commission.

Since Italy has a double system of supervision that ensures, through entry in the Consob Special Register and in the Register of Auditors, the oversight of all auditors and auditing firms, the registration of Italian auditing firms with the Board would clearly be a duplication, with consequent inefficiencies and an inevitable increase in costs, especially if the duplication of registration was followed by the duplication of supervision.

In the absence of forms of exemption able to re-establish the necessary "equilibrium" between legal systems, we would be faced with hard-to-manage situations of competition between systems, for the performance of both audits and supervision, characterized by inevitable inefficiencies for the persons subject to supervision and for the bodies responsible for carrying it out, as well as by inevitable additional costs for auditing firms.

In fact Italian auditing firms would be subject to two fee regimes, be required to satisfy two sets of requests for information, and have to multiply by two most of the administrative tasks they have to perform under the national system of supervision.

Moreover, similar "distortions" of the system do not appear to be justified by an obvious gain in terms of more effective guarantees for investors. On the contrary, it is highly likely that they would end up by bearing the burden imposed by dual registration.

In conclusion, we believe that granting Italian auditing firms a complete exemption from the requirement to register with the PCAOB and the rules that will be issued by the SEC and the Board itself would not in any way damage the public interest that those provisions are intended to safeguard.

Without prejudice to the request for exemption put forward above, we submit the following comments in response to the questions contained in the document published by the Board regarding the registration of foreign public accounting firms;

- the time limit of end-October for Italian auditing firms to register with the Board does not appear sufficient, in view of the quantity and complexity of the information required. We therefore consider it necessary to provide a longer period and in this respect the proposal of an additional 90 days appears reasonable;
- as regards the definition of the "substantial role" played by foreign public accounting firms in the audit of a US issuer, it does not appear desirable to establish a threshold lower than that referred to of 20%.

As for the introduction of powers of oversight of Italian auditing firms by the PCAOB, we consider, taking into account Consob's powers described above, that the Board could use Consob to carry out its investigations, *inter alia* under the cooperation agreements already in place with the SEC.

C O N S O B

We inform you that the Consolidated Law on Financial Intermediation and the related implementing regulations issued by Consob are posted in Italian and English on Consob's website (www.consob.it).

We are available to provide any further information or clarifications you may need and to meet with you in order to examine the questions addressed above in greater depth.

Sincerely yours,

Carlo Biancheri
Head of the
International Relations Office

Giuseppe Cannizzaro
Head of the
Issuers Division

N.DMS: 030790012

C O N S O B

Annex

The Italian system of registration and supervision of auditing firms

1. Registration of auditing firms in the Special Register kept by Consob

When an auditing firm applies for entry in the Special Register kept by Consob under Article 161 of Legislative Decree 58/1998, the Consolidated Law on Financial Intermediation ("Consolidated Law"), the latter opens an inquiry aimed at verifying that the firm satisfies the legal and administrative requirements specified in Legislative Decree 88/1992 and the additional requirements specified in the Consolidated Law.

Legislative Decree 88/192 establishes that auditing firms must have a given legal form and a restricted scope of activities. In addition, the directors and shareholders/partners of such companies must satisfy certain integrity and professional requirements. In more detail:

a) Article 6 of Legislative Decree 88/1992 specifies the legal forms that auditing firms may have in order to perform their activity and establishes that their corporate purpose must be restricted to auditing and other services which are strictly related to the implementation of the accounting system. The latter is intended to ensure the independence of auditing firms by excluding the performance of other activities that are deemed to be incompatible.

b) Article 6 of Legislative Decree 88/1992 also establishes that the majority of directors and shareholders/partners of auditing firms must be entered in the Register of Auditors. This rule is intended to ensure that auditing firms are controlled by persons who engage in a professional activity and who satisfy certain requirements.

   In fact the natural persons entered in the Register of Auditors must satisfy professional requirements (Articles 3 and 4 of Legislative Decree 88/1992) regarding their training in economic and accounting matters and their experience, as well as integrity requirements (Article 8 of Legislative Decree 88/1992) based on the absence of convictions for certain penal offences and of recourse to plea bargaining.

Another requirement that auditing firms must satisfy in order to be entered in the Special Register is established in Article 161.4 of the Consolidated Law, which states that they must possess adequate guarantees provided by banks and/or insurance companies to cover the risks deriving from their audit activity.

Article 161.2 of the Consolidated Law states that auditing firms that apply for entry in the Special Register must satisfy the requirement of technical adequacy. For the purpose of verifying this, Consob, as part of its inquiry, carries out a quality control on applicants aimed at checking the presence of the factors necessary to ensure that, once registered, they will be in a position to perform their audit activity adequately.

To this end Consob normally carries out checks during the inquiry on the ways in which applicants have carried out their audit work verifying compliance both with auditing standards and with ethical standards of independence. Moreover the checks extend to the

adequacy of auditing firms' organizational structures, including the assessment of the professional experience of the personnel employed.

In short, in its evaluation of applicants for entry in the Special Register, Consob carries out checks that are not limited to verifying that they satisfy the formal legal and administrative requirements but aimed primarily at verifying auditing firms' satisfaction of the substantial requirements concerning the audit activity they have actually performed.

The Consolidated Law authorizes Consob to ask auditing firms entered in the Special Register to provide it with periodic data on their activities. Information on all the audit engagements they are awarded and the composition of their organizational structure (as regards the personnel employed and their qualifications) must be sent to Consob every three months. Once a year, instead, auditing firms are required to transmit their financial statements and the other information of a general nature established in a Consob Communication n.91001877 of 11 April 1991 (total hours worked and billed for the year; relations with other auditing firms; information on the network they belong to and the relationship within it; and a detailed description of the quality control procedures adopted for the acceptance of new engagements, the assignment of personnel to engagements, the internal supervision of the audit work carried out, independence vis-à-vis clients and personnel hiring and training policies).

Auditing firms are also required to notify Consob within 30 days (Article 162.3 of the Consolidated Law) of every change in their shareholders/partners and directors, the transfer of shares, and any other changes concerning the legal and administrative requirements that are verified at the time of auditing firms' entry in the Special Register. In the event of the omission or late submittal of notifications of such changes, Article 193 of the Consolidated Law provides for the imposition of a pecuniary administrative sanction on the directors of the auditing firm concerned.

Companies whose financial statements are subject to statutory audit by auditing firms entered in the Special Register are however required to provide Consob with adequate information on the occasion of the appointment of the auditing firm and the revocation of the audit engagement. Article 159 of the Consolidated Law assigns Consob the task of establishing ~~in a~~ by regulation the documentation that companies conferring engagements must transmit to Consob in relation thereto.

Article 146.1 of Consob Regulation 11971/1999 on issuers implementing the above-mentioned provision of the Consolidated Law requires listed companies to send Consob copies of the following documents: the resolution adopted by the shareholders' meeting conferring the engagement, the opinion of the board of auditors on the engagement, the proposal concerning the audit engagement prepared by the audit firm, and the declarations attesting the absence of situations of incompatibility established by law between the auditing firm engaged and the company that conferred the engagement.

Article 146 of Consob Regulation 11971/1999 also specifies the content of the opinion to be rendered by the board of auditors, which is charged with evaluating the independence and technical adequacy of the auditing firm, with particular regard to the

adequacy and completeness of the audit plan and the firm's organization in relation to the size and complexity of the engagement to be performed.([1])

This documentation is normally sent to Consob after the engagement has been conferred, but if the board of auditors intends to render a negative opinion on the appointment of the auditing firm chosen by the directors, this must be sent to Consob immediately.

Article 159.6 of the Consolidated Law establishes that if a company fails to appoint an auditing firm, Consob, proceeding on its own authority, must appoint one of the firms entered in the Special Register and determine the fee it is to be paid.

Where the appointment of an auditing firm is revoked, Consob must be sent copies of the following documentation: the resolutions of the shareholders' meeting revoking the appointment and appointing a new auditing firm, the comments expressed by the revoked auditing firm and the related opinion of the board of auditors. As in the case of the appointment of an auditing firm, if the board of auditors intends to render a negative opinion on the revocation, this must be sent to Consob immediately.

Auditing firms entered in the Special Register have to pay Consob an annual supervision fee based on the fees charged for statutory audits (4% for 2003). Consob also requires them to indicate in their financial statements, which have to be transmitted within 15 days of their approval, the breakdown of revenues received during the year by type of activity (statutory audits, other audits and other services which are strictly related to the implementation of the accounting system).

The legislation governing the activity of auditing firms entered in the Special Register also provides for Consob to be promptly informed whenever their work reveals problems at their statutory audit clients.

Specifically, Article 155.2 of the Consolidated Law requires auditing firms to inform Consob and the client's board of auditors without delay of any circumstances they find in their work that they deem to be censurable. A report of censurable circumstances triggers a two-pronged control mechanism, inside and outside the company in question. Indeed, on the one hand the board of auditors is required to act promptly taking all the steps within its sphere of competence, on the other the report allows Consob to take action in order to obtain clarifications and information and possibly carry out inspections, both at the company and at the auditing firm.

As regards the opinions auditing firms are required to render on their clients financial statements, Article 156 of the Consolidated Law establishes that in the event of an adverse opinion or a disclaimer the auditing firm must immediately inform Consob, giving the reasons for its decision.

[1] For a description of the role and functions of the board of auditors, see the letter Consob sent to the Securities and Exchange Commission on 25 February 2003 containing comments on the proposed rule "Standards Relating to Listed Company Audit Committees" (File No. S7-02-03").

C O N S O B

2. The supervision of auditing firms and related sanctions

Article 162.1 of the Consolidated Law entrusts Consob with the task of supervising auditing firms entered in the Special Register in order to verify their independence and technical adequacy. Article 161.2 specifies the powers assigned to Consob for the purpose of supervising auditing firms, whereby it can:

a) require them to communicate data, information, records and documents periodically or otherwise, specifying the related time limits;

b) carry out inspections and obtain information and clarifications from their shareholders/partners, directors, members of the board of auditors and general managers.

These powers enable Consob to carry out extensive controls on the entire activity of auditing firms entered in the Special Register using all the different instruments made available by the Consolidated Law.

In particular, at any time Consob can carry out inspections at auditing firms, either to verify their work in individual engagements following the emergence of facts or circumstances that require the immediate acquisition of information or to perform a more general control of the quality of registered firms' audit work and internal procedures. On the basis of the powers described above, Consob does in fact regularly conduct investigations and carry out inspections involving auditing firms entered in the Special Register.

Where during its supervisory activity Consob finds serious irregularities in the performance of audits, Articles 163.1a) and 163.1b) of the Consolidated Law authorize it to impose administrative sanctions on auditing firms entered in the Special Register. In this respect it should be noted that the sanctions specified in the Consolidated Law are calibrated according to the seriousness of the offences committed.

To this end Consob may:

a) order the auditing firm not to use in performing audit activities, for a period of not more than two years, the person responsible for the audit in which the irregularities were found;

b) prohibit the firm from accepting new audit engagements for a period not longer than one year.

Article 163.2 of the Consolidated Law authorizes Consob to impose a sanction that is more serious than those referred to above, the deletion of the auditing firm from the Special Register. The law provides for this sanction to be imposed when:

a) the irregularities found are particularly serious;

b) the requirements for entry in the Special Register are no longer satisfied and the firm does not satisfy them within a time limit, of not more than six months, established by Consob;

c) the firm does not comply with sanctions referred to in Article 163.1 of the Consolidated Law.

Lastly, under Article 163.3 of the Consolidated Law, Consob may also delete an auditing firm from the Special Register where, for an uninterrupted period of 5 years, it has

not carried out any statutory audit engagements for which the Consolidated Law prescribes entry in that register.

The measures described above can only be imposed at the end of an administrative proceeding governed by the rules contained in the law that established Consob (Law 216/1974), the Law 241/1990 and the related implementing regulations issued by Consob. The procedure starts by Consob notifying the alleged irregularities to the person responsible for the audit and the auditing firm concerned in a formal document approved by the Commission. The auditor and the auditing firm have 30 days in which to submit their objections in writing; not later than 6 months from the date the charges were brought Consob decides whether or not to impose the sanction. Sanctions imposed by Consob can be challenged by the auditor and the auditing firm concerned before the Regional Administrative Tribunal and, at the second level, before the Council of State.

Provision is made for sanctions imposed by Consob to be adequately publicized by posting them on Consob's website (www.consob.it) in the weekly newsletter "Consob Informs" and by publishing the full text of the resolution in Consob's *Bollettino Ufficiale*, which is also available on the authority's website.

Article 156 of the Consolidated Law establishes that the reports issued by auditing firms entered in the Special Register on the financial statements of companies subject to statutory audit are to be signed by the person responsible for the audit, who must be a shareholder/partner or director of the firm and entered in the Register of Auditors kept by the Ministry of Justice.

In view of the links between the Special Register of auditing firms and the Register of Auditors, the Consolidated Law provides for a flow of information between Consob and the Ministry of Justice when they adopt resolutions imposing sanctions. Under Article 163 of the Consolidated Law all the sanctions imposed by Consob must be notified not only to the interested parties but also to the Ministry of Justice, which in turn has to inform Consob of all the measures it adopts with respect to persons entered in the Register of Auditors. As a member of the Central Commission for Auditors, Consob takes part in the supervision of all the persons entered in Register of Auditors.

Lastly, whenever a resolution is adopted deleting an auditing firm from the Special Register, all its clients subject to statutory audit must be promptly informed, so as to allow them to appoint another registered auditing firm. If a company fails to appoint another firm, Consob proceeds on its own authority to make the appointment and determine the fee the new firm is to be paid.

3. Regulation, guidance and recommendation of standards for the proper performance of audits

The Consolidated Law lays down the fundamental principles of the auditing system and entrusts Consob with the task of implementing some of its provisions in detail by regulations.

In addition to this regulatory activity, under Article 162.2c) of the Consolidated Law Consob can recommend the adoption of auditing standards and methods after consulting the Italian accounting profession.

Starting with the audits of companies' financial statements for the year ended 31 December 2002, Consob has recommended the adoption of new auditing standards based on the international standards on auditing (ISA) and the fruit of close cooperation between Consob and the Italian accounting profession.

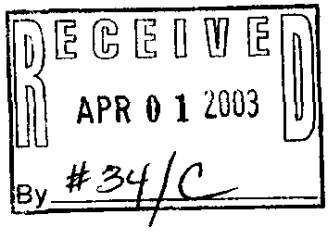
All the communications concerning auditing issued by Consob to auditing firms are posted on its website (www.consob.it).

4. Criminal sanctions applicable to auditing firms

Articles 2624 and 2638 of the Civil Code, Articles 177, 178 and 179 of the Consolidated Law and Article 622 of the Penal Code establish that auditors are criminally liable for making false statements in reports and communications related to audited companies, obstructing the performance of the functions of public supervisory authorities, entering into illegal financial relationships with audited companies, receiving illegal compensation from the same, and using and divulging confidential information obtained in the performance of an engagement.

Article 179 of the Consolidated Law provides for judgements issued against directors, shareholders/partners or employees of an auditing firm for the above-mentioned offences to be notified to Consob by the judicial authority that issued the judgement.

CROWE CHIZEK



March 25, 2003

Public Company Accounting Oversight Board
Attention: Office of the Secretary
1666 K Street, NW
Washington, DC 20006-2803

Docket No. 001

We are pleased to comment on the Board's "Proposal of Registration System for Public Accounting Firms". Our comments follow in the general order of the proposed rule.

1. Form 1 Part I Item 1.2 Applicant Contact Information

A registering firm is asked to provide the address of its "headquarters office". What is the primary factor in this determination? Our Firm has multiple offices and management in various different offices. For example, our CEO and certain direct support personnel are located at one of our Indianapolis, Indiana offices and our COO is located at our Oakbrook, Illinois office. Those are the offices those two individuals were in before they were selected as CEO and COO, and future CEOs and COOs may be located in other offices. Management meetings are held at various different locations or by teleconference. We have a concentration of administrative personnel in one of our South Bend, Indiana offices. Our other South Bend office contains mostly professionals and the national office of Technical Standards personnel who will be listed as the primary contact in Item 1.3. We do not refer to any particular office as the "headquarters".

2. Form 1 Part I Item 1.6 Associated Entities of Applicant

A registering firm is asked to provide information about associated entities that engage in the practice of public accounting. If the firm registering is a subsidiary of another entity ("holding company"), is information as to the holding company to be provided even if the holding company does not itself "engage in the practice of public accounting"?

3. Form 1 Part I Item 1.8 Required Licenses and Certifications

A registering firm is asked to indicate if individual accountants who participate in audits have all licenses "required". While many of the personnel in a firm may have licenses, we think it is possible that most of the personnel in a firm may not be "required" to have those licenses. Presumably if the audit partner has a license, there then is no additional requirement that those that perform the audit under the direction of this partner are "required" to be licensed. In fact, many firms use personnel on audits that may not yet have passed the CPA exam or are not yet eligible for a CPA license due to having not yet met the experience requirements. Are we to presume that we should respond only for the professionals that sign the audit reports and have the final responsibility for the audit engagement? Or do you want all licenses held even if they are not "required". Further, it also seems that this question may be answered "yes" or "no", and that the detail of such licenses is only required under Item 7.1.

CROWE, CHIZEK AND COMPANY LLP
330 EAST JEFFERSON BOULEVARD POST OFFICE BOX 7 SOUTH BEND, INDIANA 46624 574.232.3992 FAX 574.236.8692

4. Form 1 Part II Items 2.1-2.4 Listings of Applicant's Public Company Audit Clients and Related Fees

These sections call for registering firms to provide information as to issuers for which audit reports are prepared or issued during the specified calendar years. We assume this is based on the date of the audit report itself and not on the date of the financial statements covered by that report. Thus for item 2.1 we assume that if a firm registers during calendar year 2003 the "preceding calendar year" would be 2002 and thus an audit report issued in early 2002 for December 31, 2001 year-end financial statements would be listed. It would help if this could be clarified.

5. Form 1 Part II Items 2.1 Issuers for Which Applicant Prepared Audit Reports

Questions (d) though (g) call for information regarding fees for the issuer's fiscal year. We note that if fee information for 2001 is to be provided (see prior comment), this fee information for 2001 may not have been recast by issuers into the new Schedule 14A categories of audit, other accounting, and tax services, since these new proxy requirements are not effective until May 6, 2003.

6. Form 1 Part II Items 2.1-2.2 Issuers for Which Applicant Prepared Audit Reports ...

These sections call for registering firms to provide information as to issuers for which audit reports are prepared or issued during the specified calendar years. If a firm registering has merged with another firm, acquired another firm, or divested a segment of its firm, during to or subsequent to the period covered, how should the acquiring firm report audit reports issued by its predecessor or acquired or divested firms?

7. Form 1 Part II Items 2.1-2.4b Issuers standard industry code (SIC), as most recently disclosed in any such filing

These sections call for registering firms to provide the SIC code of the issuer as the issuer has "most recently disclosed" in its filings with the Securities and Exchange Commission. We suggest allowing registering firms to provide the SIC code from the filing that contains the audit report being covered. Some registrants change their businesses over time, are acquired by other entities, divest of operations, and so on, any of which may change the SIC code for the issuer. The "most recently disclosed" SIC code might describe today's business of the issuer, but it may not describe the SIC code of the business that was audited in the past. Also, searching for the "most recently disclosed" SIC code may take unnecessary time.

8. Form 1 Part III Item 3.1b-e Fees received by applicant

This section calls for the registering firm to provide fee information. The registering firm may have had a merger with another firm, acquisition of another firm, or divestiture of a segment of the firm, or otherwise have been reorganized or restructured. The firm that is registering may not have any revenue in its most recently completed fiscal year because it may be the successor to another firm, or the information may have significantly changed due to the merger or disposal. It would be helpful if you could clarify how historical information should be provided in these cases.

9. Form 1 Part III Item 3.1b-e Fees received by applicant

This section calls for the registering firm to provide fee information as to "fees received". Information as to "fees received" appears to be cash collection information, and will not link up with proxy disclosures which are "fees billed". It also will differs from Part II Items 2.1 and 2.2, which ask for information as to "fees billed", rather than "fees received." Assume a firm has a March 31 fiscal year and audits an issuer with a calendar year-end. The service for the December 31, 2002 audit may be provided in February 2003 (and thus included in the proxy statement as pertaining to the 2002 audit), the service may be billed in March 2003 (and thus reported under Item 2.2 as fees billed for 2002), and collected in April 2003 (and

thus reported under Part III as part of the fees received for the firm fiscal-year ending March 31, 2004.) We suggest using a "fees billed" concept in this item.

10. Form 1 Part VI Item 6.1a Existence of Disagreements With Issuers

This section calls for information about reported disagreements where the registering firm is the former accountant. Some registering firms may have reported disagreements with issuers where they nevertheless remain the auditor. The requirement to "Indicate whether or not the applicant has been the former accountant with respect to any disclosure of a disagreement with an issuer" appears to require reporting only those disagreements where the registering firm is no longer the auditor, and to exclude other disagreements.

11. Form 1 Part VIII Item 8.1b Consents to Cooperate with the Board

This section calls for obtaining consents to cooperate from all associated persons. We suggest clarifying the extent to which such consents must be obtained. Item 8.1b refers to "associated persons", and elsewhere in the proposal "associated persons" is defined as "in connection with the preparation or issuance of any audit report", and defines "audit report" as pertaining to issuers. Hence, it may appear that this requirement for the consents may be limited to persons that participate in the preparation or issuance of an audit report for an issuer. However, if the extent is intended to be broader, this should be clarified.

12. Form 1 Part VIII Item 8.1c Consents to Cooperate with the Board

This section calls for obtaining consents to cooperate from all associated persons. The proposal in Section 1001 (m) refers to associated persons as those who "... in connection with the preparation or issuance of any audit report, ... participates as agent or otherwise on behalf of such accounting firm in any activity of the firm". Does this pertain to all audits or just audits of issuers? Does this mean any activity of the Firm or any activity of the Firm related to the audit of issuers? Some personnel in a firm, such as an estate tax consultant, might perform only activities that do not involve them in audits, or that do not involve them in audits of issuers. We suggest clarifying the scope of those from whom the consents must be obtained.

13. Form 1 Part VIII Item 8.1 Consents to Cooperate with the Board

The note to this section calls for obtaining the consent within 45 days of submitting the application. This requirement to have the consents "secured by the applicant within 45 days of submitting this application" may not allow enough time to reasonably obtain these consents. A number of the people who must provide consents may currently be on maternity leave, they may be on extended vacation, they may work only during the certain months of the year, or they may be are away on military service. We suggest increasing the time limit and also allowing consents to be obtained when a person returns to active work.

Further, if the Board requests more information of a registering firm so that a firm has to resubmit its application, or if the payment of the registration fee takes a few additional days, it may happen that consents will become more than 45 days old and have to be renewed, again bringing into focus the same issues regarding people away from the firm for a time.

If you have any questions about these comments, please call Jim Brown at (574) 232-3992. Thank you for the opportunity to comment.

Sincerely,

Crowe, Chizek and Company LLP

Crowe, Chizek and Company LLP

Deloitte
& Touche

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

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Deloitte
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March 31, 2003

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

Re: PCAOB Rulemaking Docket Matter No. 001
Proposal of Registration System for Public Accounting Firms

This letter is submitted on behalf of Deloitte & Touche LLP, the non-U.S. member firms of Deloitte Touche Tohmatsu, and Deloitte Touche Tohmatsu. We all are pleased to respond to the request for comments from the Public Company Accounting Oversight Board (the "PCAOB" or the "Board") on its *Proposal of Registration System for Public Accounting Firms*, PCAOB Rulemaking Docket Matter No. 001 (March 7, 2003).

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INTRODUCTION

We support the goals of the Sarbanes-Oxley Act of 2002 (the "Act") in restoring investor confidence as well as the Board's efforts to faithfully implement the Act. The Act requires that all public accounting firms that will prepare or issue an audit report for an "issuer" register with the Board.[1] The act of registering with the PCAOB is thus critically important to the Board, the public markets, and the accounting profession, and we support the Board in creating the most rational, efficient, and effective registration system possible. We believe that it is vital that the Board be successful in developing and executing its programs.

In this comment letter, we have sought to identify those aspects of the Board's proposal that we believe should be clarified or modified to enable the Board to carry out its duties and responsibilities in an efficient and effective manner and to ensure that applicants for registration better understand and are able to comply with their reporting responsibilities. It is very important that the nature and extent of our comments not be misconstrued by the Board. Completing the anticipated application for registration with the Board will be – perhaps unavoidably – an overwhelmingly cumbersome task, and we urge the Board to consider our recommendations included herein and identify areas where it can refine the scope of the application process – thereby reducing the burden on both public accounting firms and the Board – without hindering the Board's ability to perform its core responsibilities.

There are two important points that we would like to highlight at the outset in order to keep our specific comments in perspective. First, to the extent that we recommend that, for

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[1] *See* Act, § 102(a); S. Rep. No. 107-205, at 7 (2002) ("Conditioning eligibility to audit public companies on registration with the Board is the linchpin of the Board's authority."); *see also* Act, § 2(a)(7) (defining "issuer").

registration purposes, less information be required from applicants than required by the proposal, we are not suggesting that the Board or its staff would not have access to further information – to the extent permitted by law – from registered public accounting firms during the inspection or disciplinary process. Our comments relate solely to the registration process. Second, in this letter we recommend that, with respect to non-U.S. firms, registration be preceded by a dialogue and cooperation among regulators in order to resolve or reconcile conflicts that exist in law and to ensure that any conflicting or overlapping objectives among regulators be minimized. Our objective in making these recommendations is to assist the Board in following a logical path to the most effective result.

Our comments generally follow the order in which the Board's March 7, 2003 Release No. 2003-1 presents the registration system proposal. We first set forth general comments that address some of the larger issues that arise in many aspects of the Board's proposal. We then provide comments on the specific proposed rules, including the proposed definitions and the proposed method for treating material confidentially. Finally, we offer our comments with respect to each part of the proposed application form ("proposed Form 1").

GENERAL COMMENTS

We have identified a number of significant issues that are pervasive throughout the Board's proposal and warrant consideration by the Board.

I. COMPLYING WITH THE PROPOSED REGISTRATION REQUIREMENTS WILL BE CHALLENGING FOR FIRMS AND WILL RESULT IN VOLUMES OF INFORMATION THAT MAY NOT BE USEFUL TO THE BOARD

Complying with the proposed reporting requirements will be challenging. Collecting the information necessary to complete the proposed registration application will require substantial time, resources, and effort for those applicants with a significant number of issuers or associated personnel. We understand the need to devote adequate resources to the registration process, but

because many of the current proposed definitions are very broad, the subject matter that must be reported under the proposal would be voluminous, and ultimately not helpful to the Board. The following examples illustrate the scope of the problem.

First, we note that the U.S. member firm of Deloitte Touche Tohmatsu has approximately 23,000 professionals who could conceivably be deemed subject to one or more aspects of the proposed rule. There are an additional 80,000 non-U.S. professionals employed by non-U.S. member firms of Deloitte Touche Tohmatsu, and each of those non-U.S. associated firms anticipates registering individually so long as it meets the criteria for registration identified in Proposed Rule 2100.[2] We believe it is obvious that obtaining and reporting information concerning tens of thousands of individuals would be an overwhelmingly burdensome task. Moreover, we question both the relevance of much of this information to the Board's task, as well as the use that the Board will be able to make of much of the voluminous data that it currently proposes applicants to provide. In this regard, we note that the turnover among non-partner personnel in the accounting profession would make much of the information proposed to be reported almost immediately obsolete.

Second, under the Board's proposal, applicants would appear to be required to report information about not only their own personnel, but also information about certain other applicants' personnel as well. Thus, for example, the proposal could be interpreted as requiring the Deloitte Touche Tohmatsu U.S. member firm to list on its roster certain accountants who work for another Deloitte Touche Tohmatsu member firm – even though the Deloitte Touche Tohmatsu member firm located in that country would be submitting a separate application with

[2] As used herein, the term "associated firms" includes individual firms that are members of international organizations or members of international associations of firms.

the Board and listing these same individuals on its roster. Similar multiple reporting obligations would also arise in connection with the proposed consent requirements in Part VIII of the application form and the proposed reporting of past and pending proceedings involving certain individuals. The multiplicity that would result from imposing on more than one applicant identical reporting obligations regarding the same individuals would be needlessly burdensome for all involved – the applicants, their partners and employees, and the Board.

Third, much of the information that the Board's proposal would require applicants to provide is already available in the public domain and could be easily obtained by the Board without imposing a double-reporting obligation. For example, lists of issuers (not including foreign private issuers) for which audit reports were issued, information about fees related to such issuers on an individual issuer basis, and reports of changes in auditors, are all available through the EDGAR system maintained by the United States Securities and Exchange Commission (the "Commission" or the "SEC").

Given the broad scope of much of the current proposal, including the proposed definitions, it will likely take larger firms months and substantial human and monetary resources to collect and process the necessary information about their relevant personnel, certain independent contractors and other entities, and their clients' fees. Once collected, it will then take a significant amount of time to "upload" the collected information into the Board's web-based application form. Other unpredictable data integration and functionality problems with the web-based system could seriously hamper the registration process. In short, the registration process will be an arduous one, likely fraught with unforeseen problems.

II. THE BOARD SHOULD CONSIDER RELATED COSTS AND BENEFITS CAREFULLY BEFORE IMPOSING REPORTING REQUIREMENTS THAT GO BEYOND THE ACT'S REQUIREMENTS

Congress created the PCAOB to provide a new layer of oversight with respect to the performance of audits of issuers and set forth various reporting requirements in furtherance of that objective.[3] In several areas, the Board has proposed expanding upon the relatively extensive and specific requirements set forth in the Act by requiring applicants to report additional information. Parts of the Board's proposed registration requirements, for example, request information from applicants regarding information about such details as long-concluded legal proceedings against associated persons such as non-accountant staff members, revenues received from non-public clients, and information about accountants who do not work on audits for issuers. Those items are not required by the Act and are not clearly relevant to the Board's overall responsibilities with respect to audits of issuers.[4]

We understand that the Act gives the Board certain authority to require firms to provide more information than that specifically required by Congress when "necessary or appropriate in the public interest or for the protection of investors."[5] We would urge the Board to be cautious in exercising that authority, however, and to consider the costs and benefits carefully before deciding that more onerous reporting requirements are necessary for the application. We have

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[3] *See* Act, §§ 101(a), 102(b)(2).

[4] *See* Act, § 101(a) (establishing the Board "to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and 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").

[5] Act, § 102(b)(2)(H).

noted in the specific comments below some of the places where we think the proposal should follow more closely Congress's specifications, including the reporting requirements with respect to legal proceedings. In addition, many of the problems posed by over-broad definitions occur in areas where the Board proposes to go beyond the Act. These aspects of the proposal would be particularly burdensome for larger firms – burdens that in our view would not be outweighed by any substantial benefits to the Board's ability to fulfill its duties.

III. THE PROPOSED REGISTRATION REQUIREMENTS RAISE VARIOUS PRIVACY ISSUES

Some of the information proposed to be reported to the Board ordinarily would remain confidential. For example, the proposal would require applicants to provide the social security numbers (or non-U.S. equivalents) of their accountants, as well as information about legal proceedings involving certain personnel. Applicants would also be required to disclose information about their clients and the fees billed for services provided to those clients.[6] Providing these types of information to the Board may implicate U.S. or non-U.S. privacy and confidentiality laws, as well as accountants' professional obligations (as discussed in more detail in section IV and in Appendix A). As a result of these legal and professional constraints, firms would be placed in the unfortunate position of having to choose between complying with the Board's requirements and potentially violating applicable legal and professional standards, or filing incomplete applications with the Board. The Board should revise its reporting requirements to avoid presenting firms with such an unworkable dilemma.

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[6] The proposed fee disclosures do not align with the Commission's fee disclosure rules and thus some of the information that would be reported to the Board under the proposal would not have otherwise been made public by the issuer in a filing with the Commission.

IV. THE IMPLICATIONS OF SEVERAL ASPECTS OF THE PROPOSAL COULD BE PARTICULARLY PROBLEMATIC UNDER THE LAWS OF MANY NON-U.S. JURISDICTIONS

A. Non-U.S. Applicants Will Be Forced To Confront Potential Conflicts With Various Legal And Professional Obligations

The Board's proposal requires certain non-U.S. public accounting firms to register with the Board.[7] As the Board's proposing release makes clear, the Board is acutely aware that issues concerning potential conflicts with non-U.S. laws may arise with respect to non-U.S. applicants.[8] The Board has rightly identified an area that is filled with difficulties for non-U.S. applicants. Several of the currently proposed reporting requirements appear to be at odds with non-U.S. laws and professional standards that govern the treatment of certain client and employee information.

The potential conflicts are numerous.[9] For example, we believe that much of the information proposed to be required by the Board likely would be considered "personal data" under the European Union Directive dealing with data protection, Directive 95/46/EC. Personal data includes many of the personal details requested in the proposed rule for accountants and other persons associated with a firm. Information relating to criminal, civil, or administrative

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[7] We have also attached hereto as Appendix B our responses to some of the specific questions regarding non-U.S. applicant issues that are posed by the Board in its release.

[8] *See, e.g.*, PCAOB Release No. 2003-1, at 13 (inviting comments on the question of whether "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"); *see also id.* at 1 ("The Board recognizes that the registration of non-U.S. firms will raise special issues."); *id.* at 3 ("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.").

[9] To highlight in more detail the issues raised by the potential conflicts with non-U.S. laws, we have attached as Appendix A a chart that illustrates some of these potential conflicts. We also have considered the additional analysis conducted by the Linklaters law firm and we understand that analysis is being separately supplied to the Board for its consideration. We would be pleased to provide the Board with a copy of this analysis if requested.

actions or disciplinary proceedings, as required to be provided under Part V of the proposed Form 1, is likely to be considered "sensitive personal data" subject to greater restrictions on dissemination under the Directive. Similarly, England, France, Germany, Israel, and Switzerland each impose strict privacy and data protection laws that restrict a firm's ability to disclose certain information about itself, its employees, or its associated firms' employees, and in some cases even obtaining the employee's consent would not shield the firm from liability for making the disclosure.[10] Some of the Board's proposed reporting requirements would appear to be in direct conflict with these laws.

Potential conflicts with the laws and professional standards governing confidentiality of client information also abound. For example, it appears that several countries impose strict confidentiality requirements on accountants not to reveal information about their work on behalf of clients, including fee information that has not been made public.[11] In several countries, a violation of these confidentiality provisions also constitutes a criminal offense.[12] In Switzerland, audit work papers appear to be protected from disclosure by the Secrecy Obligation of Article 730 of the Swiss Code of Obligations and Article 321 of the Swiss Penal Code. These Swiss

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[10] *See, e.g.*, Data Protection Act of 1998 (England); The 1978 French Law on Data Protection (France); The German Data Protection Act of 1990, as amended (Germany); Privacy Protection Law of 1981 (Israel); and Federal Law on Data Protection (Switzerland).

[11] *See, e.g.*, Article 321 PC ("Verletzung des Berufsgesheimnisses") (under this provision, even obtaining client consent would not extinguish a firm's potential liability to the client); Section 323 Handelsgesetzbuch (German Commercial Code) (establishing an accountant's duty to keep client information confidential).

[12] *See, e.g.*, Section 203 Strafgesetzbuch (German Penal Code) (providing fines and prison terms for violations of accountants' duties to keep information confidential); French Criminal Code, Article 226.13.

provisions protect not only the client's confidential information, but also confidential information of other third parties that may have been obtained during the course of an audit.

Similarly, the proposed requirement that applicants and their employees consent to produce documents may place them in violation of certain laws. For example, in the Grand Duchy of Luxembourg, firm partners and all the staff are bound by professional confidentiality obligations that can be waived with respect to foreign authorities only to the extent that the foreign authority has entered into a treaty with the Grand Duchy of Luxembourg.

Again, the existence of these potentially conflicting laws and standards would place non-U.S. applicants in the precarious position of having to choose between (a) complying with the Board's reporting requirements, thereby risking a violation of these non-U.S. legal and professional obligations, and (b) adhering to the legal and professional standards of their home jurisdictions, and thereby risk the Board's disapproval of their registration applications and the resulting inability to provide audit services to issuers. The Board should alter its proposal to account for these apparent conflicts.[13]

B. Conflicting Laws And Standards From Other Jurisdictions Will Also Impact U.S. Applicants

In addition to the impact that conflicting laws will have on non-U.S. applicants' registration process, U.S. applicants may also be seriously affected. Because the Board's registration proposal appears to contemplate that U.S. firms will provide information about non-

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[13] In passing the Act, Congress demonstrated its intention not to impose unwavering U.S. standards in the face of non-U.S. laws and regulations that might be to the contrary. As Senator Enzi explained, "I do not believe that it was the intent of the conferees to export U.S. standards, disregarding the sovereignty of other countries and their regulators." 148 Cong. Rec. S7350, S7356 (daily ed. July 25, 2002).

U.S. applicants and non-U.S. personnel, laws and professional requirements from jurisdictions outside the United States could be implicated even for U.S. applicants.

For example, if a U.S. applicant were to provide information about work that a non-U.S. "accountant" did on behalf of an issuer, the provision of that information could violate the non-U.S. accountant's professional obligations.[14] In addition, the proposal would seem to require U.S. applicants to report information about certain pending and prior proceedings against non-U.S. individuals and entities that have particular associations with the applicant. Deloitte Touche Tohmatsu member firms operate in approximately 140 countries and many of these entities and their personnel would appear to fall within the currently proposed definition of "person associated with" the applicant and thus be covered by Parts V and VIII of the proposed Form 1. Requiring U.S. applicants to provide information about non-U.S. applicants and personnel would raise many of the same potential conflicts with the various data protection and other laws identified above.

C. The Board Should Confer With Non-U.S. Regulators And Study The Potential Issues Raised By Extra-U.S. Application Of The Registration Process In Greater Detail

We strongly encourage the Board to engage in further study and analysis of the issues raised by the potential conflicts of the Board's reporting requirements with laws and professional obligations outside of the United States. As the Board is aware, accounting firms are subject to many different regulatory schemes throughout the world. The Board should continue its dialogue with non-U.S. regulators to facilitate the Board's consideration of these potential

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[14] *See, e.g.*, Section 9 Berufssatzung WP/vBP (German Accountants' Professional Articles of Association) (prohibiting an accountant from providing confidential information to third parties); Section 43 Wirtshcaftspruferordnung (Accountants Ordinance) (setting forth an accountant's duty to keep client information confidential).

conflict of law issues, as well as to further cooperation surrounding their respective responsibilities relating to the accounting profession. Because of the need for the Board to have dialogue with non-U.S. regulators, such that the Board and non-U.S. applicants have the necessary time to consider the full range of issues implicated by the proposed registration requirements' potential conflict with various non-U.S. legal and professional standards, we recommend that the Board extend the time for non-U.S. applicants to register into the year 2004 and defer implementation of the problematic registration requirements until the issues can be satisfactorily resolved.

We also look forward to further discussions with the Board concerning its oversight, inspection, and disciplinary roles in the context of non-U.S. applicants. We believe that dialogue and cooperation among regulators will be very important as these areas are contemplated. Without cooperation among regulators, non-U.S. applicants could be subject to conflicting regulatory obligations imposed by multiple regulatory bodies, or find themselves exposed to multiple liability or punishment for the same conduct. By adhering to the principle of positive comity, each national regulatory authority could take advantage of other national authorities' efforts and expertise to avoid duplication of effort and to provide a more efficient allocation of resources. At this point, it is difficult to offer a complete and satisfactory comment on the potential powers of the Board in its inspection and investigative capacities before the Board is properly constituted and the rules regarding its powers in these areas are drafted and offered for comment. We look forward to engaging in a more complete discourse at that time.

V. THE BOARD SHOULD REVISE ITS PROPOSAL TO REDUCE UNNECESSARY BURDENS AND TO AVOID CONFLICTS WITH APPLICABLE LEGAL AND PROFESSIONAL OBLIGATIONS

We acknowledge that the registration process constitutes a critical aspect of the Board's authority. We request, however, that the Board remain cognizant of the burdens imposed by the

registration process, including the sheer volume of information requested, the highly technical nature of the requests identified in the application, and the need for applicants to understand their new registration obligations in the context of existing (and potentially conflicting) legal obligations in their home jurisdictions. The Board should seek to mitigate these burdens – which impact both applicants and the Board – wherever possible, such as by narrowing the scope of the information requested for registration to that information that clearly relates to the Board's mission and by excluding information that is otherwise available to the Board. Our suggestions to narrow definitions and adopt a more restrained set of data requirements during registration is in no way intended to suggest that the Board would not be able to access (or that we would refuse to provide) further information – to the extent permitted by law – in the context of issuer-specific inquiries from the Board during inspections or disciplinary programs. Our comments in this regard are solely related to the registration process.

As noted above, some of the proposed registration requirements potentially conflict with several laws and regulations that relate to the protection of confidential information. We believe that these potential conflicts with our professional and legal obligations as accountants should be resolved by limiting the reach of the proposed reporting requirements and by otherwise tempering such requirements by only demanding information "to the extent permitted by law." Such a standard would embody appropriate deference to state and non-U.S. policies and judgments. At a minimum, the Board should defer implementation of the problematic requirements that we identify in this comment letter until those potential conflicts issues are fully considered and satisfactorily resolved.

We have also set forth in detail below several suggested approaches intended to clarify the scope of the proposed definitions to more clearly reflect the realities of the accounting

profession and how audits are performed. Related to our suggested definition clarifications, we propose that, in order to prevent applicants from collecting and reporting information that relates to individuals who are more directly under the control of another applicant, the Board limit an applicant's reporting obligations to information about those individuals and entities that are employed with or retained by the applicant and that the applicant would not reasonably expect to be covered by another firm's registration application. That approach would help to eliminate the prospect that more than one applicant could be faced with identical reporting obligations for the same individuals or entities, and would thereby serve to reduce the reporting burdens on applicants in a workable, principled manner.

The burdens associated with the registration process also should lead the Board to provide explicit assurances in the final rule to applicants – and to the issuers they audit – that good faith efforts at compliance will be deemed sufficient to satisfy the registration requirements, despite any inadvertent omissions or difficulties that might arise during the registration process. This flexibility is needed because the consequences of inflexibility raise the specter of failed registrations, which would have serious consequences for the capital markets. Similarly, we strongly urge the Board to consider adopting a rule that allows for an initial, provisional registration in the event the Board requests that an accounting firm supplement its application, or a firm is responding to such a supplemental request, at the time the October 24, 2003 deadline for registration comes to pass.

In addition, we recommend that the Board establish procedures for applicants whose registration applications were disapproved to obtain a formal, fair review of the decision. As detailed in our specific comments regarding the application form, we also urge the Board to

adopt certain transition periods where the requested information poses unique problems, or is particularly burdensome, as a result of the initial registration deadline.

RULES OF THE BOARD

Set forth below are comments with respect to selected proposed rules and definitions.

RULE 1001. DEFINITIONS OF TERMS EMPLOYED IN RULES

Throughout our comments, we address definitional issues as they relate to specific aspects of the proposed rules and form. As a more general matter, we recommend that the Board revisit the use throughout the proposal of the terms set forth below. We are concerned that, if adopted as proposed, these terms may expand the reach of the Board's rules beyond the scope envisioned by Congress, impose unnecessary burdens on accounting firms that must register with the Board, and create a host of other harmful, unintended consequences.

A. "Accountant"

The meaning of the term accountant is critical to determining the scope of the applicant's reporting obligations with respect to Parts V and VII of the proposed Form 1. Proposed Rule 1001(a) contains an extremely expansive definition of the term "accountant" that includes not only certified public accountants, but also individuals with an undergraduate or higher degree in accounting, or license or certification authorizing them to engage in the business of auditing or accounting, as well as individuals with at least a college degree, in any field, who "participate" in audits. The Board's section-by-section analysis indicates that the proposed definition is intended to include all individuals who "have the requisite licensing, certification, training, and/or

experience, whether obtained in the United States or a non-U.S. jurisdiction, to be considered an accountant."[15]

We believe that this definition is overly broad and that the definition of "accountant" should be limited to certified public accountants, and accountants in non-U.S. jurisdictions holding licenses equivalent to that of a certified public accountant in the United States, who in each case have the authority to sign a firm's name to an audit opinion. This would effectively limit the definition of "accountant" to audit partners, and prevent firms – particularly larger firms – from having to supply information about hundreds or even thousands of individuals who, although licensed or otherwise certified, are not empowered to bind the firm by signing an audit opinion. The Board should be most concerned with obtaining information about those accountants who are ultimately responsible for issuing the audit report. Significantly, the Board's proposed definition of audit report includes the important concept that only those reports that set forth "the opinion of th[e] firm" would fall within the definition.[16] Just as the definition of audit reports is limited to the "opinion[s] of th[e] firm," so too should the definition of the "accountants" who prepare the audit reports be limited to those who have authority to sign such opinions.[17]

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[15] PCAOB Release No. 2003-1, at A3-iii.

[16] *Id.* at A1-ii.

[17] We also stress that, in order to avoid duplicative reporting requirements for the same individuals, the Board should make clear that an applicant's reporting obligations with respect to "accountants" is limited to those accountants who are employed or retained by the applicant and who the applicant would not reasonably expect to be covered by another applicant's registration application. For example, a non-U.S. member firm of Deloitte Touche Tohmatsu should not be required to report information about an accountant who

[Footnote continued on next page]

In the alternative, the Board could choose to expand the definition of "accountant" beyond those who are empowered to bind the firm, to all certified public accountants and accountants with equivalent non-U.S. licenses, because, as a practical matter, the vast majority of individuals with the background necessary "to be considered an accountant" will be licensed. By adopting that modification, the Board would ensure that the term "accountant" includes those licensed professional accountants who are involved with audit reports, while simultaneously providing firms with a reasonably identifiable basis for determining which personnel are covered by the definition. In contrast, bringing other individuals within the definition of "accountant" on the basis of training and/or experience would obligate accounting firms to engage in fact-specific determinations about whether individual employees – who for larger applicants may number in the tens of thousands – possess the requisite qualifications to meet the Board's definition.[18] The proposed definition would also extend the Board's authority to individuals who are not licensed accountants and are not engaged in auditing or accounting. It is not clear that Congress intended the Board's authority to extend so far.[19]

If the Board retains the definition of "accountant" as currently drafted, we recommend that, at a minimum, the Board clarify what is meant by "participate" in an audit in Rule

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works in the United States for the U.S. member firm because the U.S. member firm's application would capture that information.

[18] We note in this regard that under certain licensing rules, aspiring accountants cannot be licensed until they have had a minimum amount of accounting experience (e.g., two years) and have passed the required exam. In addition to providing firms with a more definitive reporting guideline, tying the definition of "accountant" to licensed accountants may also therefore provide some measure of consistency against which the Board, regulators, and the public could evaluate firms' application information.

[19] *See* Act, §§ 101(a), 102.

1001(a)(3)(ii). At the extreme, this language could be read to capture any college graduate employed by an accounting firm who has even a minimal role in audits: for example, a college graduate who works as an audit scheduler to assign audit staff to all engagements may be deemed, literally, to "participate" in an audit. Although we do not believe this would be an appropriate construction of the proposed definition, the Board should provide clear guidance to accounting firms and ensure that the definition more closely reflects the purposes of the Act.

B. "Audit Report"

The definition of "audit report" in proposed Rule 1001(e) also requires clarification. As drafted, the proposed definition broadly includes any "document or other record" that is "prepared following an audit . . . in which a public accounting firm . . . sets forth the opinion of that firm regarding a financial statement, report or other document." We believe that this definition will be confusing to applicants and should be refined to encompass only those audit reports that express an opinion on an issuer's *financial statements*, and are then filed with the Commission. The term "audit report" should not be defined to include documents that set forth opinions about "report[s] or other document[s]," because the inclusion of those terms in the definition of "audit report" makes the Board's intentions unclear. We understand that the proposed definition of "audit report" tracks the definition of "audit report" set forth in § 2(a)(4) of the Act, but it is not clear that Congress intended the Board to use that definition, particularly where, as here, it creates serious implementation problems. As proposed, the definition is so broad that it potentially could be interpreted to include any opinions expressed by an accountant in a document relating to a client on a variety of subjects whether or not the opinions have any direct relationship to a specific audit. In addition, the proposed definition could sweep in communications between offices on the results of audit procedures, known as inter-office

reports, potentially requiring non-U.S. firms to register even if they have conducted limited audit procedures on an immaterial subsidiary. We do not believe that the Board intended such a result.

The currently proposed definition of "audit report" is particularly confusing in the context of Part II of the proposed Form 1, which requires firms to report information about issuers for which the firm "prepared . . . any audit report,"[20] and proposed Part V, which requires the reporting of prior proceedings that involved conduct "in connection with an audit report." Much of the confusion could be avoided by refining the definition of "audit report" as we have proposed to include only those reports that express an opinion on an issuer's financial statements, and are then filed with the Commission, consistent with the definition historically used by the Commission to identify the report issued by the independent auditor.[21]

C. "Audit Services"

As proposed, the definition of "audit services" in Rule 1001(f) will present reporting difficulties in connection with Part II of the proposed Form 1. For reasons that are not explained in the proposing release, the Board has proffered a definition of "audit services" in Rule 1001(f) that "capture[s] the same category of services for which fees were required to be disclosed as

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[20] That is, when attempting to understand the reporting requirement in Part II, applicants will have to determine those issuers for which they "prepared" a "document," that was "prepared following an audit," which "set forth the opinion of that firm regarding a . . . report or other document." Such an exercise will be both difficult and confusing. The interplay between this definition of "audit report" and the other requirements in the proposal presents obvious interpretive problems.

[21] *See* 17 C.F.R. § 210.1-02(a) (defining "accountant's report" to mean "a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth an opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed.").

'audit fees' pursuant to the Commission's *2000* proxy disclosure rules."[22] Consistent with our comments provided below in connection with Part II, if the Board goes forward with this requirement, we recommend that the Board clarify that the term "audit services" means the same category of services for which fees are required to be disclosed as "audit fees" under the Commission's *2003* fee disclosure rules, or that the Board simply cite the Commission's rule as recently amended.

D. "Other Accounting Services"

The Board explains in its section-by-section analysis that the definition of "other accounting services" provided in Proposed Rule 1001(l) is modeled on "concepts used in the Commission's recent revision of its auditor independence disclosure rules."[23] The proposed definition of "other accounting services," however, appears to represent a hybrid of fee categories used under the Commission's new rules and those implemented as part of the 2000 rulemaking. The definition combines: (1) those fees for services that must be disclosed as "Audit Fees" under the Commission's new rules, but that would not have been disclosed as "audit fees" under the Commission's 2000 fee disclosure rules; and (2) fees that must be disclosed as "audit-related fees" under the Commission's new rules.[24]

If the Board goes forward with this requirement, we recommend that the Board clarify the definition of "other accounting services" to avoid implementation problems in Part II of the proposed Form 1. Specifically, "other accounting services" should be defined in a manner that

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[22] PCAOB Release No. 2003-1, at A3-v (emphasis added).

[23] *Id.* at A3-vi.

[24] *See id.* at A3-vi and A3-vii.

conforms with the Commission's new fee disclosure requirements. Among other things, by aligning its fee disclosure requirements with the Commission's new disclosure rules, under certain circumstances the Board will better enable investors to make sound comparisons between information provided in registration applications and other publicly available information.

E. "Person Associated with a Public Accounting Firm"

The term "person associated with a public accounting firm," as set forth in proposed Rule 1001(m), is overly broad and would cause great difficulties for firms in connection with their obligations under Parts V and VIII of the proposed Form 1. The proposed definition covers any individual who is a "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."[25] The section-by-section analysis goes on to state 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."[26]

The proposed definition is very expansive and could be interpreted to include administrative staff, outside counsel for the firm, and others that are only tangentially related to an audit (and who would be very surprised to learn that they are "associated with a public accounting firm" and subject to the Board's authority). In addition, it would include all the individuals covered under the definition of "accountant" in proposed Rule 1001(a), which, as

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[25] *Id.* at A1-iv (Rule 1001(m)).

[26] *Id.* at A3-viii.

discussed above, is also defined too expansively. The definition of "person associated with a public accounting firm" would be particularly burdensome for accounting firms in the context of Part V of proposed Form 1, which requires applicants to provide information about associated persons that are defendants or respondents in criminal actions, governmental and private civil actions, and administrative and disciplinary actions, involving conduct in connection with an audit report. It would also be onerous in the context of Part VIII of proposed Form 1, which would require applicants to obtain, within 45 days of submitting an application for registration to the Board, signed consents from all of the applicant's associated persons. The problem of this over-broad definition thus cascades throughout the Board's proposal.

Although the Board's proposed language is largely derived from § 2(a)(9) of the Act, we believe that the definition of "person associated with a public accounting firm" should be narrowed and clarified, as the SEC has done in analogous circumstances. In adopting its new auditor independence rules, for example, the Commission first proposed a similarly broad reach for its rotation and compensation provisions, and subsequently limited the categories of professionals subject to those requirements based on the level of a professional's involvement in auditing, accounting, and reporting issues that affect the financial statements and the extent of contact with management and the audit committee, in response to comments that the proposed rules extended too deeply and were overly broad.[27] The narrower and more reasoned scope of

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[27] *See* Strengthening the Commission's Requirements Regarding Auditor Independence; Final Rule, 68 Fed. Reg. 6006, 6018-20 (Feb. 5, 2003) (citing comment letters on proposed rotation rules from The Business Roundtable (Jan. 14, 2003); Pfizer Inc. (Jan. 13, 2003); Aetna Inc. (Jan. 13, 2003); HSBC Holdings plc (Jan. 10, 2003); Deloitte & Touche LLP (Jan. 10, 2003); KPMG, LLP (Jan. 9, 2003); Philip A. Laskawy (Jan. 9, 2003); and PricewaterhouseCoopers (Jan. 8, 2003)); and *id.* at 6024-26 (citing comment letters on proposed compensation rules from Deloitte & Touche LLP (Jan. 10, 2003); KPMG, LLP

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the final rules reflected the Commission's recognition that applying the rotation and compensation provisions to professionals with only minimal involvement or contact was not necessary to accomplish the purposes of the Act and could compromise audit quality.[28]

We urge the Board to take similar action in this instance, and to specify that the term "person associated with a public accounting firm" extends only to individual proprietors, partners, shareholders, principals, accountants, professional employees, and independent contractors and entities, whose work for the accounting firm has some meaningful and material relationship to auditing, accounting, and reporting issues that affect financial statement audits.[29] We recognize the somewhat imprecise nature of that guideline, but we would propose that the Board interpret it to mean the following:

- For those individuals who are *employees* of, or otherwise considered *personnel* of, the applicant, the term "persons associated" with an applicant should be interpreted only to include *managers*, *senior managers*, *directors*, and *partners*. That interpretation of the definition would capture those individuals with supervisory responsibilities over staff members as well as ultimate responsibility for the audits of public companies listed or traded in the United States. Such an

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(Jan. 9, 2003); McGladrey & Pullen, LLP (Jan. 9, 2003); and Ernst & Young LLP (Jan. 6, 2003)).

[28] *See id.* at 6018-20; 6024-26.

[29] This limited definition still is problematic because applicants would not have the authority to compel employees of non-applicants or other applicants to execute consents. As a result, registration issues still could arise, and we therefore are concerned that even the limited definition could disrupt the orderly function of the capital markets. We urge the Board to work with the profession to identify a solution to this problem.

interpretation would thus ensure that the Board receives the information that is relevant and necessary to its task, while providing applicants with a clear dividing line between management and staff members that would greatly facilitate their ability to comply with their new registration obligations.

- With respect to independent contractors and entities, we suggest that the definition encompass only those independent contractors or entities that received payments from the applicant in connection with the preparation or issuance of an audit report to the extent that such payments exceed 10% of the fees paid to the applicant for that audit.[30]

We also reiterate that the Board should clarify that an applicant's reporting requirements extend only to those personnel that are employed or retained by the applicant and whom the applicant does not reasonably expect to be captured through another applicant's separate application submission. The "associated persons" definition should be clarified to reflect that concept.

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

As proposed, the phrase "play a substantial role in the preparation or furnishing of an audit report," as set forth in proposed Rule 1001(n), and the explanatory note to the rule, presents several issues. We believe this phrase could be narrowed, with at most an inconsequential effect on the number of firms required to register with the Board.

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[30] In addition, we urge the Board to exercise its exemptive authority under § 2(a)(9) of the Act to exempt from the definition of "person associated with a public accounting firm" (and thus from the materiality calculation) those persons that are "engaged only in ministerial tasks." Granting such an exemption would be consistent with the purposes of the Act, the public interest, and the protection of investors.

First, as proposed, the first prong of Rule 1001(n) and the note accompanying the rule would mandate an assessment of whether a firm played a "substantial role" in the preparation or furnishing of an audit report based on a calculation of whether the "services" provided by the firm constituted 20% or more of the total engagement hours or fees provided by the principal accounting firm in connection with the issuance of its audit report.[31] In many instances, several different firms, including firms from several different countries (and in some cases, several different international or domestic associations of firms) are involved in the audit of an issuer's consolidated financial statements. For those issuers that do not manage their "total engagement hours and fees" on an all-firms, all-countries basis, the individual firms participating in the audit will have no way of knowing the total number of engagement hours or fees. Any such firm could only determine if it plays a substantial role in the audit if the total engagement hours and fees were accumulated on a consolidated basis by the *issuer* and such information was shared with each individual firm participating in the consolidated audit. It does not appear that the Board (or any other entity or body) has the authority to require such activities by issuers or such disclosure to the individual separate firms participating in the audit.

Second, as proposed, the first prong of Rule 1001(n) refers to "material services." As a result, the phrase "play a substantial role" could be interpreted to include situations in which a firm provides non-audit services, including internal audit services, to non-audit clients. As a result, any number of firms that have no relationship to the accounting profession or to the audit engagement could be subject to the Board's registration requirements through Rule 2100.

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[31] *See* PCAOB Release No. 2003-1, at A1-iv, A1-v.

Consequently, the first prong of proposed Rule 1001(n) would have the adverse effect of requiring accounting firms and other audit client service providers to engage in burdensome analyses intended to determine whether the other service providers played a substantial role in the preparation or furnishing of an audit report. This, in turn, could result in many service providers having to register with the Board simply because they provided services to issuers whose principal accountants are registered. This is particularly true of service providers in non-U.S. jurisdictions that would not otherwise be subject to registration.

We believe these issues can be resolved by limiting the definition of the phrase "play a substantial role" to the content of the second prong: "to perform audit procedures with respect to a subsidiary or component issuer the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer." This modification would encompass substantially the same universe of firms, although that universe would be determined by a simpler, more definitive test, and would dramatically ease administration of the requirement.

In addition, the Board should allow this determination to be made based on the issuer's consolidated assets and revenues as of the issuer's previous fiscal year end – otherwise, if based on the current year end, it is conceivable that an additional audit firm, not currently registered with the Board, could be deemed to play a substantial role, and if that additional firm is not yet registered, the firm would not have sufficient time to register and still work on the current year audit. Accordingly, we recommend that the Board revise the definition such that the significant subsidiary test is based on the issuer's consolidated assets and revenues as of the issuer's previous fiscal year end.

RULE 2100. REGISTRATION REQUIREMENTS FOR PUBLIC ACCOUNTING FIRMS

Proposed Rule 2100 imposes the requirement of registering with the Board on each public accounting firm that "prepares or issues any audit report with respect to any issuer" or

"plays a substantial role" in the preparation or furnishing of such a report. On its face, this language could be read to require registration of firms – including those located in non-U.S. jurisdictions – that have issued audit reports for issuers covering prior periods, but that do not currently have, and do not expect to have, an engagement with an issuer to prepare or issue, or play a substantial role in the preparation or issuance of, an audit report. This could cause significant problems in those situations where an unregistered firm has issued an opinion for a prior period. Either the firm would need to register with the Board in order to issue its consent with respect to the use of its opinion for the prior period, something the firm may be unwilling to do given the burden and expense, or the issuer would need to have the prior period re-audited by a registered firm, an expensive and seemingly wasteful undertaking. Accordingly, we believe Rule 2100 should be clarified, or an appropriate exemption created, to establish that the issuance of an audit report prior to October 24, 2003 (the expected deadline for registering with the Board), by itself, does not trigger the provisions of Rule 2100.

RULE 2101. APPLICATION FOR REGISTRATION

Rule 2101 requires applicants to file their applications and exhibits thereto electronically with the Board through the Board's web-based registration system. We encourage the Board to consult with technology specialists for the testing and development of that web-based system. Among other things, the Board should consider how functional this system will be and how much technological understanding applicants must possess to complete their submissions effectively. As firms proceed through the application process and seek to use the web-based system, technical questions will undoubtedly arise. To help address various technological issues with which applicants may be confronted during the registration process, the Board may wish to consider instituting a dedicated 24-hour help-line to respond to technology-based questions. The

Board should also consider the potential language difficulties that some applicants may have with an English-only web-based system and take appropriate steps to reduce those barriers.

In addition, given the amount of time that will necessarily elapse between an applicant's initial collection of information and the actual submission of the application, the Board should establish an operative date prior to submission of an application through which time information submitted should be current.

RULE 2103. REGISTRATION FEE

Proposed Rule 2103 provides that each applicant must pay a registration fee and that the Board will announce the registration fee from time to time. While the Board has not yet established the registration fee amount, the Board indicates that an applicant's fee amount "will be determined by a formula and that registration fees will vary with the size of the applicant."[32] Although it is not entirely clear, the formula could involve some relevant metric tied to the issuers audited by the applicant, such as the total number of issuers audited by the applicant, the U.S. market capitalization of issuers audited by the applicant, or some like variation. If this is the case, to avoid the potential for double-counting, the Board should clarify that only the issuer data for those issuers that are audited by the applicant would be included in calculating the registration fee. Issuer data for those issuers that are audited by associated entities that file separate applications should only be considered in connection with the associated entities' respective applications.

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[32] *Id.* at 7 (The Board notes that it "anticipates [determining the registration fee amount] in conjunction with establishment of its annual budget," which the Board states will occur "before the registration system is operational.").

In the alternative, the "size" of an applicant could be measured by the proportion of the applicant's revenues that is derived from auditing the financial statements of issuers. In this case, consideration should be given to the potential for significant variation, from one firm to the next, in the proportion of the firm's revenues that is attributable to issuers.

We believe that it is critical that the process for determining registration fees be as equitable as possible. To facilitate this result, we believe that the Board should not announce the definitive formula for calculating registration fees without first publishing its suggested approach and affording a reasonable time for public comment on that approach.

RULE 2105. ACTION ON APPLICATIONS FOR REGISTRATION

Proposed Rule 2105(b) provides that the Board will take action on a registration application within 45 days of its receipt. At that time, the Board will either approve the application, request more information from the applicant, or disapprove of the application by written notice to the applicant. The Board's proposal does not, however, contemplate procedures through which a rejected applicant can seek review of the Board's determination or otherwise seek the Board's reconsideration. We believe that the Board should establish formal, fair procedures for aggrieved applicants to seek and obtain review of a disapproval decision.[33]

As we explained in our general comments, we also believe that the Board should grant an initial, provisional registration to those applicants that submit their applications in a timely manner, but that are not approved as of October 24, 2003 as the result of a request from the Board to provide supplemental information. The consequences of non-registration of a firm due

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[33] *See also* Act, § 105(a) (in context of investigations and disciplinary proceedings, Board must establish "fair procedures"). Private regulatory bodies, such as the National Association of Securities Dealers, have chosen as a matter of policy to adopt fair procedures. *See, e.g.*, NASD Rule 1015.

to a rejected application or delayed acceptance (for other than substantive reasons) would not serve the public interest and would cause severe hardship for issuers. Furthermore, non-U.S. applicants should have an opportunity to submit an initial application that will be given automatic confidential treatment by the Board in order to prevent potential reporting miscues that may improperly distort investors' perceptions.

RULE 2300. PUBLIC AVAILABILITY OF APPLICATIONS AND REPORTS

We support the Board's intention to treat certain material confidentially and believe that the availability of such treatment is essential to the registration process. We note, however, that the proposal states that regardless of a decision to grant confidential treatment to information, the Board will maintain its ability to provide that information to the Commission.[34] Although we understand that the Board will work closely with the Commission and support that close relationship, we are concerned that such "onward" production – without more protection – will increase the likelihood that the information will lose its confidential character, and will erode the ability of the applicant to claim that the information should be protected from disclosure to third parties.

In order to help protect the confidentiality of any information that the Board provides to the Commission, the Board should clarify that it will request confidential treatment of any confidential information that it provides to the Commission. Further, once the information is provided to the Commission, the information might be deemed subject to disclosure under the Freedom of Information Act ("FOIA").[35] Compounding such potential disclosures is the

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[34] *See* PCAOB Release No. 2003-1, at A1-x.

[35] *See generally* 5 U.S.C. § 552.

possibility that if the information were the subject of a request under FOIA, the applicant that provided the information to the Board may never be informed by the Commission of that request. The Commission has procedures in place, however, by which a person (or entity) submitting information to the Commission for which it requests confidential treatment on behalf of another person (or entity) may provide the Commission with information about the person on whose behalf it is requesting the confidential treatment.[36] In such instances, if that information is the subject of a FOIA request, the Commission will notify the person on whose behalf the submitter requested the confidential treatment.[37] To help ensure that the party with the ultimate interest in maintaining the confidentiality of the information is informed of a pending FOIA request that it might want to challenge, we recommend that the Board expressly state in its final rule its intention to provide the Commission with any necessary information about the person on whose behalf it is seeking confidential treatment *and* that it will, in any event, notify the relevant applicant of any FOIA request for access to an applicant's information.

Given the lack of familiarity that non-U.S. applicants in particular will have with the registration process, non-U.S. applicants should have their applications given automatic confidential treatment until final submission and the Board should make efforts to work with these applicants during the registration process. Providing non-U.S. applicants with an opportunity to submit an application in "draft" form – similar to the treatment given first-time foreign private issuers by the Commission – would help to avoid inadvertent reporting mishaps and the public's receipt of misinformation.

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[36] *See* 17 C.F.R. § 200.83(c)(5).

[37] *See id.* at § 200.83(d)(1).

APPLICATION FORM

Set forth below are specific comments on the proposed Form 1.

PART I. IDENTITY OF THE APPLICANT

Part I of proposed Form 1 requires each applicant to provide certain identifying information to the Board. Although many of the requirements of Part I are consistent with the mission of the Board and the authority granted to it by the Act, certain requirements would place heavy burdens on applicants without providing commensurate benefits to the Board or its mission. Other proposed requirements could be clarified to ensure appropriate compliance.

A. The Undefined Term "Predecessor" Presents Complications

Item 1.1 requires the applicant to "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."[38] The proposal does not define the term "predecessor." The term should be interpreted consistent with principles of corporate law to mean an entity for which the applicant is the successor in interest with respect to the entity's liabilities. The term "predecessor" should not be construed to include those entities from which the applicant has assumed no liability and would not be deemed to have successor liability. Accordingly, we recommend that the Board clarify Item 1.1 by defining the term "predecessor" to apply only to firm name changes and to firms for which the applicant would be deemed to be the successor in interest with respect to the other firm's liability.

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[38] PCAOB Release No. 2003-1, at A2-ii (emphasis added).

B. Applicants Should Not Have To List All Of Their Offices Or Associated Entities

Item 1.5 requires the applicant to "furnish . . . the physical address (and, if different, mailing address) of each of the applicant's offices."[39] Similarly, Item 1.6 requires the applicant to provide "the name and physical 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."[40]

We suggest that the Board only require applicants to report those offices at which audit reports for issuers are prepared. Providing information regarding offices at which no audit reports are prepared for issuers is unlikely to assist the Board in overseeing the audit of issuers.

With respect to Item 1.6, the Board should clarify that applicants need not list as associated entities other firms that are expected to be separate applicants in their own right. For example, a Deloitte Touche Tohmatsu member firm in one country should not need to provide information in response to Item 1.6 about a Deloitte Touche Tohmatsu member firm in another country, which will file a separate application. We also propose that the same limiting principle we suggest for Item 1.5's office reporting requirement be applied to Item 1.6's requirement concerning associated entities, so that only those associated entities that prepare audit reports would be covered.

C. Proposed Item 1.8 Should Be Clarified

Item 1.8 requires the applicant to "[i]ndicate whether the applicant and all individual accountants associated with the applicant who participate in or contribute to the preparation of

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[39] *Id.* at A2-iii.

[40] *Id.*

audit reports have all licenses and certifications required by governmental (federal, state, and non-U.S.) and professional organizations."[41] We believe that this requirement should be clarified. First, the Board should limit the obligations under Item 1.8 to required *governmental* licenses and certifications, and *not* include any reference to *professional organizations*. Professional organization requirements may be particularly unclear or ill-defined in some jurisdictions. Second, it is ambiguous as to whether the Board intends for Item 1.8 to constitute a "blanket" certification that all of an applicant's professionals have the requisite licenses and certificates, or whether it is requesting that the applicant provide licensing and certificate information for each and every one of its accountants on an individualized basis. If the Board intended the latter, this requirement is largely (if not wholly) overlapping with the reporting requirements contained in Items 7.1 and 7.2. If the Board intends a "blanket" certification, it is somewhat unclear what value this certification would add over the information provided in Items 7.1 and 7.2. Third, the Board's proposal does not define who would be deemed to have "participate[d] in" or "contribute[d] to" the preparation of audit reports for the purposes of this Item. The lack of a clear definition could complicate compliance. Finally, Item 1.8 does not appear to contemplate that some accountants (as currently defined) in fact will not have licenses. In many U.S. states, an accountant may not apply for a license until he or she has a certain level of accounting experience and has passed the CPA exam. While these individuals may be labeled "accountants" – and certainly would fall within the currently proposed Board definition of "accountant" – it is unclear what treatment applicants should give them with respect to Item 1.8.

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[41] *Id.* at A2-iv.

In order to avoid confusion surrounding this issue, we suggest that the Board consider limiting the scope of Item 1.8 to whether the applicant itself possesses the requisite licenses or registration certificates to engage in the practice of auditing. If so limited, Item 1.8 would thus comport with Item 1.7's focus on the applicant's licenses, and serve as a certification that the licenses reported in response to Item 1.7 are all that are legally required of the applicant.

PART II. LISTING OF APPLICANT'S PUBLIC COMPANY AUDIT CLIENTS AND RELATED FEES

Part II of the proposed Form 1 requires an applicant to report fees charged to issuers. As a threshold issue, we believe that the Board should reconsider the need for applicants to provide the extensive fee information outlined in Part II of proposed Form 1. Issuers are already required, or will soon be required, to disclose substantially similar information about fees paid to their principal auditor under the Commission's rules, and this information is, or will shortly be, publicly available through the Commission's EDGAR system. If the Board decides to go forward as proposed, we have several suggestions with respect to the Board's approach as set forth below.

A. The Board Should Address Certain Confidentiality Issues

Proposed Rule 2300 sets forth a procedure by which applicants can request confidential treatment of any information submitted to the Board in connection with an application for registration. The proposed rule provides for an applicant to submit to the Board the information for which confidential treatment is requested along with an explanation why the information should be protected from disclosure. Although this procedure may be appropriate for most items on proposed Form 1 because they pertain to information about the applicant, its associated entities, and persons associated with the applicant, the procedure presents unique difficulties in the context of Part II, which focuses on the applicant's public company audit clients. Because

Part II pertains primarily to an applicant's clients, the information it seeks to elicit in some cases may not be the applicant's to disclose.

Requiring disclosure of information about an applicant's client may breach confidentiality expectations between the applicant and the client, regardless of whether the Board agrees to treat the information confidentially. For example, depending on timing, an applicant could face having to disclose fee information for audit clients that have not yet made that information available in their proxy statements, which under Commission rules are not due until 120 days after fiscal year end. The same confidentiality issue would arise with respect to information about audit reports that an applicant *expects* to prepare or issue, or with respect to which an applicant *expects* to play a substantial role (proposed Items 2.3 and 2.4, calling for such information about "expected" audits), because information pertaining to future periods will not necessarily have been disclosed publicly prior to the filing of the accounting firm's application with the Board. These confidentiality concerns also apply to non-U.S. applicants, where disclosure of the proposed fee information may violate laws and professional standards in several countries.[42] Similarly, because the proposed fee disclosure requirements do not align with the Commission's recently adopted fee disclosure rules, much of the financial information required to be disclosed would not have been previously reported in a public filing. This is true with respect to information about fees billed to foreign private issuers, which are not currently

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[42] *See, e.g.*, Italian Civil Code Article 2407 (setting forth the duty of auditors to maintain the secrecy of the information encountered in the course of the auditor's professional service); Institute of Chartered Accountants of Ontario, Rules of Professional Conduct § 208.1 (Dec. 2002) (providing that a "member shall not disclose confidential information concerning the affairs of any client, . . . except . . . (c) when such information is required to be disclosed by order of lawful authority," which exception may not be satisfied here because of the Board's stated private capacity); Section 9 of the German Accountants Professional Articles of Association (providing a broad duty to keep all client information confidential).

required to disclose fee information and are not required to comply with the Commission's new fee disclosure rules until the first fiscal year ending after December 15, 2003. It is also true with respect to subsidiaries that are consolidated for financial reporting purposes but that nevertheless are "issuers" under proposed Rule 1001(k), such as subsidiaries that have registered debt securities under the Securities Act of 1933. In such a case, frequently only the parent company would be billed for audit and other services. Accordingly, absent an allocation of fees to reflect the proportion attributable to the subsidiary, there would be no fee information available for the subsidiary.

In addition to raising issues with respect to firms' confidentiality obligations to their clients, requiring disclosure to the Board of confidential information about an applicant's client could undermine the client's ability to assert that the information is privileged against third parties in the future.

Accordingly, we recommend that the Board not require firms to provide non-public information about their issuer clients; or that the Board directly address these confidentiality issues. If the Board were to choose the latter option, the Board might consider permitting non-disclosure and requiring firms to maintain client consents that would allow disclosure upon a specific request from the Board; or to require periodic disclosures to capture information that, in the interim since the last Board filing, has become public. At a minimum, the Board should require firms to report issuer fee data only once issuers themselves are required to comply with the Commission's new fee disclosure requirement (i.e., for fee disclosures filed with respect to an issuer's first fiscal year on or after December 15, 2003).

B. The Proposed Fee Disclosures About Audit Clients Should Be Harmonized With The Commission's Fee Disclosure Rules

In the section-by-section analysis, set forth as Appendix 3 to the proposing release, the Board states that it has, "to the extent possible," used concepts from the fee disclosures required of issuers under the revised proxy disclosure rules recently adopted by the Commission.[43] The fee disclosures proposed by the Board, however, differ significantly from those required under the Commission's new rules.

To the extent the Board determines that it is appropriate to require the enhanced level of disclosure reflected in its proposal, we strongly believe that the Board's proposed rules should be harmonized with the fee disclosures required under the Commission's revised fee disclosure rules. In particular, applicants should be required to report information using fee categories that mirror those applicable to issuers under the Commission's fee disclosure rules.

Pursuant to the Act, the Commission recently adopted changes to its fee disclosure requirements that: (1) increased the number of categories of professional fees that issuers must disclose in the proxy statement; (2) redefined those categories to encompass "Audit Fees," "Audit-Related Fees," "Tax Fees," and "All Other Fees"; and (3) increased the years of service covered by the disclosure from the most recent fiscal year to the two most recent fiscal years. These changes were intended to "clarify the categorization of services provided by the audit firm in order to provide increased transparency for investors."[44] In particular, a new category was added for "Audit-Related Fees" to enable issuers "to present the audit fee relationship with an

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[43] PCAOB Release No. 2003-1, at A3-xxv.

[44] Strengthening the Commission's Requirements Regarding Auditor Independence; Final Rule, 68 Fed. Reg. 6006, 6030 (Feb. 5, 2003).

issuer's principal accountant in a more transparent fashion."[45] The Commission's new fee categories reflect carefully considered policy determinations about the types of disclosures that would be most useful and transparent for investors and other market participants.

The Board's proposed approach departs from the Commission's rule. Part II of proposed Form 1 would require applicants to list all issuers for which they have prepared or issued an audit report in the current or preceding calendar year and to disclose fees billed to those issuers under the categories of "audit fees," "other accounting services," "tax services," and "all other fees." For reasons that are not explained in the proposing release, the Board has proposed a definition of "audit services" in Rule 1001(f) that "capture[s] 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."[46] At the same time, proposed Rule 1001(l) defines a second fee category – "other accounting services" – to include fees for "audit-related" services (as now understood under the Commission's new fee disclosure rules) as well as those "audit fees" that would not have been reported in the Commission's 2000 "audit fees" category but that would be included in that category as recently reconfigured in the Commission's new fee disclosure rules.[47]

These differences will lead to unnecessary confusion for investors as well as firms by imposing an additional, and different, set of disclosure requirements on applicants at a time when

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[45] Strengthening the Commission's Requirements Regarding Auditor Independence; Proposed Rule, 67 Fed. Reg. 76780, 76798 (Dec. 13, 2002).

[46] PCAOB Release No. 2003-1, at A3-v (emphasis added).

[47] *Id*. at A3-vi and A3-vii.

issuers and accounting firms are attempting to adjust to new fee disclosures recently implemented by the Commission. Thus, even if the fee information provided in response to Part II is not given confidential treatment and is made available to the public, the information will be of little public value and, indeed, could confuse the public. In addition, although compliance with Commission disclosure requirements is ultimately the issuer's responsibility, accounting firms may seek to organize their internal systems with a view toward assisting their clients in complying with these requirements. Having to maintain two different classification systems for the same set of fees – one for purposes of the Commission's fee disclosure rules and one for purposes of the Board's rules – would impose an undue burden on applicants. Furthermore, some types of services may be difficult to classify. Particularly where this is the case, we do not believe it would be productive to require applicants to expend even greater resources determining how to classify services under not one, but two, different disclosure regimes.

The Board also should afford applicants sufficient time to prepare the fee information in the manner required under Part II of proposed Form 1 once the Board adopts final rules. We believe that this will necessitate time beyond the anticipated application submission deadline of early September 2003 set forth in the proposing release.[48] If adopted as proposed, Part II of proposed Form 1 would require fee information for all issuers for which we issued an audit report during 2002 and that part of 2003 leading up to the filing of our applications with the Board. Compiling the relevant information and assigning it to the appropriate categories will be an enormous undertaking, particularly in view of the fact that it will not be possible, in many

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[48] *See id.* at 10.

cases, to rely on fee information that is already publicly available because of the recent changes to the fees categories. Accordingly, we suggest that the Board consider some type of phase-in approach that would permit applicants to file an initial application with fee disclosures prepared according to the categories established as part of the 2000 rulemaking and, if otherwise appropriate, the Board would approve applications for registration subject to the provision of issuer fee information classified according to the new categories as soon as reasonably practicable following the filing of applicable fee information by issuers as required by the Commission.

In addition, because fees for services provided by non-U.S. firms are required to be disclosed in U.S. dollars, the Board should clarify the manner in which firms are to calculate the exchange ratio for purposes of this provision.

C. The Board Should Consider Other Clarifications For Part II

Proposed Items 2.2 and 2.3 would require the applicant to provide information with respect to audit reports prepared by the applicant or audit reports that the applicant expects to prepare during the current calendar year. Yet, an accounting firm that has been engaged to audit an issuer's financial statements remains the auditor of record until such time as the firm resigns or is dismissed and the U.S. filer files a current report on Form 8-K announcing a change in its independent accountant, which the issuer must do within five business days.[49] In view of this requirement, we believe it is unnecessary to have applicants provide multiple lists of issuers, setting forth issuers for which they have prepared or issued audit reports in both the preceding and current calendar years, and for which they expect to prepare or issue audit reports. A list of

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[49] *See* Item 4 and General Instruction B of Form 8-K; Item 304(a) of Regulation S-K.

issuers for which an applicant issued audit reports in the previous year (i.e., the information required to be provided under proposed Item 2.1), together with any changes to that list as evidenced by the filing of a current report on Form 8-K, would serve the same purpose.

In addition, proposed Item 2.4 sets forth a requirement that applicants provide information regarding issuers for which an 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. This disclosure item goes beyond the requirements of the Act and, as such, we believe that the Board should carefully consider whether the costs of requiring applicants to compile and provide this information are justified by resulting benefits. If after that consideration the Board still believes that the requested information in Item 2.4 should be provided, we would suggest that the definition of the phrase "play a substantial role in the preparation or furnishing of an audit report" set forth in proposed Rule 1001(n) be clarified in the manner described in this letter.

We also believe, as discussed above, that it would be appropriate to make clarifying changes to the definition of "audit report." This is particularly necessary in view of the information required under Part II of proposed Form 1. For purposes of the Part II reporting requirements, we believe it should be clear that only information concerning audit reports "issued," not simply "prepared," must be reported. Although we recognize that the Act includes the term "prepared" in § 102, we think that the Board should exercise its implementation authority and expertise to clarify the registration requirements in a manner that minimizes avoidable confusion and burden. Including references to the "preparation" of audit reports

would only generate questions about the distinction between "issuing" and "preparing" an audit report, when for practical purposes such distinctions are extremely rare.[50]

Finally, the Board should clarify what is intended by the phrases "expects to prepare or issue an[] audit report" and "expects to play [] a substantial role in the preparation or furnishing of an audit report," as used in proposed Items 2.3 and 2.4, respectively. Although a note to each item indicates that disclosure is only required with respect to issuers that have engaged an applicant, the note says nothing about the continued circumstances under which, following the engagement, an applicant is entitled to presume that it "expects" to prepare or issue an audit report or play a substantial role in connection therewith. The Board should provide guidance on this issue by, for example, establishing that an applicant may presume that it is expected to issue (or play a substantial role in the issuance of) an audit report absent an indication from the issuer that it no longer intends to engage the applicant, as evidenced by the filing of a current report on Form 8-K, or other contrary indication. Clarification would be particularly useful for applicants that audit the financial statements of foreign private issuers, because foreign private issuers may not be required to file current reports with the Commission announcing a change in an independent accountant.

PART III. APPLICANT FINANCIAL INFORMATION

Part III of proposed Form 1 would require an applicant to provide disclosure about the total amount of fees received by the applicant during its most recently completed fiscal year, broken down according to the same categories used in Part II.

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[50] Although there could be circumstances in which an accounting firm might prepare, but not issue, an audit report (such as, for example, where the firm is dismissed immediately prior to issuance of the report), in practice, these circumstances are so rare and exceptional that we do not believe they merit exception-driven distortions to the Board's rules.

A note to proposed Item 3.1 expressly states that the fee disclosures required under Part III "are not limited to fees received from issuers and include fees for audits performed other than pursuant to generally accepted auditing standards."[51] According to the section-by-section analysis, the more expansive disclosure "is meant to give a picture of the applicant's firm-wide sources of revenue."[52]

Providing this detailed information about issuers and non-issuers goes beyond the Act. We recognize that firm-wide fee information could be used in planning post-registration inspections that are expected to focus on audits of issuers. We suggest, therefore, that financial information about the relative size of an applicant's issuer/non-issuer practice could be an aid in understanding the scope and breadth of the applicant's practice regarding issuers. We believe that providing total dollars and percentages of an applicant's issuer vs. non-issuer practice would be most consistent with the Board's purpose of "oversee[ing] the audits of public companies" and would avoid extending the scope of the Act to areas where Congress did not intend it to reach.[53]

PART IV. STATEMENT OF APPLICANT'S QUALITY CONTROL POLICIES

We recognize that the Act requires that as part of the registration application a public accounting firm provide to the Board, in the form designated by the Board, a "statement of the quality control policies of the firm for its accounting and auditing practices."[54] The Board will

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[51] PCAOB Release No. 2003-1, at A2-viii.

[52] *Id.* at A3-xxvi.

[53] Act, § 101(a).

[54] Act, § 102(b)(2)(D).

undoubtedly review registered firms' quality control policies as part of the Board's inspection process. Accordingly, we believe that for purposes of the registration process, the Board would be most helped by an applicant's representation that the applicant is in compliance with the promulgated quality control standards (or a similar representation by non-U.S. firms), along with the provision of the date and type of report issued as a result of the firm's most recent peer review, rather than by the applicant's provision of a summary of what will be reviewed as part of the Board's inspection process. Nonetheless, if the Board determines that a summary statement of quality control policies is necessary or useful, we would not object to providing one.

PART V. LISTING OF CERTAIN PROCEEDINGS INVOLVING THE APPLICANT'S AUDIT PRACTICE

The Act provides that an applicant for registration with the Board shall submit "information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report."[55] The Senate's Committee Report further explains that this information is intended to capture "pending" actions "relating to the firm's audits of public companies."[56] We recognize the importance of providing this information to assist the Board in making its decision whether or not to allow a firm to audit publicly traded companies. Although the mere existence of a pending proceeding against a firm or a person currently associated with the firm that relates to the preparation or issuance of an audit report should not result in an applicant's automatic disqualification, the Board certainly should be made aware of the existence of current

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[55] Act, § 102(b)(2)(F).

[56] S. Rep. No. 107-205, at 46 (2002).

proceedings against an applicant that may raise questions about the applicant's performance in its role as auditor for public clients.

As the Board acknowledges, its proposal would go beyond Congress's approach. The Board's proposal seeks to expand upon the Act by requiring applicants to provide information about proceedings that are no longer pending and about proceedings not related to the firm's audits of issuers.[57] The proposal also seeks information that the applicant may have no reasonable basis for having and no reasonable ability to obtain. We are concerned that in its zeal to seek all information that could conceivably assist it, the Board has proposed obligations on applicants that are extraordinarily burdensome and impractical – indeed, in some cases impossible – for applicants to comply with.

We also emphasize the longtime role of the licensing authorities in determining the eligibility and fitness of individuals to engage in the practice of accounting and auditing. Congress recognized the significance of these bodies to the accounting profession, and thus expressly provided that applicants should provide the Board with licensing information about their accountants.[58] The Board, too, should have confidence in these licensing boards to determine those individuals who are qualified and fit to practice accounting and auditing, and the Board should rely on that process. Because of the existence and role of these licensing bodies,

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[57] *See* PCAOB Release No. 2003-1, at A3-xxviii ("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[.]").

[58] *See* Act, § 102(b)(2)(E).

the Board need not delve as deeply into an applicant's and its accountants' legal history as it might otherwise choose to do in their absence.

As noted earlier, in the context of non-U.S. persons, the Board also should consider carefully the presence of non-U.S. laws that may prohibit the provision of information called for by Part V. Several countries impose strict privacy and data protection laws that would restrict a firm's ability to disclose certain information about itself, its employees, or its affiliates' employees. This specific concern is addressed in more detail in Appendix A.

We have provided below a number of specific recommendations with respect to Part V of the proposed Form 1 that we believe will allow applicants to satisfy the Board's needs under this part.

A. Reporting Requirements Regarding Prior Proceedings Should Be Limited

The Board has proposed requiring applicants to provide information concerning any adverse decision in certain prior proceedings that were initiated against the firm, its accountants, or its associated persons. The Board has candidly acknowledged that the request for information about actions that are no longer pending is not required by the Act.[59] Despite Congress's decision not to require accounting firms to report past legal proceedings, we support the Board's view that reporting certain prior convictions, findings of liability, and sanctions based on conduct related to the firm's auditing of issuers would be appropriate. We believe, however, that the current proposal is broader in scope than necessary and would be exceptionally difficult for larger firms to comply with.

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[59] *See* PCAOB Release No. 2003-1, at 5 n.10.

First, under the current proposal, applicants must report information about certain prior proceedings that involved the firm, accountants of the firm, and persons who were associated with the firm "at the time that the events in question occurred." We recommend limiting the reporting requirement regarding prior adverse decisions in legal proceedings to those that were against the applicant itself (i.e., the firm), and not include prior adverse decisions against the applicant's accountants or other associated persons. Larger firms' institutional ability to provide information about past proceedings is somewhat restricted in light of their size. It would be virtually impossible for larger firms to collect accurate data concerning prior proceedings against each of many thousands of employees who would appear to be encompassed within the proposed definitions of "accountant" and "persons associated with" the firm.[60] Indeed, it is entirely possible that such proceedings could have taken place before an "accountant"-employee ever came to work for a firm. Nonetheless, the proposal would appear to require the firm to know about and report such actions. It would not be feasible for firms to provide all of this information. Accordingly, we suggest revising the disclosure requirement related to prior adverse decisions – which is not imposed by the Act – so that only those prior adverse decisions against the applicant itself need be reported.

Second, the proposal sets forth different time periods for which applicants are required to report prior adverse proceedings. For example, Item 5.1 would require applicants to report any

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[60] We also note that the proposed definition of "persons associated with a public accounting firm" includes independent contractors or other entities that may have only the most tangential connection to an audit report. As described above in our discussion of definitions, we strongly support the inclusion of a materiality standard with respect to these independent contractors and entities before they would be encompassed within the definition of "associated persons." Again, the reporting problems identified in this section simply underscore the pervasive nature of the problems created by the over-broad definition.

adverse judgments against the applicant (or its accountants or associated persons) in a criminal proceeding that was rendered within the last *ten years*. Item 5.2, meanwhile, would require applicants to report any adverse decision in a civil government action that was rendered within the last *five years*.[61] Item 5.3 (private civil proceedings or arbitration proceedings) would impose a *twelve-month* reporting period and Item 5.4 (administrative and disciplinary actions) would require a *ten year* review. Finally, Item 5.5, which seeks information about "other proceedings," uses a *ten year* period for part (a) and seems to establish no time period for part (b), suggesting that applicants are required to provide information about virtually any professionally-related admonition against it or its partners, principals, or officers that took place in any forum, *at any time whatever*. We recommend, in the interest of simplicity and practicality, that these periods be harmonized with each other, and limited to the last three years. The Board likely determined that different time periods were appropriate because of its perception that some types of proceedings were more serious than others. We understand and respect that viewpoint. Nevertheless, we think that divergent disclosure rules based on the type of proceeding involved will be needlessly confusing and will hamper applicants' ability to collect accurate information from their partners, principals, and employees. In addition, we believe that requiring firms to report proceedings that occurred as many as ten years ago (or more) would be unnecessarily costly and burdensome.

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[61] We note that oftentimes with respect to private arbitration proceedings, contractual provisions between the parties prohibit disclosure of the fact of arbitration and the results of the arbitration. The Board should establish in its final rule a method by which applicants can fulfill their reporting requirements without simultaneously subjecting themselves to liability for breaching private contractual obligations.

B. The Board Should Clarify That Applicants Are Not Required To Report Information About Proceedings That Involved Foreign Personnel

As currently defined in the proposal, the phrase "person associated with a public accounting firm" would seem to encompass foreign partners and professional employees who have any affiliation with an applicant.[62] That definition is unnecessarily overbroad as a general matter, and in the particular context of providing information about prior and pending proceedings it will be exceedingly difficult for firms to compile and submit the requested information. Accordingly, consistent with our comments above that the Board should refine certain definitions and limit an applicant's reporting obligations to those individuals who would not reasonably be expected to be covered by another applicant's submission,[63] we suggest that the Board revise its reporting requirements with respect to proceedings so as not to include information about proceedings involving foreign associated persons. Such a revision would enhance applicants' ability to comply with the reporting requirements and would be consistent with the Board's approach in Item 7.2 of the proposed Form 1, wherein it has proposed more modest reporting requirements for non-U.S. applicants.

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[62] We assume that the phrase "person associated with the applicant" used in Part V of the proposed Form 1 is intended to mean the same thing as the defined term "person associated with a public accounting firm." The Board should clarify, however, whether that is in fact its intention and, if so, adjust the terms used accordingly.

[63] This limitation still is somewhat problematic because applicants likely would not have the ability to obtain, or the authority to demand, information about proceedings involving employees of non-applicants or other applicants. As a result, registration issues still could arise, and we therefore are concerned that even with the limitation that we have proposed the orderly function of the capital markets could be disrupted. We urge the Board to work with the profession to identify a solution to this problem.

In addition, we note that the specific proceedings identified in Part V, and those offenses listed in Item 5.5, may not be easily translated into the types of proceedings and/or comparable offenses in non-U.S. jurisdictions. We recommend that the Board seek to address those issues in its final rule.

C. Applicants Should Not Be Required To Provide Information About Proceedings Involving Persons No Longer Associated With Them

The proposal requires applicants to report information about proceedings against its "accountants," as well as any "person associated with" it at the time that the events in question took place. Subject to our comments concerning the need to clarify these definitions to ensure that they encompass only the appropriate individuals, we support the proposal insofar as it requires a firm to report currently pending proceedings – of the types described in the proposal – against one of its current accountants or a person currently associated with the firm. The obligation to provide information about an accountant's or associated person's legal proceedings should be shouldered by the firm that currently has the employment relationship with that individual, and not on an applicant that no longer has the individual under its employment control. It is most reasonable to impose on firms the obligation to be knowledgeable about their current employees.

Consistent with our comments that information about prior proceedings should be limited to adverse judgments against the applicant only, we do not think that the Board should require firms to provide information about past proceedings for individuals. Thus, information about an individual's past proceedings, even if currently employed by the applicant, should not be required.

In any event, it would be particularly difficult for applicants to obtain information about proceedings against former employees, even if the conduct in question related to events that

occurred when the person was associated with the firm. Oftentimes, applicants will have no contact information for former employees and would receive no notice of a proceeding against a former employee. Moreover, with respect to individuals who have left a firm, they will either have left the practice of auditing public companies (in which case the Board would not be concerned); or be affiliated with another registered firm, which would then be required to report proceedings related to its current associated persons.[64]

We recommend, therefore, that the Board limit the legal proceeding reporting obligations to encompass only those individuals currently associated with the applicant. We note, however, that firms do not have the necessary resources to conduct an affirmative investigation to determine independently the accuracy of information received from employees and other associated persons. Accordingly, we recommend that the Board make explicit that an applicant's good-faith attempts to obtain the information requested in Part V will meet its obligations.

D. Applicants Should Not Be Required To Provide Information About Proceedings Unrelated To Audit Reports

Consistent with its determination that the Board would be responsible for "oversee[ing] the audit of public companies . . . in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for [public] companies,"[65] Congress provided that firms should report information concerning

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[64] To the extent the Board believes such over-reporting of proceedings may be a useful measure of a firm's quality control policies, we note that disclosure of such policies would be required under proposed Part IV. Even if the Board were to concur with our recommendation that providing information about quality control policies not be required during the registration process, review of the adequacy of such policies would, presumably, be a key component of inspections under the Act's § 104.

[65] Act, § 101(a).

proceedings against the firm or its associated persons "in connection with any *audit report*."[66] As the language in the Act makes clear, Congress did not envision that accounting firms would be required to furnish to the Board information about proceedings that were not related to audits. Indeed, as explained in the Senate Committee Report, the Act requires firms to provide information about proceedings "relating to the firm's audits of public companies."[67]

We believe that Congress struck the proper balance by tying the reporting requirement directly to the activity that the Board is charged with overseeing. The proposal, however, would go beyond Congress's approach. As proposed, Item 5.5 of proposed Form 1 would require applicants to report information that has no connection to a firm's or an individual's preparation or issuance of an audit report. Moreover, Item 5.5(a) asks for information that is ten years old, while Item 5.5(b) has no time constraint on how far back in time an applicant must go to gather the requested information. The breadth of the proposed reporting requirement would impose a substantial burden on the applicant to collect the necessary information and the resulting benefit to the Board that would come from disclosing this information would appear to be negligible. We of course agree that if an accountant has been convicted of embezzlement, for example, his or her fitness to work on audit reports would be highly suspect, but we stress the role of the licensing bodies in determining who is fit for the practice of accounting or auditing. So long as an accountant is properly licensed to practice accounting and auditing (which other parts of the proposed Form 1 would cover), we believe his or her fitness for those responsibilities should be deemed sufficiently established and that the Board should defer to the relevant licensing bodies.

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[66] Act, § 102(b)(2)(F) (emphasis added).

[67] S. Rep. No. 107-205, at 46.

Requiring the provision of information about past proceedings that involves conduct that is unrelated to the preparation or issuance of an audit report goes beyond the scope of the Board's intended mission.

We also reiterate our comments above that the definition of the term "audit report" should be refined. Because many of the items required to be disclosed by the proposal are tied to proceedings "involving conduct in connection with an audit report" (and we believe that *all* of the proceedings required to be reported should be so tied), it is critical that the definition of "audit report" be clarified.

The proposal also seeks information about proceedings that involved conduct unrelated to issuers.[68] Again, that information is not required to be provided by the Act, and is of questionable relevance given that the Board has no responsibilities with respect to audits of non-public companies.[69] Information about proceedings that involved conduct that was not directly related to the preparation or issuance of an audit report for an issuer should not be required. We believe the Board should seek to limit the practical difficulties that applicants will face in trying to compile all of the requested information.

Completing the anticipated application for registration with the Board will be – perhaps unavoidably – an overwhelmingly cumbersome task, and we urge the Board to find areas where it can refine the scope of the application process without hindering its ability to perform its core

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[68] *See, e.g.*, PCAOB Release No. 2003-1, at A2-ix, A2-x, A2-xi, A2-xii (Items 5.1-5.4) (requiring information about proceedings "involving conduct in connection with an audit report *or a comparable report prepared for a client that is not an issuer*" (emphasis added)); *id.* at A3-xxviii (explaining that "Item 5.5 asks about certain criminal proceedings, *whether related to audit reports or not*. . ." (emphasis added)).

[69] For example, firms that do not audit public companies are not required to register with the Board. *See* Act, § 102(a).

responsibilities. We have identified the reporting requirements related to proceedings as one significant candidate for such modification.

E. Information Provided About Proceedings Should Be Kept Confidential

We also are concerned that in some instances providing information about pending or prior proceedings may impact our future ability to claim that certain information is privileged against third parties. Although some of the information requested in connection with proceedings would be publicly available, such as the name of the court in which the proceeding is pending, providing other information may reveal protected attorney-client communications or attorney work product. For example, whether a proceeding involves conduct in connection with an audit report, or the name of the issuer that was the subject of a certain audit report, could conceivably not be known publicly or not have been identified in the course of the proceeding. The Board should consider allowing applicants to protect certain confidences that may be implicated by the information requests by withholding certain information on privilege grounds in appropriate instances.

At a minimum, we believe that whatever non-public information is provided concerning proceedings should be given confidential treatment by the Board. The Board's proposal states that "[t]he Board will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings."[70] We applaud the Board for recognizing the sensitive nature of information concerning non-public disciplinary proceedings. We believe that the same principles that underlie the Board's proposal to treat those proceedings confidentially equally support according confidential treatment to all other non-public information concerning pending

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[70] PCAOB Release No. 2003-1, at A2-i and A2-ii.

or past proceedings. Accordingly, we recommend that the Board clarify that it will grant any confidential treatment requests for non-public information that is provided by applicants concerning pending or prior proceedings.

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

Part VI of proposed Form 1 provides that an applicant must identify instances in which its audit clients have disclosed disagreements with the applicant and furnish specified information about those instances. The Commission requires domestic issuers to disclose such disagreements under Item 304(a) of Regulation S-K, to which Item 6.1 makes explicit reference. Because issuers already report this information pursuant to Commission rules, we believe that the Board should obtain this information directly through the Commission's EDGAR system. Registered firms could then, on a going forward basis, provide the Board with any filed Form 8-Ks that show additional disagreements with domestic issuers. To require more from an applicant would be unnecessary.

In addition, the Board should clarify how applicants would comply with the requirements of proposed Part VI with respect to foreign private issuers, which are not required to disclose disagreements with a former accountant under Item 304(a)(1)(iv) of Regulation S-K.

PART VII. ROSTER OF ASSOCIATED ACCOUNTANTS

Subject to the concerns regarding confidentiality that were expressed previously, we have several suggestions with respect to the scope of the Board's approach in Part VII, particularly as to U.S. firms, and set them forth below.

A. Firms Should Only Be Required To Furnish Rosters Of Licensed Audit Partners

Part VII requires applicants to report information about "accountants" only, and thus a clear and appropriate definition of the term "accountant" is essential for applicants to be able to

comply with this roster requirement. As discussed above, the proposed definition of "accountant" should be clarified to reflect more accurately the nature of that professional position. Among the flaws in the current definition's scope, is its inclusion of any person who has an undergraduate degree in accounting as well as any college graduate who "participates in audits."[71] Employing that definition for purposes of the roster proposal would require firms unnecessarily to compile and provide information about a plethora of individuals such as administrative staff who, although not accountants, may play some minor role in the preparation of audit reports. Accordingly, we recommend that the term "accountant" be defined as those licensed accountants who are empowered to sign the firm's name to an audit report.

Even if the Board ultimately decides not to define "accountant" in the manner we have proposed, we recommend that, at least for purposes of Part VII of proposed Form 1, the Board limit the roster reporting requirements to those accountants who have the authority to sign the name of the applicant to an audit opinion, i.e., audit partners. Limiting the roster reporting requirement in this fashion would ensure that the Board is aware of those accountants who have the authority to bind the firm and sign audit reports (which are defined as "opinion[s] of th[e] firm"), while reducing the enormous burden that the proposed reporting requirement places on larger firms and the burden placed on the Board in terms of dealing with such volumes of information. Given the turnover rate of non-partner personnel at firms, a list of all accountants would not be very useful. Still, as discussed previously, we do not mean to suggest that the Board could not get access to names of such lower-level accountants if needed (to the extent permitted by law) for post-registration Board activities.

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[71] *Id.* at A1-i.

B. The Roster Reporting Requirement Should Apply Only To Accountants Who Participate In Or Contribute To Audit Reports

The Board's roster reporting proposal demands that U.S. applicants provide data regarding "*all* accountants associated" with the firm,[72] while it requires non-U.S. applicants to list only those "accountants associated with the applicant who *participate in or contribute to the preparation of audit reports*."[73] The Board's proposal with respect to U.S. applicants is inconsistent with the Act's approach, which does not differentiate between the applicants' countries, and uniformly ties the roster reporting requirement to those accountants who *participate in or contribute to* audit reports.[74] We believe that Congress's approach is appropriate because it is more tailored to the purpose of the Board and that the Board's roster reporting requirements for U.S. applicants should adhere to Congress's approach.

The Board is charged with overseeing the audits of issuers. Requiring U.S. firms to provide a list of all accountants associated with the firm – even those who do not participate in or contribute to the preparation of audit reports – does not seem to have any direct relationship to the Board's tasks, and would be exceptionally burdensome for larger firms and for the Board. The Board seeks to justify the broader reporting requirement for U.S. firms by explaining that it is intended "to avoid forcing these firms to choose which accountants to list on their registration application."[75] We appreciate the Board's interest in relieving U.S. firms from having to make potentially difficult determinations with respect to reporting obligations, and we have sought to

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[72] PCAOB Release No. 2003-1, at A2-xv (Item 7.1) (emphasis added).

[73] *Id.* at A2-xvi (Item 7.2) (emphasis added).

[74] *See* Act, § 102(b)(2)(E).

[75] *Id.* at A3-xxx.

identify several other areas in which the proposed reporting requirements are either particularly ambiguous or otherwise difficult for firms to comply with. We do not, however, believe that requiring U.S. firms to report the names, identifying information, and licenses of every accountant associated with the firm is an appropriate response to the problem that the Board identifies. The increased burden on firms to provide such information far outweighs any offsetting benefit in simplifying the decision of who should be included in the roster report. Instead of requiring the disclosure of all accountants, we believe (as discussed above) that the most useful manner in which to streamline the proposed reporting obligations into a simpler form is to refine the definitions for "accountant" and "audit reports," among others. Given the availability of such alternatives, the Board could relieve applicants from the difficult reporting determinations that the Board identified in its release, without straying from the Act's focus on those accountants who participate in or contribute to audit reports.

C. The Board Should Not Require Firms To Disclose Social Security Numbers

We recommend that the Board not require firms to provide their accountants' social security numbers (or non-U.S. equivalents). Given the ever-increasing reports of identity theft and other abuses committed against innocent individuals whose social security numbers are obtained improperly, individuals associated with a firm are likely to be wary of having that information provided to the Board. Indeed, a recent report published by the Social Security Administration described some of the shortcomings in various federal agencies' controls over social security numbers and concluded that federal agencies should "strengthen[] some of their

controls over the access, disclosure and use of SSNs by external entities."[76] We understand that the Board intends to maintain the confidentiality of these numbers, but nevertheless believe that the use of another identifier would be more appropriate. Accordingly, we suggest that the Board establish an alternative method by which firms can identify their accountants. For example, a firm could provide the name and initial CPA license number (or non-U.S. equivalent) of its accountants, or some other individual-specific numerical identifier.

D. The Board Should Grant Confidential Treatment Automatically To Roster Information

The Board has stated that it intends to grant confidential treatment to social security numbers and taxpayer identification numbers without the need for a request for confidential treatment. Subject to our comments herein, we support the Board's proposal, and recommend that the Board afford the same automatic confidentiality treatment with respect to all of the information requested in Part VII of proposed Form 1.

Little benefit would come from publicly listing the names of individual accountants associated with accounting firms, and we are troubled by the potential issues involved in such a public posting. Publicizing the names of professional accountants associated with a larger firm that may perform audit services for a multitude of different types of public companies, could put those individuals at risk of harassment or worse. Some members of society may take exception to the manner in which particular public companies conduct their business or take positions on controversial issues. We are sensitive to this reality and strive to protect our personnel from

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[76] *Report to The President's Council on Integrity and Efficiency: Federal Agencies' Controls over the Access, Disclosure and use of Social Security Numbers by External Entities*, Social Security Administration Office of the Inspector General, at 7 (Feb. 2003).

needless harassment that might stem from our relationship with particular clients.[77] Affording the roster reporting information automatic confidential treatment would help to ensure the safety of individual employees, without depriving the Board of information it needs to fulfill its statutory obligations.

PART VIII. CONSENTS OF APPLICANT

Pursuant to § 102(b)(3) of the Act, Item 8.1 of the Board's proposed Form 1 requires each application for registration to include the applicant firm's signed, written consent to cooperate with any request by the Board for testimony or document production. The statute also requires applicants for registration to agree to secure similar consents from their "associated persons," defined to include what would appear to be virtually every professional employed by or contracting with an applicant firm.[78] Item 8.1 requires applicants to secure those consents within 45 days of submitting the application for registration.

We have several suggestions with respect to the proposed rule, as set forth below.

A. Conditioning Continued Employment On Providing Consents May Pose Conflicts With Non-U.S. Or State Law

The proposal specifies that virtually all professional employment with a registered public accounting firm must be conditioned on the employee's consenting to cooperate with the Board's requests for testimony and documents. We are concerned that imposing such a condition may

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[77] *See, e.g.*, "Audit Firm Staff Details Leaked to Lab Activists," The Times of London, at 9 (Feb. 20, 2003) (describing an animal rights group's intention to harass Deloitte & Touche employees because of the firm's audit work conducted on behalf of a client).

[78] As discussed in more detail above, the proposed definition of "person associated with" a firm suffers from ambiguities as to its intended scope. If construed broadly, we fear the term would encompass almost all professionals employed or retained by the firm, personnel of *other* applicants, as well as a number of independent entities with very little connection to the firm.

conflict with provisions of employment law, both abroad and on the state level. We recommend that the Board undertake some modifications to its proposed rules and form to resolve these concerns.

1. Non-U.S. Employment Law

Various employment laws would preclude firms from conditioning their professionals' and associated persons' continued employment on their signing the Board's proposed consent form. In Appendix A hereto, we have set forth several examples in which non-U.S. laws would potentially conflict with the proposed consent requirement.

For example, under English law, there exists an implied common law duty of confidentiality between an employer and its employees.[79] That duty could be considered breached if an applicant were to require employees to execute consents that obligated the employee or the applicant to provide information about pending legal proceedings against an associated person working in England.

Similarly, accountants in Germany have the right to refuse to testify in civil, criminal, and tax proceedings.[80] An accountant's work papers in Germany also cannot be seized as evidence for use in a criminal proceeding to the extent the accountant has a right to refuse to testify in that proceeding.[81] It is conceivable that by executing the consent proposed under Item

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[79] *See, e.g., Prout v. British Gas plc*, [1992] FSR 478; *Smith, Kline & French Laboratories (Australia) Ltd. v. Dep't of Community Svcs.*, (1991) 28 FCR 291, 303; Toulson & Phipps on Confidentiality (1996), §§ 16-10, 16-11.

[80] *See* Civil Procedure Act § 383; Criminal Procedure Act § 53; General Tax Act § 385.

[81] *See* Criminal Procedure Act § 97.

8.1(b), an associated person in Germany could be viewed to have relinquished his rights to refuse to testify in a civil, criminal, or tax proceeding.

Accordingly, to avoid subjecting registered public accounting firms to irreconcilable obligations between non-U.S. and U.S. law, we recommend that the Board clarify that applicants must secure consents from their covered employees only to the extent that obtaining such consents does not conflict with an applicable non-U.S. law.

2. State Employment Law

The same issue occurs in the U.S. context, because some state employment laws may similarly forbid registered firms from conditioning continued employment on the signing of the consent that the Board requires. Indeed, firms' attempts to enforce the employment condition against a noncompliant employee could conceivably result in a tort action for wrongful discharge.[82] Moreover, some state contract laws might invalidate as procedurally unconscionable a contractual provision consenting to disclosure; one-sided terms that are

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[82] For example, "California courts have recognized a separate tort cause of action for wrongful termination in violation of public policy . . . where the employee is discharged for . . . exercising (or refusing to waive) a statutory or constitutional right or privilege . . . ." *Pettus v. Cole*, 57 Cal. Rptr. 2d 46, 81 (Ct. App. 1996). "[T]he assertion of the [state] constitutional right to privacy is the assertion of a fundamental principle of public policy which is sufficient to state a cause of action for wrongful termination." *Semore v. Pool*, 266 Cal. Rptr. 280, 286 (Ct. App. 1990). Some other states have followed a similar path. *E.g.*, *Tisdale v. Kayo Oil Co.*, No. 88-244-II, 1989 WL 4981, at *1 (Tenn. Ct. App. Jan. 25, 1989). As an alternative basis, in addition to state constitutional privacy rights, some states might permit a similar tort action for wrongful discharge when the employee is terminated for exercising his right against self-incrimination by refusing to turn over documents that have a testimonial aspect. *See United States v. Hubbell*, 530 U.S. 27, 36-37 (2000) (recognizing that the privilege against self-incrimination sometimes protects from compelled disclosure even documents that are not themselves privileged).

imposed as conditions of continued employment frequently are deemed unenforceable contracts of adhesion.[83]

This problem is more readily resolvable in the U.S. context than in the non-U.S. context, because the federal law that imposes the consent requirement on associated persons can, at least arguably, be deemed to preempt aspects of state employment law to the contrary. We therefore recommend that the Board include in its proposed rules an express statement that, in its considered legal judgment, the consent provision preempts any otherwise applicable provision of state or local law that would preclude firms from conditioning continued employment on the timely signing of the Board's prescribed consent form.

To be sure, this specification by the Board may not be strictly necessary. Congress determined in the Act that providing the consent was to be "a condition of . . . continued employment by or association with [a registered public accounting] firm," and that any firm that does not "secur[e] and enforc[e] such consents from its associated persons" risks termination of its registration with the Board.[84] A state's regulation subjecting a registered firm to liability for wrongful termination for the very action prescribed by Congress presents a good case for preemption, for not only does the "state law 'stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,'" but in fact "'compliance with both

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[83] *See, e.g.*, *Villa Milano Homeowners Ass'n v. Il Davorge*, 102 Cal. Rptr. 2d 1, 6-7 (Ct. App. 2000).

[84] Act, § 102(b)(3)(A).

federal and state regulations is [an] impossibility.'"[85] Thus, contrary state employment regulations might be preempted under the Act even in the absence of action by the Board.

Nonetheless, in light of the "presumption against federal preemption" that the federal courts employ in certain circumstances, we recommend that the Board make its judgment explicit.[86] At least once they are approved and adopted by the Commission, a clear statement in the Board's rules that employers must make the specified consent a condition of continued employment should be deemed to preempt state law to the contrary.[87] The Commission's approval of a Board rule constitutes a determination by the Commission that the rule is consistent with the Act and the securities laws, is in the public interest, or will protect investors.[88] Moreover, the Commission "may abrogate, add to, and delete from" the Board's rules if it finds such changes necessary or appropriate to further the objectives of the Exchange Act.[89] Thus, by approving a Board rule, with or without changes, the Commission pronounces

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[85] *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985) (quoting *Hines v. Davidowitz* 312 U.S. 52, 67 (1941), and *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963)).

[86] *See, e.g., New York v. FERC*, 122 S. Ct. 1012, 1023 (2002) (citing cases).

[87] *See* Act, § 107(a), (b)(2) (requiring Commission approval of Board rules).

[88] *See* Act, § 107(b)(3).

[89] *See* Act, § 107(b)(5); 15 U.S.C. § 78s(c).

the rule to be within the scope of the statutory authorization and gives the rule its own imprimatur. That decision would likely be entitled to preemptive effect.[90]

B. The Board Should Adopt Safeguards To Avoid Unintended Consequences Of The Consent Requirement

1. Reasonable Efforts Are Required

The Board should make clear that it expects an applicant to make reasonable, good-faith efforts to secure the Item 8.1 consents from its associated persons. So long as an applicant undertakes its responsibility to obtain those consents in good faith, however, a firm's registration application should not be denied as a result of an inadvertent, or *de minimis*, failure to obtain each and every associated person's consent. Imposing a standard akin to strict liability would not be appropriate in this context.

2. Firms And Individuals Should Not Forfeit All Otherwise Available Protections As A Result Of Signing A Consent

Under the proposed rule, registered firms are required to state that the firm consents, and will seek consent from its associated persons, to comply with "*any request* for testimony or the production of documents made by the . . . Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002."[91] Such a blanket consent raises some concerns, particularly with respect to legally recognized protections that would otherwise be available for assertion against requests for documents or testimony, and we encourage the Board to reconsider elements of its proposed consent requirement.

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[90] *See, e.g.*, *City of New York v. FCC*, 486 U.S. 57, 64 (1988) ("The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof.").

[91] PCAOB Release No. 2003-1, at A2-xvi (Item 8.1) (emphasis added).

The consent regime incorporated in the Board's proposal is substantially broader in scope, and would have harsher consequences to applicants, than we believe was intended by Congress. The consent provision appears to have been included in the Act as an alternative to providing the Board with subpoena powers. By requiring firms to consent to cooperate with future Board requests for documents or testimony as a condition of their registration, Congress provided the Board with a mechanism through which the Board could secure necessary evidence to assist it in its oversight responsibilities. However, as drafted, the consent requirement would seem to impose considerably more severe restrictions on applicants than would be the case if the applicant were served with a subpoena. For example, the blanket consent mechanism contemplated by Item 8.1 appears to require applicants to relinquish various constitutional rights in advance, before being confronted with a request for specific documents or testimony. Whereas, in the subpoena context, a recipient of a subpoena has an opportunity to consider the request and determine whether to resist the production of documents or testimony on constitutional grounds, e.g., the right against self-incrimination, the proposed consent requirement could be read as forcing applicants to provide a blanket waiver of all such rights.[92]

Similarly, while a common-law legal privilege, such as the attorney-client privilege, might otherwise preclude a governmental body from obtaining documents or testimony pursuant to a subpoena, the proposal's consent procedure contains no safeguard to ensure that an applicant can assert such privileges once confronted with an actual request from the Board for documents or testimony. In this regard, the proposal is also considerably less protective than the regime established in § 105(b)(5) of the Act, which provides that information received by the Board in

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[92] Such blanket, advance waivers of constitutional rights would likely be deemed invalid as unconstitutional conditions. *See, e.g.*, *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967).

the course of an inspection or investigation retains its privileged status and would not be admissible, or subject to civil discovery, in proceedings before federal and state courts and administrative agencies. Section 105(b)(5) might have obviated certain concerns about the scope of the consent requirement imposed by Item 8.1, but Item 8.1 is broader, covering requests made "in furtherance of [the Board's] authority and responsibilities under the [Act]," whereas § 105(b)(5) applies only "in connection with an inspection under section 104 or with an investigation under this section."[93]

To avoid the Draconian consequences that the proposed consent requirement could lead to, we recommend that the Board amend its proposal and expressly include a reservation in the consent form. Applicants and their associated persons should maintain their rights to assert any legally recognized grounds for resisting compliance with a request for documents or testimony. The reservation should provide, therefore, that before any applicants or associated persons are required to turn over any information to the Board they will have an opportunity to be heard with respect to any legal grounds they may have for not producing information to the Board.

3. The Board Should Clarify That Associated Persons Need Not Provide *Written* Consent

We encourage the Board to clarify that firms need not assemble the *written* consents of each and every one of their associated persons within the 45-day period during which their applications are pending.

Certain aspects of the Board's proposing release could be misinterpreted with respect to obtaining written signatures. Specifically, the commentary on Part VIII of the proposed Form 1 states that "[t]he consents must be signed in accordance with rule 2104, which, among other

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[93] Act, § 105(b)(5)(A).

things, requires the manually signed version of the statement to be retained for seven years."[94] Rule 2104, in turn, requires a manual signature of "[e]ach signatory to an application for registration (including, without limitation, each signatory to the consents required by such application)."[95]

Our understanding is that Rule 2104's requirement that a manually signed copy be retained for seven years applies only to a registered firm's consent that is filed electronically with the Board. However, Rule 2104 and the commentary on Part VIII could be misinterpreted as applying to the consents of associated persons as well as to the consent of the registered firm.

We urge the Board to make clear that the requirements of Rule 2104 apply only to the registered firm's consent form, not to the consent forms that registered firms must gather from its associated persons. Rule 2104's seven-year retention requirement would not be well tailored to the preservation of associated persons' consents, because the seven-year period would be not tied to the signatory's continued employment by, or continued association with, the registered firm. More importantly, requiring physical signatures from each and every associated person would be a qualitatively different and infinitely more burdensome undertaking than requiring a physical signature from a single partner or owner on behalf of the firm. Securing, gathering, and maintaining the physical signature of every associated person who joins any larger firm would be a significant undertaking. But the *initial* registration process will require firms to secure consents from each and every one of their associated personnel within an extremely short time period. To impose the additional requirement that those consents contain a physical signature

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[94] PCAOB Release No. 2003-1, at A3-xxxii.

[95] *Id.* at A1-vii.

and be maintained in a central location would be incredibly costly for accounting firms. Obtaining and retaining the required consent from associated persons electronically, by contrast, would be more efficient and practical.

Consistent with the Board's proposed web-based registration system, electronic signatures can be just as effective as pen and ink to authenticate documents. Congress has directed federal agencies to afford electronic authentication the same recognition for most purposes and has expressly provided that transactions between private parties may be memorialized in electronic form, and that an electronic signature is to be considered just as effective as a physical signature to consummate such transactions.[96] Consequently, the Board should make clear that applicants need not secure written consents from their employees, and instead can utilize an electronic method of obtaining the necessary consent.

4. The Board Should Consider Extending The 45-Day Period In Which To Obtain Associated Persons' Consents

Whether or not the Board agrees that the requisite consents need not be obtained from associated persons in writing, we encourage the Board also to consider extending the 45-day deadline that Item 8.1 imposes for the gathering of consents from all associated persons. We note in particular that the 45-day deadline is *not* imposed by the Act, which does not specify a time period during which the consents are to be assembled. Indeed, the Act appears to require only that firms undertake good-faith cooperation with the Board to secure the necessary consents

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[96] *See* Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, §§ 101(a), (d), 104(b)(2), 114 Stat. 464, 464-69 (2000); *see also id.* § 104(a), 114 Stat. at 469 (allowing limited exceptions for records that, unlike the consents of associated persons, are required by law to be *filed* with Federal agencies).

from its associated personnel.[97] A firm that, despite its reasonable efforts, is unable to do so within 45 days should not be penalized, particularly during this initial registration process, which seems to entail assembling the necessary consents from virtually each and every professional associated in any way with a firm. We encourage the Board either to eliminate the 45-day restriction, at least for the initial registration process, or to extend it sufficiently to permit the requisite consents to be assembled with reasonable diligence.

5. The Board Should Clarify How Long A Consent Remains In Effect

The Board should also clarify how long a consent of an associated person remains in effect after that person ceases to be associated with an applicant. At a minimum, it should be made clear that an associated person's consent to cooperate in and comply with a request for testimony or production of documents made by the Board is limited to events that occurred while the person was associated with the applicant.

C. Providing Client Information To The Board To Fulfill Consent Obligations May Pose Conflicts With Non-U.S. And State Laws And Professional Standards

Proposed Item 8.1(a) provides that an applicant would be required to consent "to cooperate in and comply with any request for testimony or the production of documents" made by the Board in the exercise of its authority. As detailed in Appendix A, the provision of client confidential information to a third party, including the Board, presents numerous potential conflicts with non-U.S. laws and professional standards, as well as with professional standards in

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[97] *See* Act, § 102(b)(3)(B) (requiring firms to acknowledge that obtaining consents of employees is a condition of registration, but not placing any constraints on the method or timing for accomplishing the task).

the United States.[98] Therefore, we are concerned that the proposed consent requirement would place the applicant (and associated persons executing similar consents) in the untenable position of either refusing to comply with the terms of the consent, thereby jeopardizing its registration (or jeopardizing the associated person's continued employment), or providing client information to the Board, thereby committing an act in potential violation of non-U.S. or state law or professional standards. We recommend that, at a minimum, the Board modify the proposed consent requirement so that testimony and the production of documents is required only to the extent consistent with applicable law and professional standards.

CONCLUSION

The effective registration of public accounting firms is critical to the mission of the Board to oversee the audits of issuers, and we appreciate the opportunity to provide comments concerning the Board's proposed system of registration. Given the novelty of the reporting requirements, the breadth of some parts of the proposal, the conflicts of laws identified, and the short time period with which firms will have to digest the final rules and submit their applications, we believe that the adoption of the recommendations and revisions suggested herein would greatly enhance the proposed requirements, and help to ensure that the Board's registration process succeeds.

We have attempted to provide comprehensive recommendations and revisions. The issues presented are very complex and may warrant further discussion. We would be pleased to

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[98] *See, e.g.*, AU 339.11 (Statement on Auditing Standards 96) ("The auditor has an ethical, and in some situations a legal, obligation to maintain the confidentiality of client information. Because audit documentation often contains confidential client information, the auditor should adopt reasonable procedures to maintain the confidentiality of that information.").

discuss these issues with you further. If you have any questions or would like to discuss these issues further, please contact Robert J. Kueppers at (203) 761-3579.

Very truly yours,

/s/ Deloitte & Touche LLP

cc: Charles Niemeier, Acting Chairman of the PCAOB
Kayla Gillan, Member
Daniel Goelzer, Member
Willis D. Gradison, Jr., Member

APPENDIX A

Potential Conflicts Between Proposed PCAOB Registration Rule and Non-U.S. Law and Professional Standards[*]

Canada

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
Rules of Professional Conduct	The Rules of Professional Conduct in Ontario provide that a "member shall not disclose confidential information concerning the affairs of any client, . . . except . . . (c) when such information is required to be disclosed by order of lawful authority." Institute of Chartered Accountants of Ontario, Rules of Professional Conduct § 208.1 (Dec. 2002). The fee information requested in Part II of the proposed Form 1 presents a potential conflict with the Rules of Professional Conduct in Ontario. In addition, if an accountant is obligated to provide client information to the PCAOB as a result of the consent executed pursuant to proposed Part VIII, the disclosure of this information potentially could be viewed to conflict with the Rules of Professional Conduct in Ontario. Moreover, it is unclear whether the PCAOB would be considered a lawful authority for the purposes of § 208.1, and thus a chartered accountant might be deemed in breach of the Rules of Professional Conduct if the accountant provided the fee information required under Part II or was obligated to respond to a PCAOB request for information that involves client confidential information as a result of the consent required pursuant to Part VIII of the form. As with the other potential conflicts identified throughout this Appendix A, it is unclear to what extent a client's consent or an employee's consent would operate to eliminate the potential conflict.

[*] To highlight in more detail the issues raised by the potential conflicts with non-U.S. laws, this chart provides a non-exhaustive list of potential conflicts with non-U.S. laws in some, but by no means all, countries.

China

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
CPA Law Article 19	Article 19 specifically states that a CPA has the responsibility to keep confidential the business information acquired in the performance of services. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between China's CPA Law and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form.

France

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
Code de Commerce Article L225-240; Decree 69-810 of August 12, 1969 Article 67; and Code of Professional Ethics Article 5	Article L225-240 of the Commerce Code provides that auditors shall be bound by professional secrecy for all acts, events, and information of which they may become aware in the course of their duties. The Code of Professional Ethics for auditors confirms this duty of confidentiality. The Decree provides that the French domestic securities regulator (Commission des Operations de Bourse) may have access to certain information under certain circumstances, and the duty of confidentiality cannot protect against this disclosure. There are, however, no provisions of French law providing for the disclosure of confidential information to foreign authorities. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between Article L225-240 of the Commerce Code and the information requested in Part II of the proposed Form 1, as well as the consents required under Part VIII of the form. Under French law, client consent may not cure a conflict with the confidentiality provisions because professional secrecy is imposed by legislation. Thus it may be a violation of professional secrecy to provide certain client information to the PCAOB, which could subject an accountant to criminal and civil penalties.
Statute n°68-678 of July 26th, 1968, as modified by statute n°80-538 of July 16th, 1980	Article 1bis provides that "no individual may request, seek or communicate, in writing, verbally or by any other means, economic, commercial, industrial, financial or technical documents or information, for the purpose of constituting proof

	with a view to court or administrative proceedings abroad or as part thereof." Article 3 also provides that for the applicable sanctions in case of violations of the rules provided for in Article 1bis: 6 months of imprisonment and/or a fine of FRF. 120,000. Article 2 requires to inform without delay the relevant French Minister when such a request is made. To the extent the information required to be provided under Parts II or V of proposed Form 1 or as a result of the consents executed under Part VIII of the form is construed to be information provided for the purpose of constituting proof with a view to court or administrative proceedings, there is a potential conflict with this Article 1bis of Statute n°68-678. The likelihood of obtaining a specific authorization from the French Minister of Justice in this context cannot be evaluated at this stage.

Germany

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
The Accountants Professional Articles of Association Section 9	This section provides that an accountant shall keep confidential all facts and circumstances with which the accountant is entrusted or of which the accountant becomes aware in the course of professional work. The scope of the duty in Germany is quite broad (extending the confidentiality obligations to third party information) and captures all information learned by the auditor in the course of providing professional services, whether by active revelation by the client or information which the accountant becomes aware of as a result of the accountant's professional position and activities. Not only are accountants to refrain from disclosing such confidential information, but accountants also have an affirmative duty to take the appropriate measures to ensure that such information is not disseminated to third parties who are not entitled to the information. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between Section 9 of the Accountants Professional Articles of Association and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form.
Commercial Code Section 323; Accountants Ordinance Section 43; Penal Code	These sections establish an accountant's duty to keep information confidential, and provide that any illegitimate disclosure of confidential information by an accountant is a

Section 203; Commercial Code Section 333	criminal offense. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between these provisions and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form.

Hong Kong

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
Personal Data (Privacy) Ordinance, codified at Chapter 486	This ordinance protects against the disclosure of certain personal data. There is a potential conflict between this ordinance and the requirements to disclose employee data under Parts V and VII of proposed Form 1.

Israel

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
The Privacy Protection Law of 1981	Under this law, there is a general obligation of an employer to maintain in confidence certain employee information. There may be a conflict between the Privacy Protection Law and the demand for certain information relating to employees that may be disclosed under Part V and the roster list that would be required under Part VII of proposed Form 1. The Privacy Protection Law also may present a conflict with the fee information that would be disclosed under Part II of proposed Form 1. There is an exception providing for the ability to disclose confidential information pursuant to other legal obligations; however, this exception likely would not be applicable because the exception appears only to capture obligations under Israeli law.
Rules of the Institute of Certified Public Accountants in Israel	The Rules of the Institute of Certified Public Accountants in Israel ("ICPAI") impose a strict duty of confidentiality on accountants. An accountant is not to disclose to a third party, without client consent, any information provided to the accountant while performing professional services for the client. In an opinion paper published by the ICPAI in 1985, the ICPAI recommended that accountants only deliver documents of a

	client to governmental authorities in response to a court order, unless there is a specific law authorizing such delivery. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between the ICPAI provisions relating to confidentiality and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form.
General Security Service Law of 2002	This law restricts the disclosure of information determined to be sensitive by the Israeli Government. It is possible that certain client information to be disclosed to the PCAOB as a result of the consent entered into pursuant to Part VIII of proposed Form 1 could be classified as sensitive, such as where a firm acts as auditor for defense contractors, and in this event Part VIII of form may be viewed to conflict with certain aspects of the General Security Service Law.

Italy

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
Penal Code Article 622; Civil Code Article 2407	The relevant Penal Code provision makes it a crime punishable by fine or imprisonment for a person to reveal private information gained by virtue of the person's profession. Furthermore, the relevant Civil Code specifically outlines the duty of auditors to maintain the secrecy of the facts and documents they encounter in the course of their professional service. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between these provisions and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form. The provisions relating to confidentiality in Italian law also are such that client consent may not cure a violation. The Penal Code regulation is directed at the protection of third parties, and thus it is possible that client consent cannot authorize the disclosure of third party information gained by a professional accountant.
The Commissione Nazionale per le Società e la Borsa ("CONSOB") Auditing Standard No. 230	CONSOB is the public authority responsible for regulating the Italian securities market. The CONSOB issues principles to guide the profession. This recommended auditing standard confirms the duty of auditors to keep client information

(recommended in November 2002)	confidential. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between these provisions and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form.

Japan

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
CPA Law (Law No.103, 1948) Article 27; Japanese Institute of Certified Public Accountants Code of Ethics; Law concerning Certified Tax Accountants (Law No. 237 of 1951)	Article 27 of the CPA Law prohibits any accountants from providing client confidential information to a third party. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between Article 27 of the CPA Law and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of form.

Mexico

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
Code of Ethics of the Mexican Institute of Public Accountants Concept VI; Professions Law Article 36	Under the Code of Ethics applicable to accountants, a CPA may not give client information to a third party, except for information to be furnished to a competent authority with the express consent of the client. The Professions Law also obligates a professional to keep secrets on the matters entrusted to the professional by the client, with certain limited exceptions. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between the Code of Ethics provisions and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form. It is unclear if the PCAOB would be considered a competent authority for purposes of this provision.

Netherlands

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
Rules of Professional Conduct and Practice of Registered Accountants Article 10; Rules of Professional Conduct of the Dutch Association of Tax Advisers Article 8; Rules of Conduct of Advocates Rule 6	Under the Rules of Professional Conduct and Practice of Registered Accountants, a registered accountant shall treat as confidential everything that has been entrusted to the accountant as such in the course of the accountant's duties. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between the Rules of Professional Conduct and Practice of Registered Accountants and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form.

Spain

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
Audit Law 19/1988 Article 13; Regulation implementing Audit Law 19/1988 Article 43; Law 44/2002 on Measures Reforming the Financial System Article 53	The Audit Law provides that an auditor shall be obliged to keep secret as much information as may come to the auditor's attention, and the information may not be used for purposes other than the audit itself. The Measures Reforming the Financial System provides the right of certain authorities access to audit documentation. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between the Audit Law and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form. The Measures Reforming the Financial System also may be construed to allow only Spanish governmental authorities access to auditor documents, which would present a further potential conflict with the information required by proposed Form 1.

Switzerland

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
Penal Code Article 321 (Professional Secrecy, Duty of Confidentiality); Penal Code Article 162	These provisions make it a crime to reveal professional or business secrets of which the professional became aware during the course of work for a client. The provisions protect all information the client wishes to keep confidential. The

(Preservation of Business Secrets); Swiss Code of Obligations Article 730 (Violation of Professional Secrecy of Auditors)	provisions also apply to information not publicly known regarding third parties. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between the Swiss Penal Code and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form.
Banking Act Article 47 (Banking Secrecy); Federal Act on Stock Exchanges and Securities Trading Article 43 (Professional Secrecy Obligations of Securities Traders)	Any accounting firm providing auditing services pursuant to the audit requirements of these Acts that gains insight into confidential information in the course of its mandate, where the client is a bank, stock exchange, or securities dealer, and then reveals such information to a third party, is subject to penal sanctions for violation of the banking secrecy obligation in the same way as officers and employees of a bank or securities trading firm. The protection covers any information that relates to the identity or other personal data of customers, information that relates to the mere fact that a certain person is a client, or information that allows for an inference of the identity or personal data of the customer. For the same reasons outlined with respect to the potential conflicts with Canadian standards, there is a potential conflict between these laws and the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form.

United Kingdom

Relevant Non-U.S. Law or Professional Standard	*Potential Conflict*
Common Law Duty of Confidentiality; Duty of confidence imposed by the Institute of Chartered Accountants in England and Wales Member Handbook Statements 1.205 and 1.306	The duty of confidence imposed by the rules of the Institute of Chartered Accountants in England and Wales provides that, absent informed client consent, an accounting firm may not disclose information regarding client affairs. This specifically includes the duty not to disclose the client's name or facts that could identify a particular entity as a client. For the same reasons outlined with respect to the potential conflicts with Canadian standards, the information requested in Part II of proposed Form 1, as well as the consents required under Part VIII of the form, may be in conflict with this duty of confidence.

Implied duty of confidence between employer and employee	Information held by an employer, such as details of disciplinary proceedings, may be regarded as confidential by the employee. Disclosure of confidential information about an employee by an employer may constitute a breach of the implied duty of confidence between employer and employee. This protection presents a potential conflict with the information that an applicant would be required to disclose regarding employees under Part V of proposed Form 1.

European Union Data Protection Directive

There is likely a direct conflict between the PCAOB's proposed rule on registration and the European Union Data Protection Directive.[99] Articles 25 and 26 of the Directive provide that member states are not to transfer personal data to a third country unless the recipient country provides an adequate level of protection for the data. Currently, it is our understanding that the United States is not considered to provide adequate protection of personal data. Although employee consent can form the basis for disclosure of personal information to recipients not providing adequate data protection, it is not clear that consent contemplated under Part VIII of the application form would constitute consent that is freely given, which is a required element to establish valid consent under the Directive.

Every European Union country is under an obligation to implement the Directive's protections into national law. Below are selected examples of potential conflicts between the PCAOB's proposed Form 1 and individual EU country legislation implementing the Directive.

Non-U.S. Law Implementing Directive	*Potential Conflict*
Netherlands Personal Data Protection Act	The Netherlands Personal Data Protection Act provides that the transfer of certain information outside the European Union requires that recipients adhere to the Safe Harbor Principles of the Act if the recipient does not provide adequate levels of protection for the data. There is a potential conflict between the Netherlands Personal Data Protection Act and the form's proposed requirements under Part V of proposed Form 1 regarding information on proceedings and under Part VII regarding roster information because disclosure of this information likely would be considered personal data subject to restriction on dissemination. As with the other potential conflicts identified below, it is unclear to what extent a consent

[99] European Union Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 1995 O.J. (L 281) 31.

	would operate to eliminate the potential conflict. Consents of the party must be "freely given, specific and informed." In addition, as with the other potential conflicts identified below, it may be possible to cure the potential conflict if the PCAOB were to enter into certain specified contracts (intended to limit the extent to which information could be made public in the United States) with relevant authorities in these European countries and/or the European Commission.

France – Statute no. 78-17 of January 6th, 1978, as amended, on Data Protection	The statute provides for a series of protections benefiting individuals. There is a whole series of rules against the collection and treatment of personal data through automated means. In particular, pursuant to article 30 of the statute, the collection and storage of personal data relating to an individual's "breaches of the law, condemnations or applicable safety measures" is prohibited. Even when the collection and automated treatment of personal information is not prohibited under the statute, there are a number of protective rules that are applicable, including in particular a right to access and correct the information, declaration obligations and a duty not to disclose the information There is a potential conflict between the French statute and the form's proposed requirements under Part V of proposed Form 1 regarding information on proceedings and under Part VII regarding roster information because disclosure of this information likely would be considered personal data subject to restriction on dissemination.
German Data Protection Act of 1990	The Data Protection Act of 1990 includes several data protection principles that set out the standards that "data collectors" (e.g., accounting firms) must comply with when "processing" information that relates to individuals. A possible form of processing personal data might include the transfer of the

	personal data to the Board. There may be a conflict between the German Data Protection Act of 1990 and the requirements to provide certain employee information and rosters under Parts V and VII of proposed Form 1. The proposed requirements likely would be considered personal data subject to restriction on dissemination under the German Data Protection Act.
United Kingdom Data Protection Act of 1998	The Data Protection Act of 1998 includes eight data protection principles that set out the standards that "data collectors" (e.g., accounting firms) must comply with when "processing" information that relates to individuals. Firms in violation of the Data Protection Act are subject to potential criminal and civil liability. There is a potential conflict between the United Kingdom Data Protection Act of 1998 and the requirements under Part V of proposed Form 1 regarding information on proceedings and under Part VII regarding roster information because disclosure of this information likely would be considered personal data subject to restriction on dissemination.
Swiss Data Protection Act Articles 6 and 35*	Articles 6 and 35 of the Swiss Data Protection Act subject the transfer of personal data outside Switzerland to specific requirements where the recipient does not provide protection of that information equivalent to protection provided under Swiss law. Also, personal data may not be transferred without the individual's consent in instances where the recipient declares that it will not treat the data as confidential. Under Article 35 of the Swiss Data Protection Act, whoever discloses

* Although Switzerland is not a member of the European Union, the Swiss Data Protection Act is similar in many respects to the Directive.

	confidential and sensitive personal data without authorization is subject to criminal punishment. There is a potential conflict between the Swiss Data Protection Act and the demand for certain employee information and roster information under Parts V and VII of proposed Form 1 because the United States is not considered to provide data protection equivalent to Swiss law.

APPENDIX B

Comments On Specific Questions Posed By The Board
Regarding the Registration of Non-U.S. Accounting Firms

In its release accompanying the proposed rules and application form, the Board poses several questions regarding the registration process for non-U.S. accounting firms. *See* Proposal of Registration System for Public Accounting Firms, PCAOB Rulemaking Docket Matter No. 001, PCAOB Release No. 2003-01 (Mar. 7, 2003), at 13-15. Our responses to several of these questions follow below.

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?

Non-U.S. accounting firms will have to assess whether any information requested by proposed Form 1 or the processes required to compile the information would conflict with local law or professional standards. As detailed in Appendix A, there may be several circumstances in which firms could not comply with the registration requirements without risking a violation of non-U.S. law or professional standards. Therefore, prior to proceeding with registration, non-U.S. firms likely will want some form of assurance that their actions in registering will not contravene laws in their home jurisdictions.

In addition, non-U.S. employees may have concerns that parallel those of non-U.S. applicants. Because consents are not widely understood outside the United States and their meaning (and the employee's obligations regarding them) will have to be communicated and comprehended, many individual employees may wish to seek independent legal advice before agreeing to execute the consent requested in Item 8.1(b) of the proposed rule.

Putting aside the concern regarding potential conflicts with non-U.S. laws, we believe it is unlikely that non-U.S. accounting firms could accurately complete the proposed registration form within 180 days of the date the Commission determines that the Board is capable of operating. It appears unlikely that non-U.S. accounting firms have ever sought to compile the extensive information required by proposed Form 1. Therefore, non-U.S. firms will have to establish processes and structures to ensure that the information collected is accurate and responsive to the information request contained in the form. For example, until adoption of the SEC's recently amended auditor independence rules, foreign private issuers have not had to comply with the SEC disclosure requirements regarding fee information. As a result, many non-U.S. firms have not obtained fee information on a consolidated basis, nor have they developed the processes to capture this information. A significant amount of time will be required to obtain and classify relevant fee information. It is highly unlikely that non-U.S. accounting firms would be able to implement these processes and structures and collect the required information prior to the October 24, 2003 deadline. Moreover, providing this information creates confidentiality issues, among other things, as non-U.S. accounting firms would face having to disclose fee information for foreign private issuers which have not yet disclosed such information.

Because of the need for the Board to have dialogue with non-U.S. regulators, such that the Board and non-U.S. applicants have the necessary time to consider the full range of issues implicated by the proposed registration requirements' potential conflict with various non-U.S. legal and professional standards, we recommend that the Board extend the time for non-U.S. applicants to register into the year 2004 and defer implementation of the problematic registration requirements until the issues can be satisfactorily resolved.

Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?

In our comment letter, we review in detail several aspects of proposed Form 1 that we believe should be modified. Those comments generally apply for both U.S. applicants and 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?

The comment letter and Appendix A detail numerous potential conflicts between the proposed rules and application form and the laws or professional standard of jurisdictions in which non-U.S. applicants are located. We nevertheless offer the following additional comments on this important issue.

We believe that much of the information proposed to be required by the Board likely would be considered "personal data" under the European Union Directive dealing with data protection, Directive 95/46/EC. Personal data includes many of the personal details requested in the proposed rule for all the accountants associated with a firm. Information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm, as required under Part V of Proposed Form 1, is likely to be considered "sensitive personal data" subject to greater restrictions on dissemination under the Directive. Consent by the firm's employees may allow for the release of such information, but the consent must be informed and freely given, which presents special concerns in the context of the employer-employee relationship under the laws of certain European countries. In addition, even if employees provide the consents requested, it appears the relevant non-U.S. firm may not ultimately be able to compel the employee to testify or produce documents.

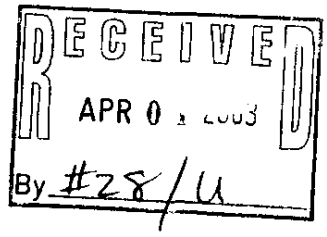
Potential conflicts with the laws and professional standards governing confidentiality of client information also abound. For example, in Switzerland, it appears that audit work papers are protected against disclosure by the Secrecy Obligation of Article 730 of the Swiss Code of Obligations and Article 321 of the Swiss Penal Code. These Swiss provisions protect not only the client's confidential information, but also confidential information of other third parties that may have been developed during the course of an audit.

Similarly, the consent requirement to produce documents may place the firm in violation of certain non-U.S. laws. For example, in the Grand Duchy of Luxembourg, firm partners and

all the staff are bound by professional confidentiality obligations that can be waived with respect to foreign authorities only to the extent that the foreign authority has entered a treaty with the Grand Duchy of Luxembourg.

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 Board's definition of "substantial role" in Rule 1001(n) appropriate? In particular, should the 20 percent test 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 percent threshold more realistically capture firms that materially participate in the preparation or furnishing of an audit report?

Our comment letter includes detailed discussion regarding the proposed definition of "substantial role." Those comments apply both to U.S. applicants and non-U.S. applicants. We support the 20 percent test for determining whether the non-U.S. firm performs audit procedures with respect to a significant subsidiary. As discussed in our comment letter, however, we believe the proposed 20 percent test for determining whether a non-U.S. firm's services are material should be revised or eliminated in its entirety. The 20 percent test for determining whether a non-U.S. firm's services are material would have the adverse effect of requiring accounting firms and other audit client service providers to engage in burdensome analyses intended to determine whether the other service providers played a "substantial role" in the preparation or furnishing of an audit report.



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28 March 2003

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street
WASHINGTON DC
USA

Dear Secretary

RULEMAKING DOCKET MATTER 01
PROPOSAL FOR REGISTRATION SYSTEM FOR PUBLIC ACCOUNTING FIRMS

My Minister, Melanie Johnson MP, the UK Minister for Competition, Consumers and Markets, and other UK colleagues were very pleased to meet members of the Board and some of the PCAOB staff in Washington a few weeks ago. We felt that this was a very helpful initial discussion and we think it is important that there is further contact and discussion between you and UK regulators on the issues raised in the proposal you published on March 7. We welcome the opportunity to participate in the Round Table organised for 31 March.

2. The issues raised are important ones for the UK, not least given the significant number of UK companies which are SEC registrants; and, we suspect, the number of UK companies which are subsidiaries of major US

companies. We comment below on some of the principal issues raised by that document. We also attach a short Annex describing the regulatory and oversight regime for registered auditors in the United Kingdom. From our discussions we know that you already have a good idea of these and in particular what the UK Government is doing to strengthen these arrangements further. We would obviously be very pleased to provide more detailed information and to discuss this with you further.

3. We are also aware that UK bodies, in particular the Institute of Chartered Accountants in England and Wales, have made submissions to the PCAOB. We are strongly supportive of the problems and difficulties raised by the ICAEW and other commentators from overseas, in relation both to the principle of registration for all relevant overseas accounting firms and to the particular difficulties – both practical and legal – seen to stand in the way of proceeding to registration in the way and in the timescale suggested. We are encouraged in the belief that you are keen to find sensible ways forward and would urge you to pay close regard to the concerns which are being expressed not only from the UK, but also from the European Commission and other European colleagues, as well as more widely. In our view it would be a mistake – and probably simply not possible - to proceed with the registration of foreign accounting firms on your domestic timescale. We would suggest that you exercise the powers with the Sarbanes-Oxley at least to give significantly more time to work out proposals on the regulation of foreign accounting firms. We doubt that an additional six months provides enough time and we would urge you to give a further 12 months to agree a sensible way forward in respect of foreign accounting firms.

General Proposition that Overseas/UK Accounting Firms should have to register with PCAOB.

4. We recognise that the PCAOB has to take forward these issues within the remit set by the Sarbanes-Oxley Act and share many of the objectives of that Act in terms of improving the regulatory regime for audit and accounting firms.

5. In broad terms the existing approach to regulation as between US and many overseas countries such as the UK has been based on an implied mutual recognition of each other's regulatory regimes and laws (We recognise of course that the SEC already imposes some US specific requirements on audit firms – in respect of auditor independence for example, and more recently on the use of US auditing standards. We have from time to time expressed our view to SEC colleagues that even these requirements should not be necessary in respect of a country such as the UK, where there is a well developed system of standards and regulation.)

6. Against this background we believe that the imposition of a general requirement of registration on the overseas auditors both of SEC registrants or of "significant" subsidiaries is a backwards step in a world which is increasingly inter-related and in which the mutual acceptance of equivalent arrangements is more rather than less desirable. We believe that the proposal to apply this in respect of the auditors of overseas subsidiaries is particularly intrusive of other countries' arrangements.

7. Registration in the way proposed also paves the way for a double system of oversight, which is potentially highly wasteful of resources, leads to conflicts when different regulatory systems reach different conclusions and creates possibility of double jeopardy for audit firms and individual auditors.

8. We have a particular concern that a complicated and expensive system of registration can only deepen the hold of the Big 4 firms on the audit market, just at the time when we are all anxious to find ways of encouraging second tier firms to grow their audit business. The costs and difficulties of registration are disproportionate generally for overseas audit firms, but even more so for firms outside the Big 4. And such firms are more likely to be the auditors of for example the UK subsidiaries of US registrants.

9. One possible way forward might be to identify principles, against which to judge whether regulatory arrangements are equivalent. This could provide the basis for agreeing equivalence across a wide area such as the European Union, or in respect of particular countries such as the UK or Ireland. It might also be an option for the PCAOB to provide for possible

exemption from registration in respect of individual foreign accounting firms, on the basis of information about them and about the local regulatory arrangements to which they are subject.

Practical difficulties for foreign firms in registering

10. Even had we no difficulties with the principle of registration, we would need to emphasise, on the basis of our discussions with UK audit firms and with colleagues in Europe, that we see very substantial difficulties in the way of developing and implementing a registration regime for affected overseas firms within the timetable set out in the Sarbanes Oxley Act. Some of these points are mentioned below but we note that many are addressed in more detail in other submissions to the Board from the UK and elsewhere:

11. Some of the information required may not be publicly available in home country, or may be sensitive. But there is no clear commitment from PCAOB to keep such information confidential. There are likely to be all sorts of difficulties unless the PCAOB can give a clear commitment not to disclose information which would not otherwise be publicly available.

12. The information required has been developed, perfectly understandably, with US in mind. Some of it may not be readily understandable in other countries; or it may simply not be appropriate. We think this needs much more careful thought.

13. We get the flavour of a shopping list of items which might just be needed.

14. There are also legal difficulties in the way of providing some of the information. Our understanding is that these problems may not be as marked in the UK as in some other EU countries, but at the very least there is a problem with providing "personal data" which is protected under the EC Directive on data protection - there would need to be at the very least negotiation with the EU and/or with individual countries on how to provide a proper level of protection for such data.

15. As already mentioned, registration imposes disproportionate costs on overseas firms, partly because the information may be more difficult to put together and partly because the foreign firm is likely to have proportionately fewer US registrants.

16. We are particularly concerned at the difficulties registration would pose for the auditors of UK subsidiaries of US companies, particularly where these are not associates of the Big 4.

Interim solution: extend time for registration for overseas firms

17. Both for the reasons of principle and of practicality therefore, we would strongly favour as an interim measure, a decision to allow more time to consider whether and/or in what circumstances there should be registration for foreign accounting firms, and also to explore practical solutions for making progress. We think that an extra year is needed to allow for this.

What regulation should there be for overseas accounting firms?

18. We would be extremely concerned, were US requirements to be applied regardless of the regulatory regimes in other jurisdictions. The most obvious manifestations of a regulatory regime are the external monitoring of the firm and the application of an external investigation and disciplinary regime.

19. We cannot see that it is an attractive proposition even from a US perspective to try to apply a US monitoring or disciplinary regime to foreign audit firms, particularly where they are already subject to national requirements which are likely to be better suited to the job. Is it sensible, to take one example, for the PCAOB to try directly to monitor the quality of the work and compliance with the rules of a UK audit firm which carries out the statutory audit under UK requirements of a UK company which happens to be a significant subsidiary of a US registrant. It looks to be a recipe for an

inefficient and ineffective system. The idea of subjecting UK firms to a double dose of regulation is highly objectionable and could potentially lead to a proliferation of monitoring regimes from around the world applying to the same audit firm. There may be a temptation to impose such unwieldy arrangements also on US audit firms in some circumstances! If, alternatively, the proposal is to draw on the work of the UK regulatory authorities, then there would very clearly need to be negotiation and discussion; for example, on to what extent and how information collected for one purpose can be disclosed for another. Similarly imposing a US system of investigation and discipline on top of our own arrangements creates double jeopardy for firms and individuals.

20. We recognise that there is the closely related issue of access to audit working papers. We understand that this is important for you and that the SEC does not think that, where there are existing arrangements, these have worked well. This is a difficult area, complicated by the various provisions in the Sarbanes Oxley Act itself. It links quite closely to the legal difficulties surrounding the transfer of confidential information, for which in Europe there is considerable protection. In our view this needs further detailed negotiation, between the EU and the US, and/or between individual countries and the US. This might include exploring how existing arrangements can be made to work better.

21. As a very minimum we would expect the practical impact of US requirements to be minimal where there is already in place a regulatory regime which meets agreed principles or standards. Indeed we would very much hope that moves towards international standards, for example for auditing, will enable the US to remove its existing insistence on local US standards.

22. We hope that these comments are valuable as you develop your thinking. We look forward to developing our contact.

23. I am copying this letter to Dan Goelzer and to Ronald Boster.

Kind regards

Yours sincerely

JOHN GREWE
Director, Company Law, (Audit and Reporting)

United Kingdom: Regulation of the Auditing and Accountancy Profession: A Brief Overview

1. The regulation of registered auditors in the United Kingdom is governed by **the Companies Act 1989**, which transposed the EU 8th Company Law Directive into the law. In brief this enables the Government to delegate regulatory powers to bodies which it recognises for this purpose where they meet a series of stringent requirements. Under this system there are five professional bodies which have delegated powers in respect of admission to the Register of Auditors and monitoring and discipline of registered auditors. These include the Institutes of Chartered Accountants in England and Wales, of Scotland and of Ireland, and the Association of Chartered Accountants. These bodies are accountable to the Department and to Parliament.

2. However, these arrangements do not tell the full story. There have been two major developments in the regulatory structure more recently – one starting in 1998 and one in 2002.

3. In 1998, the UK Government reached agreement with the six main UK accountancy bodies that the accountancy profession (NB not just the audit profession) should be subject to oversight through an independent but non-statutory body, the **Accountancy Foundation**, under which a number of boards were established, all with non practitioner majorities.

4. The boards under the Foundation were the **Auditing Practices Board** (which sets UK auditing standards); the **Ethics Standards Board** (which set the agenda for the professional bodies to bring forward standards for its approval); the **Investigations and Discipline Board** (which was to take responsibility for disciplinary cases of particular public interest, and a **Review Board**, which reviewed in particular the regulatory activities of the accountancy bodies. These activities included continuing responsibility for admission, monitoring and discipline of their members who are registered auditors.

5. More recently again, in 2002 the Government conducted a further review of the regulatory arrangements in the wake of US scandals such as Enron and WorldCom. This reported in January 2003 and the Government accepted all the principal recommendations, which are now being set in place.

6. The main further changes are:

(i) **The Financial Reporting Council** (FRC), which already oversees the setting and enforcement of accounting standards; will take on the functions of the Accountancy Foundation. This will create an independent, unified and authoritative structure with clear areas of responsibility: the setting of accounting and audit standards; their enforcement; the monitoring and disciplining of the audits of public interest entities; and the oversight of the remaining regulatory responsibilities of the professional accountancy bodies.

(ii) The independent regulation and review of audit will be significantly strengthened. In particular, responsibility for setting **independence standards for auditors** should be transferred to the **Auditing Practices Board,** which will continue to have a 60% majority of non-practitioners .

(iii) A **new audit inspection unit** is being set up within the independent regulator to take over from the professional accountancy bodies responsibility for monitoring the audit of those entities whose activities have the greatest potential to impact on financial and economic stability – specifically listed companies and major charities and pensions funds.

(iv) a **Professional Oversight Board** will take over, as the successor to the Review Board, the oversight of those parts of audit and accountancy regulation which remain within the profession. This is also within the FRC structure. As a part of this, the Government's role in recognising professional supervisory bodies and qualifications for the purposes of the 8th Directive will be delegated to this Board. This Board will have a majority of non accountants.

(v) The planned new **Investigation and Discipline Scheme**, will be brought into being without delay by the Investigation and Discipline Board, within the FRC structure. The IDB has a lay majority. The new Scheme provides a demonstrably independent forum for hearing significant public interest disciplinary cases.

(vi) The annual running costs of the independent regulator should be broadly shared by Government, business and the professional bodies, with the exception of the costs of cases coming before the Investigation and Discipline Board, which will continue to fall to the professional

bodies, and the costs of the independent audit inspection unit,which should be borne by audit firms.

MARCH 2003

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13 April 2003

Mr Charles Niemeier
Acting Chairman
Public Company Accounting Oversight Board
1666 K Street NW
WASHINGTON DC
USA

Dear Charlie

OUR VISIT TO WASHINGTON 15 APRIL

We were very pleased to take part in the Round Table on registration and oversight of foreign accounting firms. The main messages from Governments and regulators from overseas were pretty clear. However, it is now very important to follow this up with you urgently from a UK perspective. Stephen Haddrill, Peter Wyman and I are therefore very grateful to you and your colleagues for agreeing to meet us on Tuesday and we look forward to seeing you again then. It may be helpful therefore if I offer a few comments on behalf of the UK Government to set the scene for our discussion.

What we are keen to explore with you is a practical way forward which meets legitimate US needs without imposing considerable and, in our view, quite unnecessary regulatory burdens on UK audit firms. Neil Lerner wrote to you recently with an outline of a possible way forward, which would start from the existing UK registration and regulatory system and see how it

might be possible to build into this specific arrangements in respect of those firms involved in the audits of SEC registrants. This seems to offer considerable advantages both to you and to us.

We recognise the constraints within which you are working. You are required to work within the confines of the Sarbanes-Oxley Act; and, you are understandably reticent to use the Sec 106 power to exempt foreign firms too freely. And the time pressures on you are considerable. I can see therefore that it is tempting to press ahead with a uniform requirement to register and then look again at how you would try to apply regulation in practice.

Equally, you must appreciate the depth of our concern at the prospect of a US registration requirement and a US regulatory regime being imposed without regard to the implications for our own regulatory arrangements, and which duplicate and perhaps cut across requirements, which are already extensive and essentially equivalent to what you are proposing in respect of US audit firms. The context, it is important to remember, is the regulation of UK audit firms who are London (or which happen to be subsidiaries of US registrants).

Kind Regards

John Grewe

John Grewe
Director, Company Law (Accounts & Audit)

Cc Stephen Haddrill, Director General, Fair Markets, DTI
Peter Wyman, President, ICAEW

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March 31, 2003

Ronald S. Boster
Acting Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

PCAOB Rulemaking Docket Matter No. 001,
Proposal of Registration System for Public Accounting Firms

Dear Mr. Boster:

Ernst & Young is pleased to submit comments on the proposal of the Public Company Accounting Oversight Board ("PCAOB") implementing the accounting firm registration requirements of Sections 102 and 106 of the Sarbanes-Oxley Act ("the Act"). We are submitting this comment letter not only on behalf of Ernst & Young LLP, a United States accounting and professional services firm, but also on behalf of practices that are affiliated with Ernst & Young throughout the world as members of Ernst & Young Global.[1]

We support the objectives of the Act and believe that investors and the markets will benefit from enhanced audit quality, improvements in financial reporting and corporate governance, and other investor protection measures that are the Act's hallmarks. The PCAOB's registration proposal, in our view, fairly and reasonably tracks most aspects of the statutory mandate applicable to public accounting firms. The proposal is a significant step in establishing a new regulatory regime for the auditors of SEC registrants. It appropriately reflects the fact that U.S. investors have a right to rely on high-quality financial statement audits no matter where the audit is performed. Particularly in view of the series of recent financial frauds in the U.S., the PCAOB should have mechanisms to ensure adherence by foreign public accounting firms to high standards of quality, ethics and independence.

To achieve these goals, the PCAOB's rules must of course be workable, and to work effectively the rules must take into consideration foreign law constraints. The PCAOB must recognize the limitations imposed by foreign law and should ensure that foreign regulators, many of whom have developed or are in the process of developing their own sophisticated and rigorous regulatory regimes, become partners in global regulation of the profession. Many of our comments below are addressed to this issue.

[1] The Ernst & Young global network comprises a group of independent professional services practices operating in more than 130 countries. Some of the practices have ownership or operational links with others, but otherwise the practices are autonomous. They are legally separate from one another. Each practice is separately owned and managed and they have no liability for one another's acts.

In addition, we believe that several elements of the registration requirements are burdensome for both U.S. and foreign accounting firms, without attendant investor benefit. The amount of information that would be required to be filed is enormous, and it is not clear why the PCAOB needs to collect all of it. For example, the requirement that the accounting firms provide the name, license, and other information of every "accountant" – a term which is defined as including every person in the firm with an undergraduate accounting degree, whether they work on audits of public companies or not – would result in the filing of tens of thousands of names by the major accounting firms. This seems excessive, particularly in view of the high turnover rate among our staff and the fact that partners, not staff, have signature authority for financial statement opinions. In addition, many of the information requests are particularly burdensome for many foreign firms, which have not traditionally maintained information in the categories – such as the required fee information – established under the proposed rules. We believe that the requirements could be streamlined to avoid information overload, which would be in the interests of both the firms and the PCAOB.

These issues are discussed further below.

A. **Foreign firm registration issues**

1. The SEC's long-standing use of bilateral agreements: The securities markets have become increasingly globalized in recent years, and the SEC has a well-recognized need to gather information from outside the U.S. in many of its enforcement investigations. The SEC has approached this issue by negotiating bilateral agreements with foreign regulators, and its experience is highly relevant to the PCAOB's rule proposal.

   Since 1982, the SEC has entered into more than 30 information-sharing arrangements with foreign regulators. This approach has been ratified and facilitated by Congress. In 1988, the SEC proposed, and Congress passed, the International Securities Enforcement Cooperation Act (enacted as Section 6 of the Insider Trading and Securities Fraud Enforcement Act, adding Section 21(a)(2) to the Exchange Act). The Act empowered the SEC to assist a foreign regulator by conducting a formal investigation upon the request of the regulator without regard to whether there was a possible violation of the United States laws. In turn, many foreign regulators have obtained the authority to gather information at the SEC's request even though a possible violation of the U.S.'s laws, and not the foreign jurisdiction's laws, is the subject of the investigation. More recently, in May 2002, the International Organization of Securities Commissions ("IOSCO") adopted the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information. *See* http://www.iosco.org/library/pubdocs/pdf/ IOSCOPD126.pdf. Like the memoranda of understanding entered into between the SEC and many foreign regulators, the IOSCO multilateral MOU will assist in international cooperation and information-sharing.

   The reasons for this cooperative approach are several-fold. First, the SEC lacks the ability to serve subpoenas outside the United States. *See* Section 21(b) of the Exchange Act. Second, as discussed further below, foreign countries often have confidentiality, bank secrecy, or other laws that inhibit or preclude governmental information-gathering efforts. Third, international law

generally recognizes jurisdictional limitations. As set forth in the Restatement (Third) of Foreign Relations Law of the United States, a jurisdiction may not exercise authority to enforce law extraterritorially where it would be unreasonable to do so, and where two jurisdictions have conflicting laws "the two states should consult with each other." *See* § 403 ("Limitations on Jurisdiction to Prescribe"), comment e; § 431 ("Jurisdiction to Enforce") (1987). Fourth, most countries have relied upon the principle of "positive comity," which acknowledges mutual respect for the laws and regulations of other states.

The PCAOB's proposed rules fail to reflect adequately these long-standing efforts at international mutual cooperation and these principles of international law. Under the proposal, the proposed rules and requirements for the most part apply equally to U.S. and foreign accounting firms, regardless of foreign law conflicts or the existence of foreign regulatory regimes.

Many foreign firms that are members of Ernst & Young Global believe that registration should not be required at all. They believe that such dual oversight will be inefficient, costly, and inconsistent with the principle of "positive comity." Many firms believe that the approach taken in the Act and the proposed rule will lead to serious conflicts and will infringe upon national sovereignty. They also believe that there is a serious question of proportionality – the PCAOB's proposal sweeps almost every significant accounting firm in the world into its regulatory regime, yet only approximately 2.5% of the trading volume of European companies listed on the New York Stock Exchange takes place in the United States. Thus, the vast majority of shareholders in these foreign registrants are not U.S. citizens. The proposal also imposes the PCAOB's considerable array of regulatory controls on firms that may have only a handful of SEC registrants, or, because of the proposed "substantial role" definition, no SEC registrants at all.

Notwithstanding these serious concerns and objections, we ask that, if the Board does go forward with its registration requirement, it work with foreign regulators to establish cooperative arrangements. There are at least three benefits to this approach. First, it will make foreign regulatory authorities into partners in helping to promote the integrity of the capital markets throughout the world. Second, it will almost certainly minimize delays and objections to production of workpapers and testimony and will facilitate inspections of foreign firms. And third, it will eliminate many foreign law obstacles to compliance by foreign accountants with the PCAOB's requirements.

2. Foreign law limitations: The foreign law concerns are significant. In recent weeks, Ernst & Young, together with other major accounting firms, retained the Linklaters law firm to assess foreign law issues raised by the PCAOB proposal. Linklaters examined the laws of seven countries that have a considerable number of foreign private issuers – the United Kingdom, Germany, Mexico, France, Japan, Israel and Switzerland.

Linklaters has submitted its detailed legal analysis in a separate letter to the PCAOB. The Linklaters memorandum describes a number of foreign laws that would conflict with the PCAOB's requirements regarding consents to production of information and that would prevent

the firms from completing all portions of the proposed registration form. First, data protection legislation in some of the jurisdictions prohibits the disclosure of personal data to the PCAOB, including names, licensing information, and similar information about firm partners and employees. Second, some jurisdictions have laws that would prevent firms from requiring that employees sign consent forms, or would subject the firms to potential liability if they attempted to dismiss employees who refuse to sign such forms or if, having signed the form, they nonetheless refuse to comply with a PCAOB investigation. Third, all of the jurisdictions have confidentiality laws that prevent accounting firms from disclosing client information, which would make it difficult to provide information in response to a PCAOB request. Confidentiality laws also may prevent firms from disclosing employee information, such as information about prior disciplinary proceedings. Fourth, countries have laws that would prevent accounting firms from making audit workpapers or other information available to the PCAOB with respect to specific types of companies. In particular, bank secrecy laws would prevent firms from disclosing information about their banking clients when that information would in turn relate to clients of the banks. Likewise, certain countries – Israel, for instance – have strict national security laws that would prevent firms from disclosing information about defense industry audit clients.

Many of these foreign law constraints can be eliminated through appropriate waivers and consents, but not in all cases. Companies can generally waive confidentiality restrictions, but apparently not in France, and as a practical matter waivers may not be obtainable in certain other jurisdictions. Employees can waive certain data protection restrictions, but the United Kingdom and Germany (and perhaps other countries) require that such waivers be "freely given." A question exists in those jurisdictions as to whether such waivers would be viewed as "freely given" in the employer/employee context. In addition, even with a waiver, there are restrictions on the transfer of information across international borders. Most significantly, as noted above, a basic element of the Act's enforcement scheme – requiring consents from partners and employees – would be difficult for the firms to enforce, because they may be barred from dismissing or taking other significant remedial action against a non-complying employee.

In addition, it would appear that inspections by the PCAOB of non-U.S. firms would raise a number of legal problems. In every jurisdiction surveyed by the Linklaters firm, restrictions on extraterritorial law enforcement would prohibit such inspections, even when done with the consent of the foreign firm.

Many of these legal impediments can be overcome through agreements with foreign regulators. For example, we have been told by the Linklaters firm that data protection restrictions can be resolved through bilateral regulatory agreements. And inspections could be conducted through joint efforts of U.S. and non-U.S. regulators in order to avoid the restrictions on extraterritorial law enforcement.

3. Our proposed approach: In view of these foreign law constraints and conflicts, the Act and the proposed rule may promise more than they can deliver. The PCAOB cannot reasonably – or consistently with international law – require that a foreign firm violate the law of its home country. Moreover, although the consents will greatly facilitate U.S. law enforcement, the

individual accountant who signs the consent will be outside of the U.S., and the PCAOB would generally find it necessary to go to foreign courts to enforce the consent. As a result, in a circumstance in which information is urgently needed, this new enforcement mechanism may not work as effectively or efficiently as some people might think or would hope. The foreign firms may simply be prevented from delivering the information that the PCAOB wants and expects to receive.

It should also be noted that these problems could not be resolved by having the U.S. firm fill in the gaps and take over the role of performing audits in jurisdictions where firms cannot register because of foreign law constraints. Even if it were practical to do this, the U.S. firms would be subject to most of the legal limitations applicable to non-U.S. accounting firms. Thus, if audit firms in a particular country find it impossible to register because of registration requirements that conflict with local law, it may be that issuers in that country will be unable to file audited financial statements with the SEC. That result would not be in the interests either of foreign private issuers or their U.S. investors.

Accordingly, the appropriate approach is the entry of cooperation agreements between the PCAOB and foreign regulators, as the SEC has done for many years. We recognize that the MOU process does not always work perfectly – memoranda of understanding can take a long time to negotiate, foreign regulator counterparts may not be as helpful in producing information as the SEC would like, and persons being investigated may oppose the SEC's requests and challenge them in court. But the Act fundamentally changes this situation: for the first time there is now a statutory mechanism – the registration requirement and the related mandatory consents – that will facilitate foreign assistance and cooperation. MOUs typically provide a means to compel a person outside of the U.S. to provide information sought by the U.S. regulators, in addition to furnishing a procedural mechanism for production of such information. Here, the registration and consents provide their own basis for compelling production of information from outside of the U.S. In this situation, bilateral agreements would not be needed in order to compel production of information, but, rather, in order to ensure that such production would be consistent with foreign regulatory and legal requirements.

The PCAOB, therefore, should amend its rule proposal to make explicit that foreign firms and accountants are not required to violate their local law when they complete the registrations and consents (something which is essentially required by principles of international law), and should also make clear that it will work with foreign regulators to establish cooperative agreements that would facilitate the Act's regulatory objectives.

4. Need for more time: As noted, we believe that any foreign firm registration requirement should be coupled with negotiations and discussions between the PCAOB and foreign regulators about supervision and regulation of the foreign accounting firms. Accordingly, we believe that the PCAOB should postpone foreign firm registrations for some period of time – we recommend one year – in order to put into place cooperation agreements with other countries. In this regard, we note precedents for an extension in this context. The SEC's independence rules adopted in 2000 gave foreign firms an almost two-year transition period to comply with requirements relating to quality control systems to ensure auditor independence. Revision of the

Commission's Auditor Independence Requirements, Release No. 33-7919, 65 Fed. Reg. 76008, 76055 (Dec. 5, 2000). Likewise, the SEC's recently adopted independence rules provided additional time for foreign firms to comply with new partner rotation requirements. Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183, 68 Fed. Reg. 6006, 6047 (Feb. 5, 2003).

Importantly, a one-year delay would give the PCAOB time to flesh out its approach to standard-setting, inspections, investigations, disciplinary proceedings and other activities. The PCAOB could also work with foreign regulators in developing requirements and procedures that would be applicable to foreign firms. Many foreign governments have developed their own regulatory approaches to accounting firm quality control. For example, in the European Union, the European Commission has adopted a Recommendation on Quality Assurance which will be implemented by all of the member states by November 2003. It provides a comprehensive approach to quality control of the audit firms. We understand that similar initiatives have been proposed in Switzerland and other countries. The PCAOB might well conclude that the existence of such regulatory regimes would obviate the need for exercising certain of the PCAOB's powers over foreign firms. The substantive rules and requirements that will be developed by the PCAOB are matters of great concern to non-U.S. firms, and it seems only fair to give them some sense of the Board's initiatives before they are required to register.

Even if the additional one-year period were not appropriate for these reasons, the foreign firms would nonetheless need additional time to file their applications. This is the first time that foreign accountants would be required to collect much of this information, and they simply do not currently have the information – such as the fee category data, or ten years of information relating to litigation – collected in a manner that would make it possible to complete the application under the proposed time schedule. As for gathering the fee data, it may in some cases be necessary for the foreign firms to gather relevant invoices and manually add relevant fees. In some countries, information systems have been developed on an entity-by-entity basis. In other words, there may not be one information system at a national level that brings together the results of all entities in that country. The need to aggregate information across national borders would further complicate this process. Finally, in order to avoid foreign confidentiality and secrecy law obstacles, it will be necessary in many cases to obtain waivers from audit clients. That will almost certainly be a complicated and difficult process, and may take many months. These problems are exacerbated by the fact that many foreign auditors will be in the midst of their "busy season" due to the June 30, 2003 deadline for Foreign Private Issuer 20F filings.

It also appears that an extension of time would be useful to the PCAOB because it would result in a staggered review process. If foreign firms were to register one year after the U.S. firms, the PCAOB will have more time to review the U.S. firm applications. The amount of information that is proposed to be filed with the PCAOB is enormous, and postponing the foreign firm filings will reduce the crush of registration form filings that will hit the PCAOB in early September of this year.

B. **Issues affecting both U.S. and non-U.S. firms**

Proposed Rules:

Rule 1001(a) defines "accountant" as a 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."

The definition of "accountant" in Rule 1001(a)(1) and 1001(a)(2)(i) as proposed would include individuals who might never participate in any audit services. For example, clerical and administrative personnel and personnel with no connection to the audit practice would be included. In addition, when coupled with the reporting requirements under Part VII of Form 1, Rule 1001(a)(2)(i) would require that registered firms collect and maintain information regarding the undergraduate or graduate degrees of all of their employees (professional and non-professional), which is not something that we currently do. The definition in Rule 1001(a)(3) sweeps less broadly but still reaches farther than necessary. At a minimum, the rule should define "participate" in a way that would eliminate purely *de minimis*, ministerial or inconsequential activities.

The definition in Rule 1001(a)(1) would by itself appear to sufficiently address the Board's need for information about those individuals whose roles will be of most concern to it. While this definition will also require the implementation of additional tracing mechanisms for some firms, the criteria are more objective and therefore, we believe, more easily implemented.

Rule 1001(f) defines "audit services" and **Rule 1001(l)** defines "other accounting services." According to the section-by-section analysis, the 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." The term "other accounting services" 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 [January 2003] revised rules, but that were not previously disclosed as 'audit fees,' and 2) services the fees for which are to be disclosed as 'audit-related fees' under the Commission's [January 2003] revised rules." This means that auditors and their clients would be required to compute these two categories differently for purposes of the proxy disclosure rules and the Form 1 disclosure. It is not clear why the PCAOB is proposing such an approach. The definitions of all of these terms should refer to the revised proxy fee disclosure rules, and (as discussed further below) the Board's rules should require disclosure of whatever the issuer discloses publicly until such time as the new fee disclosure rules become fully effective.

Rule 1001(m) – There is a fair amount of inconsistency in the rule proposal's use of the terms "accountant," "person associated with a public accounting firm," and "accountant associated with a public accounting firm" (or "associated accountant"). As noted above, the term "accountant" is defined broadly to include CPAs, college accounting majors, and so on. The term "person associated with a public accounting firm" is defined to include persons who, in connection with issuance of a report on a public company, share in the profits, receive compensation, or participate "as agent or otherwise on behalf of such accounting firm in any activity of that firm." By contrast, the term "associated accountant" is not defined, yet that term is used throughout the proposed rules. For example, the roster of

individuals associated with the firm in Part VII refers to "all accountants associated with the applicant." It is not clear what the term "associated" is intended to mean in this context, although we assume it is intended to refer to an employment relationship. We urge that the PCAOB clarify this matter.

The phrase "persons associated with a public accounting firm" is used in the requirements relating to disclosure of lawsuits, criminal actions, and related information (Part V). A similar although not identical term, "associated persons," is used in the requirements relating to consents to cooperate (Part VIII). As noted, the "persons associated with a public accounting firm" definition includes a third party who "participates as agent or otherwise on behalf of such accounting firm in any activity of that firm." Assuming the Board intends that "associated persons" have the same meaning as "persons associated with a public accounting firm" (which appears to be the case under Rule 1001(m)), it will be very difficult or impossible for firms to obtain such information and consents from third parties such as engineers, geologists, or other specialists who might occasionally be used on an audit under generally accepted auditing standards. In addition, it is not clear how far this definition reaches – the phrase "participates as agent or otherwise" lacks a precise meaning. Although we recognize that this definition was derived from the Act (Section 2(a)(9)(A)(ii)), we urge that it be modified to include only partners or employees of the accounting firm itself.

Rule 1001(n) – The proposal defines the phrase "play a substantial role in the preparation or furnishing of an audit report" as including the performance of "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," and it defines "material services" as services "for which the engagement hours or fees constitute 20% or more of the total engagement hours or fees." The "substantial role" test can also be met if the firm performs 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."

We do not believe that these dual tests for "substantial role" are necessary, and would urge that the Board drop the 20% of hours or fees test. There are at least four reasons for this recommendation. First, the 20% of assets/revenues test has often been used in the accounting literature as a measure of "significance." Indeed, the SEC adopted precisely that measure in its newly adopted partner rotation rules, which exclude partners serving on subsidiaries constituting less than 20% of assets and revenues of the issuer from the definition of "audit partner" subject to partner rotation. 68 Fed. Reg. at 6019. Second, it would be difficult for the U.S. and foreign firms to determine when the 20% hours/fees test will be met. This will be particularly true when the foreign firm is not part of an international network of accounting firms (as is often the situation in audits of multinational companies) and therefore must rely on a completely separate U.S. firm to provide it with relevant fee and hour information. Third, there could be situations where unregistered firms participate in an audit without anticipating a level of work that would exceed the 20% hours/fees amount, but the amount of work does in fact exceed that level, thereby resulting in a violation of the securities laws by the foreign firm. Fourth, the "substantial role" registration requirement is not required by the Act. *See* Section 10b(a)(2) of the Act. Because it is not statutorily mandated, and in view of all the other burdens being placed on the foreign firms, it seems excessive to impose the "substantial role" registration requirement in a manner that will be difficult for foreign firms to apply.

In addition, we ask that the Board provide greater certainty to the "assets/revenue" test by pegging the test to assets and revenue reported in the audited financial statements of the issuer for the most recent fiscal year prior to the year currently being audited.

Rule 2101 – Footnote 9 of the Release authorizes the Board to require or permit the filing of registration applications by means other than electronically via the internet in "special cases." We believe that there may be firms in some countries that are unable to submit this information electronically, and we would ask that the Board be reasonable in its application of the "special cases" exception.

Rule 2104 – This proposed rule requires that the accounting firm registrant obtain manual consents from accountants that they will provide documents and testimony if the PCAOB so requests. Ernst & Young has thousands of accountants who are partners or employees, and obtaining manual signatures from all of them would be a giant technological step backwards. Electronic consents should be sufficient. We have for several years used electronic signature procedures for partners and staff to confirm their compliance with the firm's independence requirements, and a similar procedure could be used for this purpose.

Rule 2105(a) – The Board's proposed standard for approval of registrations is whether registration of a particular firm 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." This is a very vague standard and gives the Board almost complete discretion in reviewing and approving applications. We suggest the Board provide more specific guidance. The Board should state the factors it would look to in determining whether to approve or disapprove an application. In addition, the proposed rule does not indicate whether the Board will provide a notice of the grounds for denial of an application and an opportunity for a hearing, consistent with Section 15(b)(1)(B) of the Exchange Act, which governs the registration of broker-dealers. Such procedures should be provided given the significance of the registration process to applicants.

Rule 2105(c) – This proposed rule states that where the Board requests additional information from the applicant, "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." We are concerned that, particularly in this first-year registration process, there may be many instances in which firms are asked to provide supplemental information to the Board. If a new 45-day review period is triggered whenever this happens, the Board might in some instances not approve a firm's application until after the October 24, 2003 registration deadline. We recognize that the Board does not need to take the additional 45 days every time supplemental information is submitted, but we nonetheless believe that the phrase "will treat" should be changed to "may treat," and that a new 45-day review period will only be triggered by the submission of important or significant new information.

Rule 2300 – We agree with the proposal that social security numbers or equivalent information be given automatic confidential treatment.

Form 1:

Item 1.8 Required Licenses and Certifications – This item requires that the applicant state whether "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." Laws and rules relating to licensing requirements are complex and ambiguous, and it is often uncertain whether a license is required for work in a particular situation. Accordingly, it would be impossible for the firm to make an affirmative statement that "all" necessary licenses have been obtained for the thousands of associated accountants. The firm's statement will inevitably be based on self-reporting by the individual license holders and on interpretation of a patchwork of laws and regulations governing licenses that vary from state-to-state and are often interpreted without clear guidance. Thus, the item should be changed to include a qualifier such as "to the best of the firm's knowledge." In addition, we suggest that the phrase "required for their participation in or contribution to the audit report" be added to the end of Item 1.8 (after the words "professional organizations") to make clear that information only need be provided on individuals who hold appropriate licenses for the roles they have been asked to perform.

Item 2.1 Issuers for which Applicant Prepared Audit Reports During the Preceding Calendar Year – We assume that the Board intends the phrase "prepared or issued any audit report during the calendar year" to refer to the date of the auditor's opinion and not the date of the financial statements themselves, but this matter should be clarified.

The proposed fee disclosure rules are confusing and will be difficult to satisfy during this period when the SEC's proxy fee disclosures are in transition. The PCAOB's proposal appropriately tracks the fee "buckets" in the SEC's new rules – audit services, other accounting services (called "audit-related services" in the SEC's rule), tax services, and other services – but, as noted above, the proposal defines "audit" and "other accounting" differently than the new SEC rule. Moreover, even if this definitional problem is fixed, these new fee buckets are only required by the SEC for periodic filings for the first fiscal year ending after December 15, 2003, and in proxy statements that include such periods. Accordingly, the fee information required by the proposal is not generally available now, although some issuers, as encouraged by the SEC, have early adopted the new disclosure approach.

In our view, while it would be possible to reconstruct this type of fee information retrospectively, it would take a considerable amount of work, and we are not persuaded that this information would be useful or necessary. Further, in virtually all cases, the fee data that is disclosed would be inconsistent with fee data already in the public marketplace, as disclosed by issuers in their proxy statements. The proposed breakdown of fee information does not seem vital to the PCAOB's mission, and consistency with the SEC's rules is the most practical approach. The PCAOB's rules should simply require disclosure of whatever fee information is contained in issuers' proxy statements. For those companies that have not previously disclosed fee data, such as foreign private issuers, fee information should reflect the timetable and fee categories in the new SEC rules. As noted, some companies have in fact disclosed audit-related fees, even though the SEC rules did not previously require that disclosure, so the PCAOB would receive that information for those companies. In any event, if we are required to reconstruct these fee buckets, including for foreign private issuers, we ask that the Board understand that, because neither we nor our clients previously maintained fee information in this manner, our determinations may reflect certain estimates or approximations of particular fee categories.

Item 3.1 Applicant's Revenue – The rule includes a note stating that "[t]he 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." This would appear to require fee information relating to non-public companies audited by the registrant, but we have never attempted to break down such fees into audit, audit-related, tax and other fees for such companies. Accordingly, this would require considerable effort to establish "fee buckets" for thousands of non-public companies. We do not see the need for this information, which extends beyond the PCAOB's jurisdiction over SEC registrants.

In addition, it should be noted that this type of financial information is viewed as highly confidential in many foreign countries and confidential treatment would frequently be appropriate.

Part IV – Statement of Applicant's Quality Control Policies – The rule proposal requires 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." Although the rule uses the words "summary" and "concise," we note that quality control procedures are elaborate and extensive, and we believe that it would be helpful if the PCAOB were to provide additional guidance on how much detail it requires. For instance, the PCAOB might specify its expectations for the length of the summary and the elements of quality control to be covered. We also note that in circumstances where the applicant is part of a networked firm, the registration application will likely refer to the networked firm's quality control policies and requirements

Part V – Listing of Certain Proceedings Involving the Applicant's Audit Practice – We note that some foreign firms may not have maintained all of the information that is being requested as to various litigations, enforcement actions, and similar proceedings. Some of this information, such as information on pending proceedings or non-public arbitration proceedings, may also be confidential, particularly outside of the U.S., and we expect the PCAOB would provide confidential treatment. Foreign firms may also find it extremely difficult to comply with Items 5.5(a)(3), which requires an applicant to disclose information about crimes involving violations of foreign statutes that are "substantially equivalent" to specified U.S. statutes. Determining what foreign statutes are "substantially equivalent" to U.S. statutes will require considerable effort, both by the foreign firms and foreign lawyers who will need to assist them. In addition, the information being sought seems excessive both for U.S. and foreign firms, and we suggest that requirements for 10 years of information be changed to five years.

We also note that each disclosure item – Items 5.1, 5.2, 5.3, and 5.4 – requires information in connection with an audit report "or a comparable report prepared for a client that is not an issuer," which sweeps in non-SEC clients. However, subsection b.4 of each item is limited to clients who are "the subject of the audit report." Because the term "audit report" is defined as being limited to audits of SEC registrants (*see* Rule 1001(e)), the proposed rule is internally inconsistent.

Item 7.1 – Listing of Accountants Associated with Domestic Applicants – The proposal requires that a vast amount of information be provided – the name, social security number, and license number of "all" accountants associated with the firm. We do not currently have that information assembled in one

database, and it seems unnecessary for the Board to gather all of this information. The staff turnover at the major accounting firms is significant. We believe that information on partners with signing authority should be sufficient. Moreover, we assume that the applicant can file this information as of a particular date prior to the actual application – e.g., the application could be filed on August 1, but the information might be current only as of July 1. In view of the high level of staff turnover, it would be impossible to ensure the accuracy of the accountant roster at the precise time of filing.

Item 7.2 – Listing of Accountants Associated with Non-U.S. Applicants – The rule proposal requires information as to all accountants who "participate in or contribute to the preparation of audit reports." We are not certain whether this definition would include "national office" personnel at foreign firms. In this regard, the SEC's new partner rotation rules exclude "national office" personnel who "may be consulted on specific accounting issues related to a client" because they serve as a "technical resource for members of the audit team" rather than as actual members of the team. 68 Fed. Reg. at 6020. The analysis may be different under the PCAOB's proposed "participate in or contribute to" test, and we ask that the PCAOB clarify this matter.

Item 8.1 – Consent to Cooperate with the Board and Statement of Acceptance of Registration Condition – The rule requires that the firm and its associated persons consent to providing testimony or documents in response to "any request" by the Board which is "in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002." The rule on its face does not contain any "reasonableness" limitation, but the Board should make clear that the same standards that are applicable to SEC subpoenas apply here as well. Courts have held that, to be enforceable, an SEC subpoena must be "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. 1978), *cert. denied*, 439 U.S. 1071 (1979). We assume that, notwithstanding the consent form, similar standards would apply here.

* * *

We appreciate the opportunity to provide these comments, and we would welcome discussion of any points that require further explanation.

Respectfully submitted,

EΨ

Ernst & Young LLP

EUROPEAN COMMISSION
Internal Market DG

Director General

Brussels, 28 March 2003
Markt/G4/EvdP D(2003) 116

Mr Ronald S Boster
Acting Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803

Dear Mr Boster,

Subject: Comments to PCAOB rulemaking Docket number N° 001

1. INTRODUCTION

We thank you for the opportunity to comment on the proposed rules on the registration of audit firms with the Public Company Accounting Oversight Board (PCAOB), implementing Title 1 of the Sarbanes-Oxley Act (SOA). We make the following comments in the context of the constructive regulatory dialogue between the United States and the European Union on financial markets because the Act and its implementing measures have important effects on US-listed EU companies and EU auditors.

The Sarbanes-Oxley Act aims at restoring investors' confidence in US capital markets. The European Commission and our 15 Member States share these concerns and support the objectives and many measures of the Act, because investor protection is equally important for the European Union and its Member States as it is for the US authorities.

While the US authorities rightfully expect high standards of conduct from audit firms providing audit services to companies raising capital on American markets irrespective of whether they are domiciled in the United States or overseas, they are not necessarily better placed than the European Union and its Member States to establish precise rules that ought to apply to auditors domiciled in the European Union. Only tailored regulatory solutions can fully accommodate the

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http://europa.eu.int/comm/internal_market/
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different legal environment in the EU and US so as to achieve, efficiently and effectively, the same objectives.

We understand that the PCAOB is under severe time constraints for setting up its operations and regret the resulting pressure that has been placed on proper due process. We set out below the main points that have come to our attention in the very limited time for assessing and making comments to the proposed rules and Form 1.

The European Commission and its Member States are of the firm view that EU audit firms from the EU should not have to register with the PCAOB. We therefore request a full exemption for all EU audit firms and auditors under section 106 (c) of the SOA. We propose more effective ways to improve audit quality.

2. ANALYSIS OF THE PROPOSED RULES AND FORM 1

Our analysis of the proposed rules, from an EU perspective, showed that the proposed rulemaking:

(1) **Creates an unnecessary overlap with existing EU registration requirements.** All EU audit firms are subject to licensing and registration requirements for more than 20 years on the basis of EU legislation (Directive 84/253/EEC). This law is fully complied with in all Member States.;

(2) **Creates conflicts of law in particular on data protection and access to "documents".** With regards to data protection, much of the information being requested by the PCAOB is, under European legislation dealing with data protection (Directive 95/46/EC), considered as "personal data" or even "sensitive personal data". This requires that specific consent should be given by each "accountant" of the audit firm prior to the transmission of the registration application. More importantly, the above Directive prohibits transfers of personal data to countries outside the European Economic Area which do not provide adequate data protection in accordance with the Directive. The US is such a country. The European Commission has approved a data flow contractual clause, the safe harbour, with the US to facilitate compliance with the Directive. If adhered to, it would also allow the transfer of the data to the PCAOB. However, the present safe harbour arrangement is operated under the FTC (Federal Trade Commission) and does not cover the financial services sector. As a matter of fact there exists no safe harbour agreement on financial services. It is therefore, at present, legally impossible for EU audit firms to submit a large part of the information requested for the registration to the US PCAOB.

In respect of access to documents, in several Member States the auditor is only allowed to provide audit working papers to Courts or to defined inspection authorities, a restriction that cannot be waived by the audit client. In these cases it is simply illegal for the audit firm to give consent to the access of "documents" as required by item 8.1 of Form 1. Moreover, in case audit working papers or any other document would contain personal data, they could not be transferred to the PCAOB.

(3) **Leading to distorting the EU market for audit services.** The proposed registration requirements create an enormous incremental cost for providing audit services in relation

to US issuers. In practice this would mean that many smaller and medium sized EU audit firms would most likely no longer accept audit engagements in relation to US issuers. This would be unwelcome in itself and tends to further the concentration of the market for audit services in the EU and perhaps worldwide as well.

(4) **Would pre-empt EU policy making on auditing.** Registration of the most important EU audit firms with the PCAOB, in combination with the required direct application of US auditing standards and independence requirements, would create a drive via these firms to have the same standards as the US applied in the EU. This would undermine our regulatory sovereignty in particular because EU audit regulation is applicable for the statutory audits of a million plus companies, a significantly higher number than the 15.000 SEC registrants. In addition we are yet to be convinced that these standards are, without exception, as good as those that already apply.

(5) **Takes a maximalist approach on the registration of foreign audit firms** by using the option of SOA Section 106 (a)2 to require the registration of foreign audit firms that play a substantial role in the preparation and furnishing of audit reports in relation to US issuers. A more effective, and less harmful, alternative would be for the PCAOB to change US audit practice by adoption of an auditing standard requiring the (US) group auditor to take full responsibility for the group audit. The US group auditor could no longer in his audit report refer to the audit opinions of other (foreign) subsidiary auditors without consideration.

(6) **Takes an over-maximalist approach** as it goes in some instances beyond the intent of the Sarbanes Oxley Act. For example, from the wording used in section 102 (b) 2 E it is clear that this section refers to licensed CPA's. However, the PCAOB definition of "accountant" (rule 1001) comprises also persons who hold an undergraduate or higher degree in other fields than accounting. This extension beyond section 102 increases significantly the scope of persons that need to be registered in Part VII of Form 1. Another example is to ask for more than *pending* criminal, civil or disciplinary proceedings as (section 102 (b) 2 F of SOA);

(7) **Has discriminatory and disproportionate consequences for foreign audit firms.** The registration requirements in section 102 have not been drafted from a foreign registrants perspective. US audit firms would, on average, provide a much larger number of audit reports on US issuers. This would mean that that the relative cost for registration of US firms is relatively lower compared to EU audit firms that may issue only one such a report. An EU audit firm with one potential US issuer client, would need to register thousands of "accountants" the majority of whom are performing solely EU audits. We believe that in addition to requiring the US group auditor to take full responsibility for group audits (see point 4), the registration requirements could be refined to become more proportionate by only requiring the registration of foreign audit firms that audit a significant number of foreign issuers (dual listed companies) or issuers that are material for the US markets in terms of trading volumes or shareholdings. The average trading volume in securities of EU companies with a dual listing on the NYSE is, on average, no more than 2.5% of the trading volumes in their European home market.

(8) **Has some inconsistencies**. For example, Form 1 item 7.2 listing of accountants associated with the non US applicant does not coincide with the intent of the section by section analysis on this point 7.02. This results in a significantly broader scope of accountants to be registered!

In section B of the summary, the PCAOB provides arguments why pre-existing requirements on foreign audit firms and SOA justifies the registration of foreign audit firms with the PCAOB, a line of argumentation that could easily be turned around: because of exiting requirements on foreign audit firms there is no need for further registration. More importantly, we noted that the present PCAOB proposal completely lacks any cost-benefit consideration. In our view it is crucial for any proposed capital market measure to consider: (a) whether it is necessary to increase the efficiency of the capital market, (b) whether it is likely to increase the efficiency of the capital market and (c) whether it could be substituted by less harming regulation. If applied to the proposed registration of audit firms from the EU, our answers to the second question would be clearly no. Also, because the description in the summary of pre-existing requirements on foreign audit firms, notably via SECPS requirements, makes clear that foreign audit firms are already sufficiently covered. We simply fail to see the added value of the registration of many EU audit firms and tens of thousands of "accountants" at an estimated cost of tens of million euros. This is even more unconvincing as all EU audit firms and auditors are licensed and registered by competent authorities and subject to legally underpinned public oversight, external quality assurance systems, etc.

In our view a more effective regulatory approach would be the conclusion of an EU-US Memorandum of Understanding ensuring access to audit working papers where it is justified and to start quickly a regulatory dialogue on equivalent measures in relation to audit. This would be more effective because whatever consent audit firms have to give in item 8.1 and 8.2 and whatever unilateral sections on the access to audit working papers the SOA contains (section 106 (b)) it is simply legally impossible for EU audit firms from several Member States to give access to audit working papers by the PCAOB (and any other document from any audit client (section 105 (b) (2) (B) and (C)). It would be inconceivable for us that due to conflicts of law, EU audit firms could no longer be in a position to perform audit work in relation to US issuers.

We also would like to give you some additional comments that in our opinion are relevant for applicants. The proposed rules and Form 1:

- **lack some definitions or clarity ("bright lines")** which create a uncertainty for the applicant. For example, there is no definition of "associated person", "accountant associated with" the applicant, what "documents" the registrant gives consent to reproduce for the PCAOB. It is also unclear whether foreign audit firms should register all associated entities for example other foreign firms from the same network but located in other jurisdictions.

- **lack of operational safeguards that would guarantee a fair and equal treatment for all applicants.** The present lack of definitions and guidance underline the importance of appropriate safeguards on fair judgements. For example, the proposed rule does not describe a possibility to appeal against a rejection by the PCAOB.

Conclusion

The European Commission requests a full exemption of registration for EU audit firms and auditors under section 106 (c) of SOA for the following reasons: (i) there are existing EU registration requirements, (ii) there are conflicts of EU and national law, (iii) there is an unjustified cost-benefit relation for foreign applicants, (iv) it will have impacts on the EU markets for audit services and (iv) missing definitions and inconsistencies in the proposed rules. This makes registration for EU audit firms impossible, inefficient and/or ineffective.

The European Commission and its Member States fully share the objectives of the Sarbanes Oxley Act and the intent of the PCAOB. However, we believe strongly there are far more efficient and effective (and less harmful) ways to ensure high quality audits that contribute to the protection of investors, wherever they are domiciled, as well as other stakeholders. The European Commission therefore propose to start quickly the EU-US regulatory dialogue aimed at achieving an effective Memorandum of Understanding on mutual access to audit working papers and to work towards equivalent auditing standards, quality assurance and public oversight as a basis for mutual recognition.

Yours sincerely

Signed

p.o. D. J. WRIGHT

for

Alexander SCHAUB
Director-General

EUROPEAN UNION

DELEGATION OF THE EUROPEAN COMMISSION

Head of Delegation

RECEIVED
APR 11 2003
By

April 11, 2003

Mr. Charles M Niemeier
Chairman of the PCAOB
1666 K Street, N.W
Washington DC 20006-2803

Dear Mr Niemeier

Attached please find a copy of a letter from Commissioner Bolkestein, dated 11th April 2003, on the PCAOB's, draft rules on the registration and oversight of foreign audit firms.

The original letter will follow by mail.

With the assurances of our highest consideration.

Gérard Depayre
Charge d'affaires a.i.

Enclosure - 2

2300 M street, NW Washington DC 20037-1434 Telephone : (202) 862-9500 / Fax (202) 429-1766

Frits Bolkestein
Member of the European Commission

Rue de la Loi 200 - B-1049 Bruxelles
Wetstraat, 200 - B-1049 Brussel
Tel. (32-2) 298.07 00

Brussels, 11 04 2003

Dear Mr. Niemeier,

At the request of the European Union's Finance Ministers, I am writing to you on behalf of the European Union (EU), concerning the Public Company Accounting Oversight Board's (PCAOB) forthcoming rules on foreign auditor registration and oversight

Whilst the European Union supports the broad aims of the Sarbanes-Oxley Act, we are very concerned about the draft PCAOB rules, discussed recently in Washington DC at the March 31 PCAOB Roundtable and due to be finalised soon. These draft rules and the registration requirements they contain will cause major difficulties for European audit firms

We have 4 major concerns.

1. Since the mid-1980's, on the basis of a European Directive, the European Union's Member States have established effective, equivalent registration requirements in all our 15 Member States for all EU auditors. The public oversight systems in which these registration requirements are embedded may take different forms due to the different legal traditions of our Member States, but they exist, and work. The PCAOB proposals therefore add an unnecessary, expensive second layer of regulatory control for those EU Audit firms that will be subject to registration with the PCAOB We consider that the best way forward in this area is to work towards an effective and efficient approach based on mutual recognition and equivalence. If we cannot move forward on this basis, it will be difficult to avoid calls for reciprocity and requirements whereby U.S audit firms would have to register with all our Member States (15 today, 25 soon with the enlargement of the EU), and be subject, also, to EU oversight mechanisms.

M. Charles M. Niemeier
Chairman of the PCAOB
1666 K Street, N.W.
Washington, D C
2006-2803

2 The present PCAOB draft registration rules will cause serious conflicts of law with existing EU and national laws. In effect, mandating EU audit firms to register with the PCAOB in the manner proposed in order to provide audit services to EU and other companies listed in the United States and their subsidiaries will cause these audit firms to infringe EU and national laws. I enclose in annex a short memorandum highlighting some examples of the legal conflicts which will arise.

3 The PCAOB proposals will tend to concentrate even further the market for audit services, globally and in the EU. Small EU audit firms, with few listed clients in the US may well decide not to register with the PCAOB because of the heavy costs and implications involved. In any event the relative costs for European firms will be higher than for local US firms.

4 Finally, the PCAOB rules, to be adopted formally by the SEC, must fully respect accepted principles of international law. Moreover, the PCAOB should be aware that EU policy making, as in the US, is in the process of change. For example, the European Commission will be tabling a significant new audit and corporate governance policy in the next few months tailored to the EU's legal and cultural environment. In many Member States important policy changes in these areas are also underway building on the existing solid legal basis.

For all these reasons, we request full exemption for EU audit firms from the rules on registration under section 106 (c) of the Sarbanes-Oxley Act as we suggested in our testimony to the Roundtable. I firmly believe that the right approach is to accept a moratorium (say 1 year) for both registration and oversight and to discuss openly with all international regulators an acceptable and efficient approach based on mutual recognition and equivalence. We would be willing to work constructively and intensively in that direction.

If we are not able to find a common approach to these highly sensitive matters, I see a danger of additional tension which might have a negative impact on confidence and the performance of financial markets which we can ill afford at the moment.

I would be most grateful for an early response to this letter which I underline, contains issues of significant political importance for the European Union.

I am sending this letter in parallel to Treasury Secretary Snow, Senator Shelby, Senator Sarbanes, Representative Oxley, Representative Frank, US Securities and Exchange Commission, SEC Chairman Donaldson and copying it to all Ministers of Finance in the European Union.

Yours sincerely,

Frits Bolkestein

MEMORANDUM ON CONFLICTS OF EUROPEAN UNION AND NATIONAL LAW WITH DRAFT PCAOB RULES FOR FOREIGN AUDIT FIRM REGISTRATION

1. Introduction

Ministers of Finance of all 15 EU Member States decided unanimously at their meeting on 5 April in Athens to request a full exemption for EU audit firms from the PCAOB audit registration process. With regard to foreign audit firms – unlike US audit firms - , the PCAOB has been granted a specific exemptive authority under section 106(c) of the Sarbanes-Oxley Act to enable such an outcome

The EU Finance Ministers have also requested the European Commission to provide you with a Memorandum demonstrating in more detail the national and EU legal conflicts EU audit firms would face if they are required to register with the PCAOB.

This Memorandum on legal conflicts is complementary to the European Commission's comment letter already sent to the PCAOB on 28 March and our comments made at the PCAOB round table meeting on the registration of foreign audit firms on 31 March In our letter and at the Roundtable, the European Commission requested an exemption for the registration of any EU audit firm because we believe the PCAOB's proposal is:

- ineffective (e.g. due to legal impediments to transfer data to the PCAOB and access to audit working papers);
- unnecessary (because of existing European legislation on the registration and the existence legally underpinned systems of public oversight in all Member States for many years);
- disproportionate in that it involves significant costs of registration for EU audit firms with a relatively small number of US issuers;
- likely to cause distortions of the market for audit services and further concentration of audit services provided by the large audit firms (because the relative cost will be too high for audit firms performing audit work for only one US issuer);
- prejudicial to future EU policy making on audit issues

A complete inventory of possible legal conflicts with foreign jurisdictions requires sufficient time which unfortunately is not available due to the time constraints under which the PCAOB is operating. The following presentation of legal conflicts is based on a first preliminary analysis of these issues at EU and Member State level. It presents a range of significant legal issues accompanied by specific examples from Member States. Further analysis may result in additional areas where legal conflicts may arise. Avoidance of such conflicts can only be achieved by lifting the registration requirement from EU

2. Legal Conflicts in relation to registration with the PCAOB

The PCAOB should acknowledge that that there are well recognised limits on the outreach of US law and non-US law. One country's law can only compel a person in another country to perform an Act "to the extent permitted by the law of his home jurisdiction" (Restatement 3rd on Foreign Relations Law of the United States).

Among the main identified legal conflicts are:

2.1. EU-wide data protection issues

Legal conflicts arise at Member State and at the level of European Union law. A prominent example is Directive 95/46/EC dealing with data protection. This European Directive is in force since 1998 and has been implemented in all fifteen Member States

Much of the information requested in the proposed PCAOB registration exercise, under the data protection Directive, is considered as "personal data" or even "sensitive personal data". According to this Directive, data subjects enjoy certain rights, and data controllers have certain obligations. Data can only be processed for legitimate and specified purpose. This would, for example, require that specific and informed consent should be given by each "accountant" of the audit firm prior to the transmission of his data in the registration application. More importantly, the Directive prohibits transfers of personal data to countries outside the European Economic Area which do not provide adequate data protection in accordance with the Directive. The US is such a country. The European Commission has approved a data flow international arrangement with the US government called, the safe harbour, to facilitate compliance with the Directive. If adhered to, it would also allow the transfer of the data to the PCAOB. However, the present safe harbour arrangement is operated under the FTC (Federal Trade Commission) and does not cover the financial services sector. There is currently no safe harbour agreement on financial services. It is therefore, at present, legally impossible for EU audit firms to submit a large part of the information requested for the registration to the US PCAOB.

This general data protection requirement would, for example, prevent EU audit firms from providing information with regard to

- data on employees including the person's name or social security number
- information relating to criminal, civil or administrative actions or disciplinary proceedings pending
- information relating to non-SEC audit clients

2.2. Other legal obstacles with regard to data transfer to the PCAOB

At the level of Member States' laws there are legal conflicts that would prevent EU audit firms from providing the PCAOB with certain information. For example:

2.2.1. Employees; legal proceedings

Two main areas of registration requirement of the proposed PCAOB rules concern data on employees and associates and, partly linked, information on legal proceedings. Some prominent examples from Member States' legislation show the difficulties involved:

In the **United Kingdom**, the employment relationship results in an implied duty of confidence between employer and the employee. Information retained by an employer may be regarded as confidential to the employee Disclosing such information would breach confidence and the implied term of trust and confidence.

Even if consent is obtained, employees may have the right to refuse or to testify or disclose documents on the grounds of the privilege of self incrimination. Under English law the principle of privilege against self-incrimination provides that a person shall not be coerced by the exercise of state power to convict himself/herself of a crime or expose himself/herself to any criminal penalty.

Any sanction imposed on an employee must be proportionate to the employee's act or omission. Therefore, if an accounting firm dismissed an employee e.g. following an order from the PCAOB or for refusing to disclose documents an employment tribunal could rule that the dismissal was a disproportionate sanction and unfair

In **Denmark**, secrecy laws do not allow the audit firms to provide information on their employees or associated persons to third parties

Finland imposes duty of care regarding the processing of personal data (section 5 of the Finnish data privacy act). This serves the protection of the data subject's private life and other basic rights. Transfer of personal data must be in accordance with the Act. The processing of sensitive data is prohibited (especially in relation to criminal sanctions, Section 11).

In **Germany** the rights of employees are protected extensively by Federal labour law and the judiciary. Unlike other branches of civil law, fundamental constitutional principles are applied directly This comprises in particular the right to privacy due to Article 2, paragraph 1 to be read in connection with Article 1, paragraph 1 of the German Constitution.

The right to privacy limits the employer's right to demand specific information from his employees. As stipulated by the courts, in general the employer has no right to request information concerning previous criminal convictions of his employees

Only by way of exception, the employer may request information concerning criminal convictions that may affect the employee's personal qualification for the occupation concerned. However, this information can only be used for the employer's decisions with respect to the employer-employee relationship. The information cannot be disclosed to third parties. There is no right to force the employee's permission. Besides, the employee's representatives may - because of the Federal Works Council Constitution Act - hinder the employer from asking for a general permission on disclosing information

In **Belgium**, professional secrecy rules prohibit the signing of a statement to comply with any request for testimony. Professional secrecy has to be guaranteed by the persons employed by the auditor. Another specific problem concerns the disclosure of information on certain proceedings concerning criminal actions in connection with audit reports. Pending criminal investigations are not public. Only if the case has been brought to court (full) information becomes available for the defendant and other parties. In civil actions the general rules on professional secrecy have to be taken into account.

2.2.2. Audit client information

A further problematic issue is the revelation of data concerning audit clients. This is especially valid with regard to information on non-SEC audit clients For example:

In **Denmark**, secrecy rules cover all information regarding audit or consulting clients. Accordingly, Danish audit firms cannot give information regarding clients, unless clients have consented to this

The **Swedish** Auditors Act (paragraphs 26 and 28) prevents Swedish auditors to provide information on clients to parties other than the supervisory boards of accountants

In **Germany**, the revelation of information related to other clients or third parties being not even clients might contravene the applicant's duty of secrecy, as set out, inter alia, in Article 43, paragraph 1 of the German Public Accountants Act and Article 323, paragraph 1 of the German Commercial Code. Any breach may be sanctioned in professional disciplinary proceedings due to the severity either by the Chamber of Public Accountants or a special disciplinary Court established at the Berlin District Court In addition, any breach might be sentenced by fine or imprisonment under Article 203 of the German Criminal Code, unless the respective client has given permission to the accountant to disclose all, or specific parts, of information on the client's matters.

3. Access to audit working papers and documents of the audit client

A key area of EU concern is access to audit working papers. The draft PCAOB rules on registration of foreign auditors require the foreign auditor to give written consent to hand over his working papers to the PCAOB. This conflicts with specific professional secrecy laws. In many Member States the auditor is only allowed to provide audit working papers to Courts or to defined inspection authorities, a restriction that cannot be waived by the audit client. In these cases would be illegal for the audit firm to give consent to the access of "documents" as required by item 8.1 of Form 1. Moreover, in case audit working papers, or any other client document, would contain personal data, they could not be transferred to the PCAOB due to the EU wide regime on data- protection.

In **France**, Article L225-240 of the French Commercial Code provides that auditors shall be bound by professional secrecy as regards all acts, events and information of which they may have become aware in the course of their duties. Decree 69-810 expressly states that only French authorities are granted access to audit files

In **Denmark**, unauthorised handing over of audit working papers of clients represents a criminal offence. **Belgium** has a similar requirement (article 458 Belgian Criminal Code).

Finland also protects information obtained from clients by professional secrecy obligations laid down in Section 25 of the Finnish Auditing Act

4. PCAOB investigations and inspections

Whilst the draft PCAOB registration rule does not directly address PCAOB inspections and investigations, questions were posed at the Roundtable by the PCAOB to explore the possibility of PCAOB directly inspecting EU audit firms. The European Commission and all fifteen EU Member States are very concerned about this and clearly reject the idea of SEC/PCAOB investigations or inspections on EU territory. We already addressed similar concerns in the European Commission s comment letter to the SEC on SEC proposed rules on Retention of Records Relevant to Audits and Reviews (*Release No.* 34-46869; IC-25830; *File No* S7-46-02)

Conducting such inspection activities on foreign territory raises questions of international law, in particular compatibility with general principles concerning jurisdiction and sovereignty, and would not be permitted in virtually all Member States

It is obvious that effective inspections require access to audit working papers. In addition to the cases mentioned under the previous point, secrecy rules in **Portugal** do not allow access to documents obtained in the course of an audit to third parties. **Spain** allows access to audit working paper only under conditions laid down in law (Article 14 of the law on auditing) which will not permit PCAOB/SEC staff access.

* * *

Date

31 March 2003

Secrétariat
Général

Fédération
des Experts
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Mr Ronald S Boster
Acting Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
USA-Washington, DC 20006-2803

Dear Mr Boster,

We thank you for inviting FEE, the European Federation of Accountants, to participate in the Round Table which we were pleased to attend earlier today.

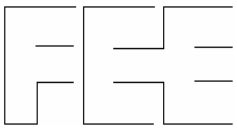
Background

FEE represents 41 bodies of professional accountants from 29 countries. Details can be found on the FEE website www.fee.be. On 19 December last year, I was elected as FEE President for a period of two years, after serving for several years on FEE's Council and Executive. FEE represents the profession as a whole and not any particular type of audit firm. However, in our comments Mr Niemeier has asked us to emphasise in particular the position of other than the four major firms in Europe, as to how FEE considers the PCAOB proposals might affect them. Please bear in mind that Europe has a requirement for statutory audit for all larger companies whether they are public or not. In this context, FEE has always promoted the view that an "audit is an audit", so that the public expectations of, and confidence in, an audit are uniform.

FEE is committed to high quality financial reporting and auditing for capital markets, including effective enforcement. For example, FEE has for many years been active in the area of quality assurance. In 1998, we issued a discussion paper on the topic and performed a detailed survey which have provided valuable input for the EC Recommendation on Quality Assurance in 2000 which includes recommendations on public oversight. FEE fully supports the EC Recommendation and is contributing to the further development of public oversight in Europe. We are firmly of the opinion that robust oversight works best at national level; especially investigation and discipline are most effective at EU Member State level, due to the legal, institutional and cultural differences. However, FEE believes that there needs to be coordination at EU level to deal with cross-border issues and to continue to develop the quality assurance systems in the single EU market as public expectations increase. This coordination mechanism could also have a role in explaining EU arrangements in the global regulatory dialogue.

FEE strongly supports the transatlantic regulatory dialogue between the European Commission, with the support of the Member States and the US authorities, with a view to establishing principles and criteria for oversight, and such matters as inspection, investigation and discipline. Global principles, criteria and standards are needed in globalised capital markets to ensure the consistent high quality of financial reporting, auditing and related enforcement.

A principles based approach, as supported in the EU and as envisaged for the European coordination of oversight, with strict criteria and sufficient detail, allows for a variety of mechanisms of equivalent quality to provide consistent public oversight to achieve the shared objective of restoring confidence in financial reporting. The benefits of such an approach are that national laws and sovereignty can be respected; sanctions can be applied effectively, and that all possible situations are addressed.



FEE has a policy of supporting the efforts of the authorities in Europe continually to improve and develop financial reporting, audit and related enforcement. Therefore, we are also very supportive of the PCAOB efforts to establish itself and to fulfil its mandate. FEE is strongly of the opinion that discussion with European authorities will provide the PCAOB with a possible means of relying on home-country regulation as far as Europe is concerned, an approach which FEE considers will be the most consistent and effective in term of oversight and such matters as inspection, investigation and discipline. You have published certain questions for consultation, which illustrate some of the issues with which the PCAOB is confronted. Our contribution will be mainly related to these questions and in particular to questions 1, 3, 4, 5 and 7.

Questions on registration

Question 1: 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 ?

FEE Member Bodies have not been able to make a comprehensive examination of the legal consequences of, and any impediments to, registration. A comprehensive legal study, at least by those firms which may consider registration, would seem to be a necessary and demanding task. This alone suggests that additional time would be advisable to enable full consideration of the legal position in each country by the firm concerned. This is even more the case if such firms consider it necessary to check the evaluation with European and national regulatory authorities. It would seem likely on the preliminary evidence that there are serious impediments, at least in some countries, to firms providing the information and/or consents sought. Two examples are confidentiality and professional secrecy in relation to the inspection of working papers and the privacy of information about individual employees. We provide more details later.

FEE's initial discussion on this question also indicates that, given the extensive nature of the information sought, the practical collection and verification of it is likely to be challenging. Even for smaller firms, where such information might be thought to be more readily available, this is a major issue, as collection of all the data seems likely to require very extensive special exercises. If they have only a few clients registered with the SEC or are auditors to some significant subsidiaries of US registrants, they may prefer to withdraw from the engagements, where permitted, on the grounds of the disproportionate cost and effort involved. There is serious concern in FEE that this could lead to a concentration of the audit market. It could inhibit new entrants to the what could easily become a very specialised audit market in Europe for SEC related work. This may have further distorting consequences for the market in audit services for EU listed companies generally and for prospective new issuers, which are not SEC registered but may wish to preserve the option doing so at any point in future.

FEE is aware that in some European countries there are joint audit appointments to listed companies, for example at present in Denmark and France. It is frequently the case that one of the four major firms is appointed together with a smaller firm. The proposed registration requirements may have a particularly severe impact on smaller firms in these circumstances.

Because of our support of the transatlantic regulatory dialogue and our firm belief that oversight and inspections are most effective at home-country level and because of the legal and practical problems that initial consideration of the PCAOB's proposals have indicated, we think that a substantial extension of time is warranted before any registration requirements are imposed on foreign audit firms. We believe that the appropriate period should be determined by the PCAOB on the basis of its obligations under the Sarbanes-Oxley Act, the evidence provided to it through the roundtable and otherwise, its own resources, and the outcome of consultation with authorities elsewhere, especially the European Commission.

FEE is concerned that if registration is applied to auditors in some countries in the EU, but not in others due to legal impediments, this will have unforeseeable consequences for the reputation of the profession in the single EU market and could lead to public confidence in the uniform quality of audit in Europe being seriously undermined. On the one hand, if it is seen that registration is likely to enhance

quality, then auditors from other countries not registered may be thought to be of lesser quality. On the other hand, precisely the opposite inference could be drawn also. We believe that such potentially harmful effects would not be likely to enhance confidence in audit in globalising markets.

We understand that section 106 of the Sarbanes-Oxley Act permits exemption of foreign audit firms or any class of such firms, if in the public interest or for the protection of investors. This is a decision that can be made only by the PCAOB. However we anticipate that a prime consideration might be the quality of the audit infrastructure in the particular country from which the firm comes and we refer again to our earlier observations on the possibility of reaching agreement with European regulators on oversight, inspection and discipline. Such an approach might assist the PCAOB in making known its views on appropriate principles and criteria for oversight and related arrangements and in considering whether to exercise its discretion in this respect.

Question 2 Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants ?

We have not been able to give this full consideration, but we can offer some observations. There are differences in legal systems which make the requirement difficult to understand in all circumstances and systems. For instance, it may not always be easy to interpret when a criminal case should be considered as pending. Might preliminary investigations by the prosecutor sufficient cause to consider a case to be pending ? Is the case pending when a judge has been appointed to investigate ? Is the case pending only when the case is submitted to tribunal or court ?

Question 3 In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants ?

Certain of the information sought is related to the audit infrastructure, notably arrangements for licensing, quality assurance and disciplinary actions in the particular country. We believe that it would be helpful and efficient for the PCAOB to obtain an understanding of such systems through interaction with European and national regulators. We do not suggest that this information should be sought from applicants, since this would be duplicative.

For example in Ireland, there is a new Office of the Director of Corporate Enforcement to enforce company law across the board. Also, the Irish government has carried out a major review of the auditing profession, financial reporting and related corporate governance issues. Legislation to implement the review recommendations was published very recently and is due to be enacted soon. It will establish a new Irish Auditing and Accounting Supervisory Authority to oversee the accounting profession, rather like the new US arrangements. Other elements include enforcement of high quality financial reporting and a requirement in law for significant companies to have audit committees which are given specific responsibilities.

Question 4 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 ?

We found this a difficult question to answer in any comprehensive way at this stage and therefore regret that our response must be limited and is not as helpful for the PCAOB as otherwise would be desirable.

We are aware of the following examples:

1) The Sarbanes-Oxley Act provides that a foreign audit firm shall be deemed to have consented to produce its audit working papers for the Board on the Commission in connection with any investigation by either body with respect to an audit report. According to the survey made by FEE in most European countries, such a communication would be impossible without the previous consent of the firms clients. In certain countries such as Belgium, France, Finland, Luxembourg and Sweden, the law seems even more strict. Consequently, an audit firm cannot

commit itself to doing something which would be in contradiction with a domestic regulation and which in many cases is subject to criminal sanctions. The issue might appear to be soluble in countries where only the clients consent may be necessary, but such consent could be withdrawn. Neither is it clear that the information and papers sought will necessarily be confined to those relating to SEC registrants and their significant subsidiaries.

2) In countries such as Denmark and France, listed companies must have joint audits. The question can be raised of what a company should do if one of the audit firms does not register. We assume that the second audit firm will not be authorised for US purposes to sign the joint audit report. The problem, for example in France, is that the audit firm is elected or appointed by the General Assembly of shareholders for a period of years, in the case of France six years, and that the law requires the firm to report as auditor under national law.

3) Furthermore, the possible consequence of a decision by PCAOB to refuse registration of an audit firm must be considered. In most European countries, the General Assembly of shareholders is the only body competent to appoint the auditor. In several countries, notably Germany, the auditor cannot easily resign from the engagement. A statutory audit firm duly appointed by the shareholders will remain in office at least until it has been replaced. In this interim period, it might then be subject to sanctions in the US. There is also a clear difficulty for the foreign registrant company where its appointed audit firm is not registered.

We expect that these issues need extensive legal study and careful evaluation, ideally in conjunction with European and national regulatory authorities, before the possible conflicts of law in each country and their implications for the work of PCAOB can be fully understood.

Question 5: 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 percent threshold more realistically capture firms that materially participate in the preparation or furnishing of an audit report ?

We expect that this requirement arises from US practice, since under US GAAP auditors of consolidated financial statements may refer to the audit opinion issued by the auditors of the financial statements of subsidiaries. However, this is not considered a desirable practice under International Standards on Auditing (ISAs) and national auditing standards in Europe generally preclude division of responsibility.

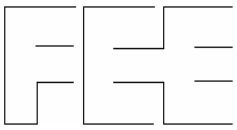
It is difficult to evaluate how well the proposed definition of 20% might work, as far as it refers to 20% or more of the total engagement hours or fees, respectively, provided by the registered public accounting firm. The impact of such criteria could vary considerably from year to year.

So far as smaller firms are concerned, not alone are they impacted by acting as auditors to foreign SEC registrants but they could also be required to register by operation of this proposed rule. With a view to avoiding the difficulties explained above regarding the risk of further concentration in the market and the special burden for smaller firms, FEE would support a 20% rather than a lesser figure.

We would point out that there are no statistics available of which we are aware on the extent to which foreign audit firms services are material to the audit of US SEC registrants.

Question 6: Should the requirements to register be different for foreign public accounting firms that are "associated entities" (as defined in the Board rules) of U.S. registered public accounting firms than for foreign firms that are not associated with U.S. registered firms ?

FEE is committed to promoting high quality audit in Europe and globally. We are anxious that public confidence in statutory audit in Europe should be maintained at a uniform level. This leads us to



suggest that there should not be differences in requirements for associated or non-associated firms unless this can be arranged in such a way as to avoid the risk to public confidence referred to.

Questions on oversight

Question 7: 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 ?

Consistent with the views expressed above, we are firmly of the belief that inspection is best conducted at national level and therefore that foreign public accounting firms should not be subjected to Board inspection. The Board could in our opinion rely on home-country regulation in lieu of inspection of foreign public accounting firms.

This approach would be facilitated by an agreement or understanding reached through the transatlantic regulatory dialogue. Such an arrangement could, as we have pointed out above, establish principles and criteria for inspection, investigation and discipline.

Question 8 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 ?

As with other issues we expect that closer examination and fuller understanding of the implications of the Sarbanes-Oxley Act and the PCAOB proposals may reveal substantial issues not yet identified but which need to be resolved. This is a further reason why we believe that a substantial extension of time before any registration requirements are imposed on foreign audit firms and discussion with European regulatory authorities are imperative.

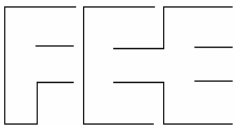
Question 9: Are there requirements different from those the Act imposes on all registered public accounting firms that the Board should apply to foreign public accounting firms ?

Please see our points above under question 1 on registration which describes why we believe that a substantial extension of time for registration is warranted and should be linked to the regulatory dialogue previously referred to.

Question 10: 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 ?

FEE believes that uniform standards of audit are important to the public perception and confidence in the audit process. FEE therefore does not favour distinctions in the Board's approach to those foreign public accounting firms that are "associated entities" of US registered public accounting firms and its approach to other foreign public accounting firms and that are not so associated.

We would like to reiterate our willingness to support the work of the PCAOB through offering comment on its proposals, participation in future round tables and otherwise; not least we attach real importance to the potential benefits for your work of the transatlantic dialogue with European regulators, in particular the European Commission, which we are also ready to support in every way.



We trust that you will find our comments in this letter helpful. Please do not hesitate to contact us if you would like us to clarify any aspect of our comments.

Yours sincerely,

David Devlin
President

FINANCIAL SERVICES AGENCY
GOVERNMENT OF JAPAN
3-1-1 Kasumigaseki Chiyoda-ku Tokyo 100-8967 Japan

March 28, 2003

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

Re: Proposal of Registration System for Public Accounting Firms
(PCAOB Rulemaking Docket Matter No.001)

Dear Sir:

As the Director for International Financial Markets of the Financial Services Agency of Japan (" FSA"), I am pleased to submit this letter on behalf of the FSA in response to the request of the Public Company Accounting Oversight Board ("Board") for comments on its Proposal of Registration System for Public Accounting Firms (" Proposal") under the Sarbanes-Oxley Act of 2002 as contained in PCAOB Release No. 2003-1 (March 7, 2003).

We appreciate that the Board recognizes that the registration of foreign public accounting firms may raise special issues that are not present in the case of U.S. firms, and that it will convene a public roundtable on March 31, 2003 concerning the registration of foreign public accounting firms and seek the views of interested persons on whether its registration requirements should be modified.

While the Proposal seems to seek views of interested persons on the issues including the appropriate scope of the Board's oversight of non-U.S. public accounting firms, we would like to point out, first and foremost, our position that it is not appropriate for the Proposal to include non-U.S. public accounting firms in its scope and require them registered with the Board. ***As we have been respectfully requesting the Securities and Exchange Commission ("SEC") to provide an appropriate exemption from the registration requirement to Japanese audit firms, we reiterate our request for the appropriate exemption in this comment letter***. Based on this premise, we set forth below additional

comments on the Proposed Registration System.

? . Request for an appropriate exemption from the registration requirement

We respectfully request the Board to provide an appropriate exemption from the registration requirement to Japanese audit firms, utilizing the exemption authority provided by Section 106(c) of the Sarbanes-Oxley Act. Needless to say, the Japanese audit firms should not be subject to such oversight powers as inspections, investigations, and disciplinary proceedings by the Board.

1. Principle of registration with and oversight by the authority of a home jurisdiction

(1) IOSCO Principles

The establishment of the Board and registration of U.S. public accounting firms with the Board and oversight by the Board are important aspects of the Sarbanes-Oxley Act that are designed to restore investors' confidence in the United States securities markets. The issues addressed by the Sarbanes-Oxley Act are global, and we share the same objective.

From this global viewpoint, the Technical Committee of the International Organization of Securities Commissions ("IOSCO") issued last October the Statement titled "Principles for Auditor Oversight" ("IOSCO Principles"). The IOSCO Principles state that "In relation to companies operating or listing on a cross-border basis, IOSCO members are encouraged to provide each other, whether directly or through coordinating with the auditor oversight body in their jurisdiction, with the fullest assistance permissible in efforts to examine or investigate matters in which in improper auditing may have occurred and on any other matters relating to auditor oversight."

We understand that registration requirement is in general considered to constitute authority of oversight. Thus, we believe that ***it is an essential aspect of the IOSCO Principles that registration and oversight of auditors (CPAs and audit firms) are within the responsibility of the authorities of the home jurisdiction of auditors*** unless such auditors have substantial physical presence such as the establishment of a branch office within another jurisdiction. Even if

such auditors have substantial physical presence in another jurisdiction, the authority of an auditor oversight body of such other jurisdiction should be limited to such substantial physical presence. ***This principle is critically important from the viewpoint of mutual respect and international comity over each jurisdiction's sovereignty and auditor oversight system. Moreover, this principle is also important to avoid regulatory duplications or contradictions among auditor oversight bodies in different jurisdictions, and unnecessary regulatory burden or costs to foreign public accounting firms.***

(2) Japanese auditor oversight system

In Japan, under the current Certified Public Accountants Law ("CPA Law"), certified public accountants ("CPAs") are required to be registered with the Japan Institute of Certified Public Accountants ("JICPAs"), and the establishment of audit firms is subject to approval by the FSA. Both CPAs and audit firms are required to be members of the JICPA which is a self-regulatory organization established as required by the CPA Law. CPAs and audit firms are subject to oversight by the FSA and the JICPA. The JICPA is subject to oversight by the FSA. Thus, the CPA Law provides the legal structure in which registration and oversight of CPAs and audit firms are the responsibilities of the Japanese authorities (the FSA and the JICPA).

The FSA has the same mission as the Board to protect investors in securities markets and to further the public interest by ensuring that public company financial statements are audited according to the highest standards of quality, independence, and ethics.

If a Japanese audit firm improperly prepares or furnishes an audit report with respect to an issuer or improperly plays a substantial role in the preparation and furnishing of an audit report for an issuer within the jurisdiction of Japan, such a problem should be dealt with by the responsible Japanese auditor oversight bodies. In such cases the FSA will exercise its auditor oversight powers including investigations and disciplinary actions as necessary. If the Board intends to collect information concerning the Japanese audit firms, the FSA is prepared to cooperate with the Board appropriately in line with the above-mentioned IOSCO Principles. Therefore, ***we believe it is not only inappropriate but also unnecessary for the Board to subject Japanese audit firms to registration with and oversight by the Board. We respectfully request the Board to respect and not infringe on the auditor oversight system by the***

Japanese authorities.

2. Enhancing the Japanese auditor oversight system

(1) IOSCO Principles

The IOSCO Principles state that 'within a jurisdiction, auditors should be subject to oversight by a body that acts and is seen to act in the public interest. " They also state that "effective oversight structure generally includes that a mechanism should exist to require auditors to be subject to the disciplines of an auditor oversight body that is independent of the audit profession, or, if a professional body acts as the oversight body, is overseen by an independent body. Such an auditor oversight body must operate in the public interest, and have an appropriate membership, an adequate charter of responsibilities and powers, and adequate funding that is not under the control of the auditing profession, to carry out those responsibilities."

(2) Enhancement of the Japanese auditor oversight system

Since the FSA is an auditor oversight body under the CPA Law as mentioned above, the current Japanese auditor oversight system is consistent with the IOSCO Principles. Considering the international developments including the enactment of the Sarbanes-Oxley Act, ***the Japanese government submitted a bill ("Bill") to the current regular session of the Diet (the Japanese legislature) on March 14 to comprehensively revise the CPA Law***. The Bill is pursuant to the report issued last December by the Subcommittee on Regulations of Certified Public Accountants of the Financial System Council, an important advisory council established within the FSA. The revised CPA Law will be in principle effective in April 2004 if the Bill is passed by the Diet.

The major points in the Bill are further enhancing auditor oversight, further strengthening auditor independence, and reviewing CPA examinations to increase the number and enhance the quality of CPAs. ***Through this revision, the Japanese auditor oversight system will further provide an auditor oversight system substantially equivalent to that provided under the Sarbanes-Oxley Act*** Major concrete measures included in the Bill are as follows:

(Enhancement of the system of quality control review)

· Quality control review by the JICPA will be monitored and reviewed by the CPA and Auditing Oversight Board ("CPAAOB"), an independent third-party

board established within the FSA. (The current CPA Examination and Investigation Board will be reorganized and its functions will be expanded and strengthened.)

- Members of the CPAAOB will be appointed by the Prime Minister with the consents of both Houses of the Diet. The term of office of the members will be three years. The members will exercise their authorities independently. The CPAAOB will have its Executive Bureau including the Secretary-General.
- The JICPA will be required to make reports on the quality control review of its members' auditing to the CPAAOB.
- The CPAAOB will have the authority to inspect CPAs and audit firms in this respect.
- The CPAAOB will be authorized to issue recommendations of administrative actions or directions against CPAs, audit firms or the JICPA to the FSA.

(Enhancement of the government oversight function)

- Introducing the general authority of on-site inspections of audit firms (currently, on-site inspections of audit firms are conducted for the purpose of taking disciplinary actions.)
- Introducing the authority of administrative direction against audit firms (in addition to the current authority of the FSA to take such disciplinary actions as issuing business suspension orders against audit firms.)
- Introducing the authority to issue business improvement orders against the JICPA (in addition to the current authority of the FSA to take such disciplinary actions as issuing an order for revocation of the resolution of the JICPA's general meeting)

(Enhancement of the JICPA's oversight function)

- Introducing the legal authority for the JICPA to conduct quality control review (currently, the JICPA's quality control review is pursuant to the Constitution of the JICPA, and there is no explicit provision in the CPA Law.)

Therefore, ***we respectfully request the Board to respect the further enhanced and more substantially equivalent auditor oversight system in Japan.***

3. Conflicts with the duty of keeping confidentiality of information

It is indispensable for auditors to have sufficient information on corporate and financial affairs of an audited corporation. From this viewpoint, the Japanese Law for Special Exceptions to the Commercial Code concerning

Audits, etc. of Corporation gives external accounting auditors of large corporations such powers as perusing account books and documents of audited corporations, requesting directors and employees to make reports on accounting, and investigating conditions of businesses and finances of audited corporations. In order for auditors to collect sufficient information, it is also critical for auditors to keep confidentiality of information. For this purpose, CPAs in Japan are required not to leak or misuse confidential information obtained through their services without justifiable reasons. The duty of keeping information confidential is one of the main pillars of auditing and is clearly stipulated in Article 27 of the CPA Law. Violation of this legal duty by a CPA is a criminal offense under the CPA Law.

Section 105(b)(2) of the Sarbanes-Oxley empowers the Board to impose on registered public accounting firms, including foreign public accounting firms, the duty to testify and to require production of audit work papers and any other document or information. Thus, if the Japanese audit firms were registered with the Board, they could be forced to testify to the Board or produce confidential information. This would raise ***a clear conflict between the Japanese CPAs' duty to keep confidentiality of information imposed under the CPA Law and the duty to provide information to the Board if such duty were imposed on the Japanese audit firms under the Sarbanes-Oxley Act***.

The Japanese audit firms are established and conduct their auditing services under the CPA Law. If they intend to comply with the duty of keeping confidentiality of information under the CPA Law, they could not help but avoid registration with the Board and thus give up auditing of SEC-registered Japanese issuers. Such serious outcome should be avoided.

Therefore, ***we respectfully request the Board to respect the Japanese CPA Law in this respect***.

4. Other issues

(1) Contradiction with the promotion of competition in the auditing industry

Auditing of listed corporations in Japan is concentrated among large audit firms. The four largest audit firms in Japan audit more than 80 percent of listed and other corporations pursuant to the Securities and Exchange Law in Japan. We recognize that concentration of auditing on the largest accounting firms is a

global issue.

The Bill includes an amendment of the current CPA Act provision that makes the establishment of audit firms subject to approval by the FSA so that notification to the FSA would be necessary requirement. While the fit and proper test will be continuously imposed on partners of audit firms, this proposed change in the requirement will contribute to the promotion of more flexibility and competition including new entry into the auditing industry through the establishment of audit firms. At the same time, the Bill is designed to strengthen the Japanese auditor oversight system over both approved audit firms and newly established audit firms.

If a newly established audit firm has an SEC-registered issuer as its audited corporation, the Proposal should also subject such new audit firm to registration with the Board. If registered with the Board, such new audit firm could be subject to oversight powers of the Board. Such prospect should be enough of a reason for making such new audit firm hesitant in concluding an audit engagement with an SEC-registered issuer, and would be enough of a reason for not establishing a new audit firm at all.

Therefore, the Proposal would rather encourage concentration of the audit of SEC-registered issuers among the largest Japanese audit firms and would be contradictory to the promotion of competition in the Japanese auditing industry through the establishment of new audit firms. ***Such a problem should be resolved by providing an appropriate exemption from the registration requirement to Japanese audit firms***.

(2) Unfounded justification for registration of foreign public accounting firms

The Proposal indicates that "foreign accountants that participate in the audit of U.S. public companies have long been subject to various U.S. requirements." However, ***we believe this justification for requiring registration of foreign public accounting firms is unfounded.*** The followings are examples:

(Auditing in accordance with U.S. generally accepted auditing standards ("GAAS")

We recognize that financial statements filed with the SEC are audited in accordance with U.S. GAAS. This is just because the SEC does not accept issuers' financial statements audited in accordance with non-U.S. GAAS standards. Thus, this does not justify registration of foreign public accounting

firms. We would like to note that the FSA can accept financial statements not audited in accordance with Japanese GAAS if consistent with the Cabinet Ordinance of the Securities and Exchange Law.

(Auditing by an auditor satisfying U.S. independence requirements)

The FSA requested the SEC to provide an appropriate exemption from the U.S. auditor independence requirements to Japanese audit firms, as shown in our comment letter dated January 10, 2003. The final SEC rule does not reflect this comment. Thus, this does not justify registration of foreign accounting firms.

(Enforcement action by the SEC)

As mentioned above, it is the responsibility of the FSA to exercise oversight powers including disciplinary actions against the Japanese audit firms. We do not recognize that the SEC is authorized to take enforcement actions against the Japanese audit firms.

(SEC Practice Section of the AICPA)

We recognize that this is just the requirement for the U.S. member firms of the AICPA. Since the Japanese audit firms are not members of the AICPA, this does not justify registration of the Japanese audit firms. The same is true for inspections procedures and file review procedures.

(Inquiry from the SEC staff)

There is no legal requirement for the Japanese audit firms that are not associated with U.S. accounting firms to provide information to the SEC staff. If there were cases that the Japanese audit firms positively responded to information requests from the staff, they should be deemed to be on a voluntary basis.

? . Comments on Proposed Registration System

The oversight body of the Japanese audit firms is the FSA, not the Board nor the SEC. If the Board needs information on the Japanese audit firms, the FSA is prepared to cooperate in line with the IOSCO Principles as mentioned above. Based on this premise, we would like to make the following comments on the Proposed Registration System.

(1) Excessive requirements for information

The mission of the Board is to protect investors in the U.S. securities markets. Thus, ***the Board's need for information should be focused on***

SEC-registered issuers in the U.S. securities markets.

From this viewpoint, the Proposal includes excessive requirements for information. The following are such excessive requirements, which should not be required.

(Part III- Applicant's Financial Information)

The Board should not require information on the firm-wide source of revenue.

(Part V-Listing of Certain Proceedings Involving the Applicant's Audit Practice)

The Board should not require information in connection with "a comparable report prepared for a client that is not an issuer." Information should be at least confined to one "in connection with any audit report" as stipulated in Section 102(b)(2)(F) of the Sarbanes-Oxley Act.

In addition, ***the Board should not be an oversight body of the Japanese audit firms***. From this viewpoint, "Part VIII-Consents of Applicants" is inappropriate. Under Part VIII, the Board requires "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." Such a broad power corresponds to the FSA's power for requesting reporting and submission of materials from the Japanese audit firms, and is not acceptable to the FSA.

(2) Others

With regard to the issue of the definition of "substantial role", it should be noted that only the issuer (the parent corporation) and its audit firm have information on the amount of "assets or revenues" of the issuer and its "subsidiary or component" and "total engagement hours or fees." It is not feasible for the Japanese audit firms that audit Japanese subsidiaries of an issuer to make calculations as proposed.

? . Conclusion

The Japanese auditor oversight system, which has been well established and will be further enhanced as prescribed in the Bill, is designed to achieve the

same goal as the related provisions of the Sarbanes-Oxley Act and the Proposal. ***We respectfully request that the Board will take full accounts of our comments in promulgating the final rules***.

Yours Sincerely,

Naohiko MATSUO
Director for International Financial Markets
Financial Services Agency
Government of Japan

Comments on the PCAOB's Proposal - PCAOB Roundtable -

Financial Services Agency (FSA) of Japan

March 31, 2003

Appreciation

- We appreciate that the Public Company Accounting Oversight Board ("Board") recognizes that the registration of foreign public accounting firms may raise special issues, and that it convenes the Roundtable.

- We respectfully request that the Board will take full accounts of our comments in promulgating the final rules.

I. Request for an appropriate exemption from the registration requirement (1)

[Conclusion]

- We respectfully request the Board to provide an appropriate exemption from the registration requirement to Japanese audit firms, utilizing the exemption authority provided by Section 106(c) of the Sarbanes-Oxley Act.

- The Japanese audit firms should not be subject to such oversight powers as inspections, investigations, and disciplinary proceedings by the Board.

I. Request for an appropriate exemption from the registration requirement (2)

1. Principle of registration with and oversight by the authority of a home jurisdiction

(1) IOSCO Principles "Principles for Auditor Oversight"

"In relation to companies operating or listing on a cross-border basis, IOSCO members are encouraged to provide each other, whether directly or through coordinating with the auditor oversight body in their jurisdiction, with the fullest assistance permissible in efforts to examine or investigate matters in which in improper auditing may have occurred and on any other matters relating to auditor oversight."

- Registration and oversight of auditors are within the responsibility of the authorities of the home jurisdiction of auditors.
- Critically important principle from the viewpoint of mutual respect and international comity over each jurisdiction's sovereignty and auditor oversight system
- Also important principle to avoid regulatory duplications or contradictions among auditor oversight bodies in different jurisdictions, and unnecessary regulatory burden or costs to foreign public accounting firms

I. Request for an appropriate exemption from the registration requirement (3)

(2) Japanese auditor oversight system

- The FSA has the same mission as the Board to protect investors in securities markets and to further the public interest by ensuring that public company financial statements are audited according to the highest standards of quality, independence, and ethics.
- The FSA is prepared to cooperate with the Board appropriately in line with the IOSCO Principles.
- It is not only inappropriate but also unnecessary for the Board to subject Japanese audit firms to registration with and oversight by the Board.
- We respectfully request the Board to respect and not infringe on the auditor oversight system by the Japanese authorities.

I. Request for an appropriate exemption from the registration requirement (4)

2. Enhancing the Japanese auditor oversight system

(1) IOSCO Principles

"Effective oversight structure generally includes that a mechanism should exist to require auditors to be subject to the disciplines of an auditor oversight body that is independent of the audit profession, or, if a professional body acts as the oversight body, is overseen by an independent body. Such an auditor oversight body must operate in the public interest."

I. Request for an appropriate exemption from the registration requirement (5)

(2) Enhancement of the Japanese auditor oversight system

○ The Japanese government submitted a bill ("Bill") to the current regular session of the Diet (the Japanese legislature) on March 14 to comprehensively revise the CPA Law.

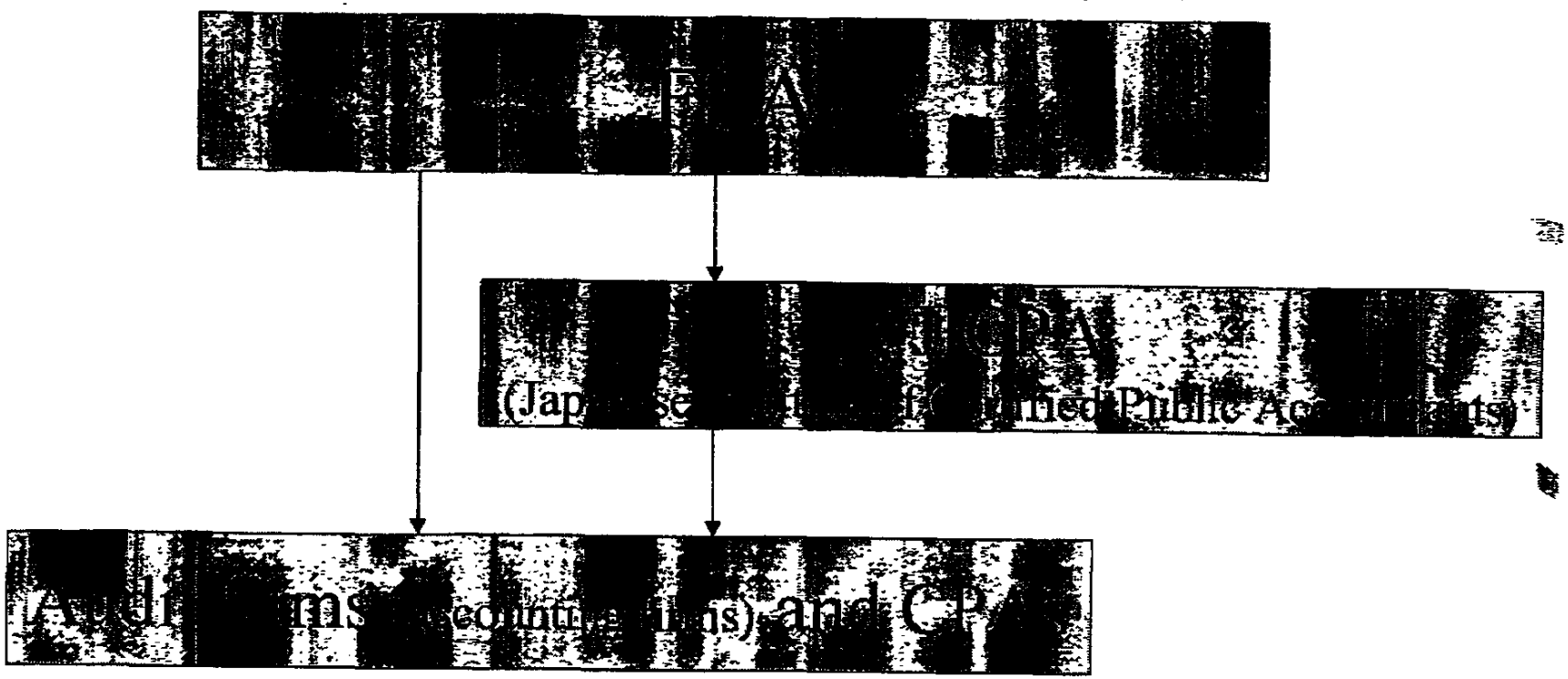
○ Through this comprehensive revision, the Japanese auditor oversight system will further provide an auditor oversight system substantially equivalent to that provided under the Sarbanes-Oxley Act.

[Major Points]

- Enhancing auditor oversight
- Strengthening auditor independence
- Reviewing CPAs examinations to increase the number and enhancing quality of CPAs

I. Request for an appropriate exemption from the registration requirement (6)

[Current auditor oversight structure in Japan]



I. Request for an appropriate exemption from the registration requirement (7)

[Comprehensive Revision of the CPA Law]

○Enhancement of the system of quality control review

- Quality control review by the JICPA will be monitored and reviewed by the CPA and Auditing Oversight Board ("CPAAOB"), an independent third-party board established within the FSA. (The current CPA Examination and Investigation Board will be reorganized and its functions will be expanded and strengthened.)
- Members of the CPAAOB will be appointed by the Prime Minister with the consents of both Houses of the Diet. The term of office of the members will be three years. The members will exercise their authorities independently. The CPAAOB will have its Executive Bureau including the Secretary-General.
- The JICPA will be required to make reports on the quality control review of its members' auditing to the CPAAOB.
- The CPAAOB will have the authority to inspect CPAs and audit firms in this respect.
- The CPAAOB will be authorized to issue recommendations for administrative actions or directions against CPAs, audit firms or the JICPA to the FSA.

I. Request for an appropriate exemption from the registration requirement (8)

○Enhancement of the government oversight function

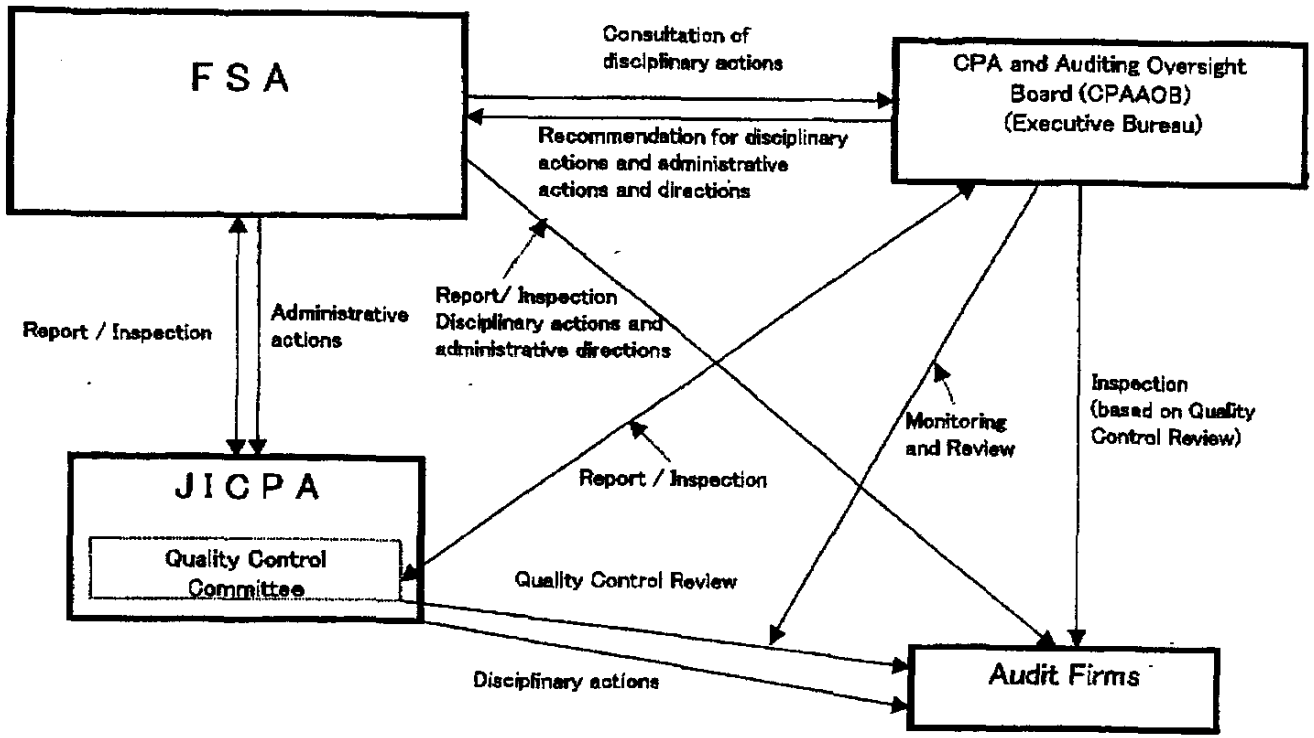
- Introducing the general authority of on-site inspections of audit firms (currently, on-site inspections of audit firms are conducted for the purpose of taking disciplinary actions.)
- Introducing the authority of administrative direction against audit firms (in addition to the current authority of the FSA to take such disciplinary actions as issuing business suspension orders against audit firms)
- Introducing the authority to issue business improvement orders against the JICPA (in addition to the current authority of the FSA to take such disciplinary actions as issuing an order for revocation of the resolution of the JICPA's general meeting)

○Enhancement of the JICPA's oversight function

- Introducing the legal authority for the JICPA to conduct quality control review (currently, the JICPA's quality control review is pursuant to the Constitution of the JICPA, and there is no explicit provision in the CPA Law.)

⇒ Therefore, we respectfully request the Board to respect the further enhanced and more substantially equivalent auditor oversight system in Japan.

I. Request for an appropriate exemption from the registration requirement (9)



I. Request for an appropriate exemption from the registration requirement (10)

[Other points on the Japanese auditor oversight system]

- Auditing standards ⇒ Set by the Business Accounting Council, which is an important advisory council established within the FSA
- Quality control standards ⇒ Currently set by the JICPA, and will be reviewed by the CPAAOB
- Ethics standards ⇒ Set in the Code of Ethics of the JICPA which is subject to oversight by the FSA
- Independence standards ⇒ Prescribed in the CPA Law and the Cabinet Ordinance

I. Request for an appropriate exemption from the registration requirement (11)

3. Conflicts with the duty of keeping confidentiality of information

A clear conflict between the Japanese CPAs' duty to keep confidentiality of information imposed under the CPA Law and the duty to provide information to the Board if such duty were imposed on the Japanese audit firms under the Sarbanes-Oxley Act

⇒ Therefore, we respectfully request the Board to respect the Japanese CPA Law in this respect.

II. Comments on Proposed Registered System

(1) Excessive requirements for information

- The Board's need for information should be focused on SEC-registered issuers in the U.S. securities markets.
  - ⇒ Part III - Applicant Financial Information
    Part V - Listing of Certain Proceedings Involving the Applicant's Audit Practice
- The Board should not be an oversight body of the Japanese audit firms.
  - ⇒ Part VIII - Consents of Applicants

(2) Others

Grant Thornton International

David McDonnell
Chief Executive Worldwide

Grant Thornton

Public Company Accounting Oversight Board
1666 K Street NW
9th Floor
Washington
DC 20006
(Being sent as an email attachment)

31 March 2003

Dear Sirs

PCAOB PROPOSAL REGARDING AUDITOR REGISTRATION SYSTEM

We welcome the opportunity to comment on the Board's proposals for registration. Our response is made on behalf of Grant Thornton International. We set out below our general comments on the proposals, followed by answers to the specific questions posed by the Board.

GENERAL COMMENTS

Grant Thornton shares the primary concern of the Board, namely to restore public confidence in the major capital markets and in financial reporting by public companies, particularly in the United States which represents such a large proportion of the World's capital markets.

While we understand the urgent timetable that was set for the Board by the legislators, we believe strongly that a more measured approach should be taken in relation to accounting firms outside the United States ("foreign public accounting firms"). We believe that through a process of cooperation with foreign regulators, many of whom have already taken steps to tighten their own requirements in the wake of recent corporate collapses, the Board could achieve a broader and more dependable level of comfort about standards of auditing in connection with US public entities.

An initial approach might be for the Board to liase with a small group of regulators (say those from the G7 countries). Such an approach would assist the staff of the Board to consider the regulatory systems that operate in each of the major territories. For this purpose, we suggest that the regulators in each identified territory be asked to submit to the Board relevant information which benchmarks their local standards against the Rules of the Board. We believe that regulators would be prepared to cooperate with the Board in this way.

The Board's proposals for registration and regulation of auditors have significant repercussions for auditors outside the United States, including the following:

- We believe that certain aspects of registration with the Board regarding members of the staff of a foreign public accounting firm would breach the Data Protection

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Directive of the European Union.

- We believe that it may be unlawful to provide access to working papers to a non-local regulator in certain jurisdictions.

- We also believe that it may not be lawful to seek to compel audit staff in all jurisdictions to appear before a non-local disciplinary or investigative hearing.

- We do not have a decision as yet from insurance brokers as to whether they would allow us in all jurisdictions to register in a public forum full details of complaints and legal actions. If an accounting firm is unable to secure their agreement then it would make it impossible for many or all members of an international organisation outside the US to register with the Board.

Grant Thornton has no plans to withdraw from audits that will be regulated by the Board; however, there is a clear and active risk that the approach being considered will lead smaller audit firms to conclude that the risks and burdens are too high and many firms will decide to withdraw from such audits, thereby reducing choice and resulting in an even greater concentration of these audits, especially with the Big 4 firms. We believe that this outcome would not be in the wider interests of the market for audit services in the US or overseas.

A number of important questions arise about the scope and impact of the proposed registration system, in particular in relation to foreign public accounting firms that do not themselves prepare or furnish audit reports on any US issuers but that play a role in the audit of groups on which another firm (possibly the US member of their international network) issues audit reports. If the Board determines that it is not able (or prepared) to apply different registration arrangements (e.g. an exemption from, or extension to, registration) to foreign public accounting firms in general, we recommend strongly that it should do so in relation to foreign public accounting firms that play a " substantial role" in the audit of an issuer but do not issue audit reports on issuers for the following reasons:

a It is not clear how firms that do not play a "substantial role" in the audit of any issuer by reference to the 20% test are to determine whether, nonetheless, they must register by reference to the first part of the definition in Rule 1001(n). As currently drafted, the Rule would appear to require subsidiary auditors to contact the issuer's auditor in each case to obtain *the other firm's view* of the significance of their involvement; only once a firm had received a reply from the issuer's auditor in respect of every subsidiary audit would it know whether it had to register (and for which clients information would have to be provided in the registration). As a result, the ability of some foreign public accounting firms to register within the 180 day period will depend directly on whether other firms are willing and able to respond on a timely basis. Because we would expect many foreign public accounting firms to be in this position, this factor could pose a threat to such firms' ability to meet the registration deadline.

b Certain of the information that is required to support a valid registration with the Board will take time to collate. In the case of information about an issuer where a firm played (or expects to play) a substantial role, that firm may have no contact with (nor detailed knowledge about) the issuer and its audit report; as a result, the foreign public accounting firm will need to obtain this information from the audit firm

responsible for the audit of the issuer. Ad hoc requests of this sort are likely to be unwelcome at a time when auditors of issuers are preparing their own registration applications. By contrast, the auditors of issuers will already have information available about the firms that play a substantial role in those audits and we therefore recommend that this information would be more appropriately gathered through the PCAOB Form 1 (Application for Registration as a Public Accounting Firm) of the auditors of issuers.

c Finally, registration requires explicit consent to be given of the powers and jurisdiction of the Board. Until it is clear how the Board will exercise its supervisory and disciplinary powers under the Sarbanes-Oxley Act, foreign public accounting firms will be required to register "blind". There are legal issues surrounding the Board's access to audit files of foreign public accounting firms that go to the root of the Board's supervision powers; we believe that the Board's objectives would be more appropriately achieved through recognition of, and cooperation with, local regulators.

RESPONSES TO THE BOARD'S QUESTIONS

1. 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?

In those jurisdictions where it would be illegal for any firm to grant the PCAOB access to its audit files, it is unclear how foreign public accounting firms could agree (as part of the registration application) to consent to cooperate with the Board. Unless firms in those jurisdictions will be permitted to qualify their consent or to issue an incomplete Form 1, time will need to be allowed for the legal obstacles to be removed before those firms can be required to register.

Item 7.2 of Form 1 requires foreign public accounting firms to provide certain information about "accountants … who participate in or contribute to the preparation of audit reports [of issuers]". It is not clear to us whether this is intended to include those who "participate in or contribute to" the audit reports on accounts of "significant" subsidiaries of an issuer (which reports in turn provide support for the audit opinion on the accounts of the issuer). We would request the PCAOB to provide clarification on this point because the answer could have a significant effect on the volume of information that foreign public accounting firms will have to gather and provide with their registration filing.

In any event, we recommend strongly that the Board should concentrate its attention on the registration of firms that are auditors of a significant number of issuers and to grant an extension (say 12 months) for foreign public accounting firms that audit, say, less than 10 issuers and (of say 24 months) for foreign public accounting firms that play a " substantial role" in the audit of an issuer but do not issue audit reports on issuers. The latter would allow time for firms that neither audit issuers nor subsidiaries of issuers that exceed 20% of the group to determine whether they need to register (see general comments above and our answer to question 5 below).

Further, even if the foreign public accounting firms were able legally to provide all of the requested information, we are concerned about the timing of the registration process. Given that the Board does not anticipate being ready to accept registration applications until late June or early July 2003, we are concerned about the ability of both foreign and domestic firms to complete the registration process by October 26, 2003. We believe that Section 102 of the Sarbanes-Oxley Act of 2002 intended to allow public accounting firms the full 180 days to complete the registration process. If firms are unable to file their registration applications until late June or early July, then firms will in effect have less than 120 days to register with the Board. The proposed Rule requires the Board to approve or disapprove a completed application for registration, or request additional information from a prospective registrant within 45 days after the date of receipt of the application. In those cases in which the Board requests additional information, a new 45-day review period will begin when the requested information is received from the prospective registrant. Since this will be the first time through the process for both the Board and the public accounting firms, requests for additional information from prospective registrants may be common, thus further tightening the time period available to firms to complete the registration process.

We therefore respectfully request that the Board:

- defers the registration deadline for certain foreign public accounting firms, as noted in the above paragraph, and
- adopts a process whereby all domestic and other foreign firms may request an extension of the October 26, 2003 completion deadline for a reasonable period of time to allow all firms the full 180 days to complete their registration with the Board.

2. Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-US applicants?

As noted in our general comments, we recommend that information required to be provided under Item 2.4 should instead be added to the information to be provided by auditors of issuers under Items 2.1, 2.2 and 2.3, together with information about the identity of the subsidiary auditor(s).

As noted in our response to the previous question, certain requirements of Form 1 conflict with laws in some non-US jurisdictions. The Board will need to give urgent consideration to whether it should accept and process registration applications that are "incomplete" in areas where such conflicts have been identified to the Board by non-US regulators.

A significant proportion of Form 1 will not apply to firms that do not perform any audits of issuers. We therefore recommend that the website for submission of registration applications should offer a simplified approach to registration by those firms that identify themselves at the outset as falling within this category.

3. In addition to the information required by Form 1, is there any additional information that should be sought from non-US applicants?

In order that the Board may take account of regulation and monitoring in an overseas jurisdiction, Part I of Form 1 should call for clear identification of a firm's regulatory body

(which may not be clearly evident from the information required by Item 1.7). The overseas regulatory bodies themselves should provide details of their regulatory and disciplinary arrangements so that individual foreign public accounting firms do not have to prepare and provide written summaries of this information.

4. 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?

We have not had time to consider the interaction of the registration requirements with the legal rights of individuals in all jurisdictions. However, we believe that certain aspects of the registration of information about members of staff with the Board would breach the Data Protection Directive of the European Union. Also, as a general principle individuals would need to give express consent to the disclosure of certain information about them (such as history relating to breaches of criminal or civil law). Where there is information that is required to be disclosed under Item 5.5 and the relevant individuals are no longer associated with the registering firm, they would have no incentive to consent so the firm could find itself prevented from filing a complete Form 1.

In view of the significance of the legal obstacles that we believe will face many foreign public accounting firms, we suggest that the PCAOB should liaise with the European Commission and equivalent bodies in other parts of the world to clarify the legal position before requiring foreign public accounting firms to register (either at all or with this information).

5. In the case of non-US firms that are required to register because they play a substantial role in the preparation and furnishing of an audit report on a US issuer, is the Board's definition of "substantial role" appropriate?

Rule 1001(n) defines the phrase "play a substantial role" to mean:

- 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**
- 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.

Although auditors of subsidiaries may be aware of the relative sizes of their clients and the corresponding consolidated entities, this will often not be the case. Also, the first element of the test can only be applied by the auditor of the issuer.

As a result, a firm that does not audit issuers cannot determine whether it needs to register and, if so, what information is required by Item 2.4 of Form 1 without full cooperation from the primary auditors of the related issuers. Given that in the coming months those firms will no doubt be concentrating on their own registrations, there is a high risk that auditors of subsidiaries will not be in a position to register by the 180 day deadline due to a lack of information.

6. Should the requirements to register be different for foreign public accounting firms that are "associated entities" (as defined in the Board's rules) of US registered public accounting firms than for foreign firms that are not associated with US registered firms?

We suggest that the information required to support the registration of a foreign public accounting firm should take account of:

- the registered status of the US member of the international network of which the firm is a member, and
- the requirements that already need to be met in order for firms to be members of the network.

For this purpose, US firms that are members of such networks could be required to file details of the quality control and other standards to which all network members are required to adhere. Foreign public accounting firms would then merely need to indicate in their registration the international network with which they are associated.

Overseas firms that are not associated with a US registered firm are likely to be viewed by the Board as having a high risk of non-compliance, so will probably justify a different, targeted approach.

7. 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?

We believe that foreign public accounting firms should continue to be monitored and regulated by their local regulators. This would provide a more continuous basis for comfort by the Board than remote monitoring from the US with occasional monitoring visits. Such an approach would also recognize the national sovereignty of countries outside the US and the steps that they have taken in response to corporate failures, both recently and in the past.

The Board should reserve the exercise of its desired powers of inspection to the more serious cases of suspected break downs of standards where there is a public interest or where the Board is not satisfied with the efficacy of overseas local monitoring arrangements.

8. 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?

The requirements of the Act for the filing of annual reports and periodic updates of registration information have yet to be turned into rules and forms. We would ask the Board to be mindful of the possibility that arrangements within foreign public accounting firms for gathering information about clients, fees, staff and 'actions in relation to audits' may differ from (or be less sophisticated than) arrangements that would be expected to be present in US accounting firms. This should be reflected in the regularity of, and timescale for, filing updates and reports.

9. 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?

See earlier responses.

10. Should the Board's oversight of foreign registered public accounting firms that are "associated entities" (as defined in the Board's rules) of US registered public accounting firms be different than its oversight of foreign public accounting firms that are not associated entities of US registered firms? Should the US registered firm have any responsibility for the foreign registered firm's compliance with the Board's rules and standards?

We would be in favour of recognition by the Board of the value of international networks in terms of the common standards and strong self-regulation of audit quality standards that already operate within many international networks, particularly the members of the Forum of Firms.

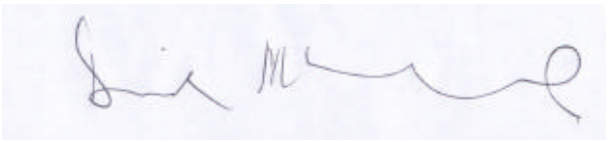
Where the US member of a network is responsible for the audit of an issuer and other network members audit significant subsidiaries, it would be logical for either the US firm or the international organisation to have oversight responsibility for compliance by member firms with the Board's Rules; however, primary responsibility for compliance would need to remain with the individual member firms.

CONCLUDING REMARKS

The Board has been given a difficult task to achieve within a short timescale. We hope that the Board will recognise the unique difficulties of compliance by non-US firms. Accordingly, we believe that one of the Board's first priorities should be to ensure that the registration/oversight system is appropriate in the US, where by a substantial margin the largest risks to US investors lie. Only once the Board is satisfied that the system is appropriate in the US and that compliance difficulties by non-US firms can be overcome should the Board then turn its attention to foreign public accounting firms, whose influence on reporting by US issuers is far less significant.

We should be happy to discuss any of our comments with a member of the Board's staff; for this purpose, initial contact should be made with Barry Barber at 732 516 5550 or barry.barber@gt.com.

Yours faithfully



David McDonnell
Chief Executive Worldwide
Grant Thornton International

From: Vernon H. Henjes [vhenjes@hhcwg.com]
Sent: Sunday, March 30, 2003 3:48 PM
To: Comments
Subject: Docket No. 001

Gentlemen:

Your information indicates that all public accounting firms that wish to prepare or issue audit reports on U. S. public companies must register with the Board.

The Sarbanes-Oxley Act amended several sections of the Securities Exchange Act of 1934 that will require ALL broker/dealers to be audited by a public accounting firm registered with the PCAOB, incurring ongoing costs and potentially burdensome requirements. There are currently 700 accounting firms auditing broker/dealers. It has been estimated that only 50 may opt for PCAOB registration.

Since most of these broker/dealers are not public companies but are required to use public accounting firms that are registered with the PCAOB, why not have a limited registration for accounting firms that are required to register but do not audit any public companies. What purpose is achieved to force broker/dealers to double or triple audit costs because the local or regional accounting firm they have always worked with can not afford to register with or incur the extra costs of the PCAOB that was intended to apply to public companies and their auditors?

Vernon Henjes, CPA
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31 March 2003

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Dear Sirs,

Rulemaking Docket Matter 001

PROPOSAL OF REGISTRATION SYSTEM FOR PUBLIC ACCOUNTING FIRMS

The Institute of Chartered Accountants in England & Wales is the largest of the professional accountancy bodies authorised to register firms to carry out audits in the United Kingdom. Accordingly the consequences in this country, of the process you propose to implement, will be most keenly felt by firms registered with us.

Our comments are directed at the impact of the proposed registration process on 'foreign public accounting firms' (FPAFs), particularly in the United Kingdom, though a number may have more general application.

We set out below, responses to the specific questions raised in your consultation paper but first we have included a number of general comments highlighting key issues that we believe should impact on the timing, extent and operation of the FPAF registration process.

The Institute of Chartered Accountants has long been committed to high standards in public company auditing. The principles of the Sarbanes Oxley Act are very much supported by us - independent monitoring of audit firms, independent setting of auditing standards and independent investigation of audit failure and independent discipline of those responsible have long been key components of audit regulation in the UK. However, the short response period specified means that comments are having to be submitted before the full consequences of registration with the PCAOB are explained or understood. This implies that the registration process is being seen as an end in itself rather than a means to an end. In addition, as noted in more deta il in our response to question 4 below, the interaction of the PCAOB's requirements with our own laws and regulations is complex and merits detailed follow up.

Leaving aside the issue of principle relating to the imposition of rules by one sovereign state on another, there are significant practical effects to be worked through.

- There is the potential that firms could be faced with irreconcilable requirements from the PCAOB and national regulators. Your requirements are necessarily based upon the legal, regulatory and business environments in the U.S.A. National regulators tailor their requirements to local circumstances. This issue is considered further in the responses to the questions, below.

- The impact on competition in the market, already restricted, is likely to be severe, particularly outside the U.S. The burden of cost and administration, exacerbated by the non-refundability of the as-yet unspecified registration fee and the extension of registration to firms that only audit substantial subsidiaries, is likely to persuade many firms with a small number of relevant clients, to discontinue auditing firms with U.S. listings and their subsidiaries.

- The potential for double jeopardy, with firms being subject to PCAOB and national discipline mechanisms, is likely to raise professional indemnity insurance premiums as well as violating principles of natural justice.

- The costs of double compliance will be significant and unnecessary. FPAFs will also have to bear the cost of complying with their own national regulatory requirements. As they typically undertake fewer U.S. - issuer audits than U.S. public accounting firms, the cost of complying with the PCAOB requirements relative to the income generated will be relatively greater.

- The impact of the above issues will be further exaggerated, in terms of both cost and the general iniquity of double jeopardy, if other national regulators decide to apply the same principle of ignoring local regulators. The demands and complexity of this whole process could expand exponentially.

- Many FPAFs only audit 'substantial' subsidiaries of U.S. issuers, rather than issuers themselves. Requiring these to register seems excessive: the auditor of the issuer should take responsibility for the whole issuer's group audit report and determine the adequacy of the audit work for subsidiaries for group audit purposes. If any registration information is really necessary in respect of such audits (which we doubt), perhaps it should be given by the auditor of the issuer. This would help to reduce the extra time likely to be taken in determining which audits are substantial, referred to above.

To ensure that our mutual objective of high quality audits is achieved in an effective and efficient manner, it is vital that a sensible system of recognition of each other's registration and inspection processes be devised which achieves the aims of all parties, but allows auditors to audit. At the very least, we need to ensure that the yet to be announced processes for dealing with monitoring and investigation factor this into account. We believe we have a robust arrangement in the U.K., including a rigorous independent oversight scheme, currently being further strengthened. We have commented on this in detail with the Securities & Exchange Commission in the past, and we would be delighted to discuss this with you further. Accordingly, we request that, as a minimum, registration for foreign public accounting firms be deferred until all these issues have been fully investigated and resolved.

Questio n 1: Ability of FPAFs to register within 180-day timetable.

The proposed registration process requires the provision of very significant amounts of information and for an individual partner to commit to its accuracy. While some of it will be easily available, the reliable collection of other information (particularly relating to associates and individuals) may need to have new systems implemented. Additional issues for FPAFs include assessment of what national equivalents are for the information required in the U.S. and an assessment of the legal consequences (e.g. privacy and human rights requirements, data protection legislation) of disclosure. These will require considerable time to deal with.

The extension of the registration requirements to auditors of substantial subsidiaries, not having been included in the Sarbanes Oxley legislation, was not foreseen. Given that one of the '20%' measures specified is total audit hours, it is likely that many auditors of subsidiaries and quite probably many group-level auditors will not immediately be aware whether their audit constitutes a 'substantial role'. We refer to this further in the response to question 5, but as proposed this will clearly require time to sort out.

We believe there is a strong case for deferral of the registration timetable for FPAFs by at least a further year. This would also allow time to be devoted to consideration of the recognition issues referred to above.

It may be advisable to phase the implementation. Allowing longer for firms which only deal with substantial subsidiaries and / or firms with only a small number of U.S. issuers, could partially mitigate the negative competition effects referred to above. We refer also to our response to question 2, below.

Question 2: Applicability ofregistration form to FPAFs

We note that the list of individuals for whom information is required relates to those 'accountants' who 'participate in or contribute to the preparation of audit reports'. It is unclear to us to what level of audit team member such information is intended to extend. If below the level of Responsible Individual[1], the FPAF concession to only list individuals who deal with U.S. issuers will be of little value as other staff are likely to be used interchangeably between the audits of U.S. issuers and other clients. In our view, if information is needed, it should be sufficient to list only those Responsible Individuals who take responsibility for the audit work. Similarly, the information provided in respect of criminal, civil and regulatory actions for individuals associated with the FPAF should not need to be extended beyond Responsible Individuals who take responsibility for the audit work, as listed on the Public Register of Auditors required by section 36 of the Companies Act 1989.

We are also unclear about the application in the United Kingdom of your definition of 'accountant'. The definition includes CPAs (but with no mention of foreign equivalents), holders of accounting degrees, holders of other degrees who audit and those with individual licences to audit. This appears to exclude individuals without degrees who perform audits, unless they are individually licensed. In the United Kingdom, we register firms to audit and 'approve' Responsible Individuals (see footnote). It is unclear if that would count as individually licensed. We also have

[1] Persons entitled to sign audit reports in the firm's name, under UK Audit Regulations

some quite senior auditors who do not have degrees (the majority of our members qualify with degrees now, but this has not always been so and alternative entry procedures are permitted whic h ensure a high educational standard). Given all these issues, it seems that a quite senior Chartered Accountant might not be deemed to be an accountant for your purposes.

As a general point, we wonder whether some of the information proposed to be included in the registration form is being gathered on a 'just in case' basis, rather than following a rigorous assessment that the benefit of collection clearly outweighs the cost of provision. To provide a couple of examples: (1) it is not clear why the SIC classification of audit clients is needed; (2) a de minimis limit on the legal / civil proceedings information required could significantly reduce the collection time. Claimants seldom claim too little so no important information would be lost.

The fee analysis required will result in onerous additional analysis requirements until such time as the information is needed to be disclosed as part of the issuer reporting. FPAFs in the United Kingdom will be in a better position than many others as audit fees and non-audit fees have had to be disclosed for many years. However, even here, the requirements are additional to those already in place, as the non-audit fee disclosure presently required relates only to an unanalysed total and then excludes services rendered to parts of the client group outside the United Kingdom. We believe that the information required should be linked directly to the issuer's disclosure requirements so that it can be phased in without additional work.

Question 3: Additional information from FPAFs

Further to our comments above about the importance of recognition of audit registration, monitoring and discipline processes of national regulators, it would seem sensible to ascertain who is responsible for these processes, for FPAFs. If recognition needs to be established on a bilateral basis, this would allow you to assess which regulator's registrants your FPAF registration process is having the most impact upon.

Question 4: Potential legislative conflicts

This is a complex area and the short response period has allowed us only to raise issues, rather than propose solutions. This illustrates the need to defer implementation for FPAFs while matters such as this are dealt with in detail.

Control of associated entities

We note that one of the issues you are proposing to consider is whether to treat associated entities of U.S. auditors differently to entities which are not so affiliated. The notion that the U.S. firm is, or could be made to be, responsible for the conduct of the foreign associate implies that the U.S. firm is able to control or at least significantly influence the associate. Schedule 11 of the Companies Act 1989 requires us to have Audit Regulations (which registered audit firms must abide by), to ensure that the audit firm has arrangements to prevent certain persons being able to influence the conduct of audits. Such persons include those who are not members of the firm (the legal entity) and individuals who do not have qualifications from a specified set of accountancy bodies (all presently in the UK and Republic of Ireland). We believe that any presumption of influence as described above could be a breach of these statutorily-derived Regulations.

Data protection and confidentiality

The Data Protection Act 1998 imposes significant requirements on possessors of data relating to individuals, as to what they can do with such data. This includes disclosures to third parties, such as the PCAOB.

Much of this legislation is written in general terms and its interpretation rests with the Office of the Information Commissioner, which deals with enforcement of the Act in the U.K., or with courts as caselaw develops. However, there is a potential breach of such legislation, as the general principle is that disclosure about individuals can only be made if at least one of certain criteria are met. One of these criteria permits disclosure with "freely given" consent. For certain information (such as history relating to breach of criminal and civil law), consent needs to be expressly given for the specific intended use. Consent would need to be obtained not just from relevant employees, but also (particularly in the event of documentation having to be produced), from former partners and employees involved in the legal proceedings to be disclosed, and any individuals at clients or elsewhere who happen to be mentioned. Clearly it should be possible to obtain such consents, but it will clearly be administratively complex and there are issues as to whether employee consent can be "freely given".

It is unclear from interpretations and caselaw so far, whether other criteria could be relied upon, such as disclosure in the public interest, or pursuing legitimate interests subject to protection of individual rights and freedoms. The Information Commissioner has, for example, given a formal ruling to the effect that it is inappropriate and unlawful for National Insurance numbers[2] to be used as personal identifiers.

A further criterion applies to compliance with legal obligations. However the exemption for this only appears to apply to U.K. law. It may be possible to take advantage of this criterion by incorporating compliance requirements into local law or indeed the regulations of the audit registration bodies, such as ourselves. This would need to be explored further.

A further issue is a restriction on the transfer of the information outside the European Economic Area (the legislation derives from a European Community directive). Again, transfer of data on individuals to jurisdictions including the U.S.A. requires one of a number of criteria to be met. These include consent (where similar issues to those referred to above apply), adherence by the recipient (i.e. the PCAOB in this context) to a European Union set of model clauses, a bespoke contract (which would probably have to include terms similar to the model clauses) or specific approval by the European commission that the data will be adequately protected. In our view, a discussion between PCAOB and European Commission personnel is important to clarify a way forward in respect of this.

In addition to the specific legislation referred to above, there are specific or implied general duties of confidentiality between the firm and its clients and between the firm and its employees. The exemptions are not dissimilar to those referred to above in connection with the Data Protection Act. Consent is usually sufficient to deal with this issue, though it cannot override a fundamental principle of English law of privilege against self-incrimination. That might be particularly pertinent in terms of employers

[2] The U.K. equivalent of social security numbers

requiring employees to testify. Your proposed registration form requires the firm to agree to secure consent from associated persons in respect of requests to testify. Taking into account the matters expla ined above and the requirement of employment law that sanctions must be proportionate to the employee's act or omission, this may not always be possible. The agreement to secure consent, required by your registration process, should be subject to the requirements of local law.

Question 5: Definition of 'substantial role'

The financial services sector in London has a particularly large number of subsidiaries of U.S. issuers and the extension of the registration requirements to auditors of substantial subsidiaries will be felt keenly in the U.K.

We refer to our comments above (general and in response to questions 1 and 2), relating to the need to include auditors of substantial subsidiaries at all, the impact on competition and on timing of registration, and who should provide any information that is necessary.

If your proposal in this respect is to be retained, we believe that percentages of audit fees and / or audit hours are unsuitable criteria. They do not recognise differences in charging processes and audit methodologies, which could result in a quite small subsidiary being considered 'substantial'. In our view, the defining criteria should be based on the financial statements of the individual subsidiaries and should certainly not be apply an even lower percentage than that advocated.

Question 6: Registration requirements for 'associated entities' of U.S. registered public accounting firms

We have referred in our response to question 4 above, to the potential impact on U.K. Audit Regulations of an assumption that U.S. firms are able to control or influence their U.K. associates' audit conduct. We do not believe it would be a breach of such Regulations if the registration process were to allow associated FPAFs to cross refer to common network information provided by their U.S. associate (for example, the description of quality control processes).

Question 7: Board inspection of FPAFs

As noted in our general comments, we consider it vital that recognition of national regulatory arrangements is explored and in particular that as an absolute minimum, the inspection processes applied factor this into account. Otherwise, where national quality reviews are also in place, as in the UK, this will result in firms being subject to two reviews. The PCAOB quality review would presumably be conducted by US nationals who might not be familiar with UK legislation, accounting and auditing standards, the local commercial and banking environment, business practice etc. Any differences in review conclusions might be expected to undermine rather than promote public confidence in the capital markets.

In principle, the PCAOB should be able to rely on national monitoring regimes that comply with high minimum standards: for example the IOSCO Statement, Principles for Auditor Oversight, or the European Commission Recommendation, Quality Assurance for the Statutory Audit. This would provide the PCAOB with a more

continuous basis for comfort than remote monitoring with occasional visits from the U.S.

We would be pleased to demonstrate compliance with these standards in the United Kingdom by the Joint Monitoring Unit (operated by this Institute but subject to independent oversight). We would also be willing to speak to the new Professional Oversight Board (being set up following a restructuring of the U.K. arrangements for independent oversight of the accountancy profession). The POB is charged with setting up a new Audit Inspection Unit to deal with auditors of listed entities and we are sure they would be most interested in a recognition dialogue.

Question 8: Other FPAF exemptions

We have referred to the need to ensure that inclusion of all the required information is in compliance with local laws, and the potential issue relating to European data protection legislation. It needs to be made clear what the impact would be if FPAFs had to submit incomplete information or declarations as a result of a conflict with national law or regulations.

We note that the PCAOB is open to requests for confidentiality but reserves the right not to grant them. Given that the public availability of information varies from country to country, we believe exemption should be granted automatically where the PCAOB is notified that the information is not publicly available in the home country.

The consent to provide testimony or make papers available should be amended for FPAFs to allow at least for situations where there is an investigation in the local jurisdiction. It cannot automatically be presumed that the PCAOB investigation will take precedence. Even if the national regulator were not investigating at the time the PCAOB instigates an enquiry, we believe it would be more appropriate for investigations to be carried out through that regulator where possible. We would be pleased to have discussions with you on lines of communication.

We have already referred to the importance of ensuring that the processes for dealing with monitoring and investigation factor recognition of national regulators procedures into account. It follows that we believe that there should be an exemption from the Board being responsible for undertaking investigations and disciplinary actions where a national regulator already fulfils this role well , as we do in the UK. Otherwise there could be conflicts between the two regulators' findings resulting in double jeopardy.

Question 9: Application of different requirements to FPAFs

We refer to our general comments and responses to the other questions.

Question 10: Treatment of associates of U.S. firms.

We refer to our response to question 6.

We have noted in a number of places in our comments and responses above, that further dialogue is vital on issues of recognition and lines of communication. we have common objectives and I believe that such discussion would be of mutual benefit and should be initiated urgently.

Yours faithfully

PETER WYMAN
President, Institute of Chartered Accountants in England & Wales

Date:

Your Ref:

Our Ref:

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7 April 2003

Charles D Niemeier Esq
Acting Chairman
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Dear Mr Niemeier

As I mentioned during my presentation at the roundtable on Monday I am Chairman of the Ethics Committee of the Institute of Chartered Accountants in England and Wales the body with responsibility for registration of firms and 'responsible individuals' and I am writing to you in this capacity.

You will see from the attached description that the Institute has well developed procedures for ensuring that all firms that carry out audits in England and Wales are registered and regularly inspected. The United Kingdom pioneered the concept of independent inspection of firms (as opposed to firm on firm reviews) and the inspection system described in the note has been developed and refined over a number of years. As you are I am sure aware, these procedures will be further strengthened when the responsibility for inspection and discipline in respect of listed companies transfers to the new United Kingdom Public Oversight Board.

The English Institute's registration procedures could be readily adapted to meet the needs of the PCAOB by establishing a separate register of firms who carry out audits of SEC registrants and making arrangements for the information on that register to be exchanged with the PCAOB with the agreement of the member firms.

Further, we would support arrangements whereby the work of the independent inspection teams are appropriately focussed to give you the comfort that you need in terms of the quality of work on SEC registrants and that the results of this work is shared with the PCAOB in an agreed form. We would also support the active involvement of the PCAOB in disciplinary investigations involving audits of SEC registrants.

We believe that this approach could help to resolve many of the difficult legal issues surrounding registration and oversight which were discussed at the roundtable.

Yours sincerely

A. Fenech

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AUDIT REGULATION WITHIN THE UK
An ICAEW Perspective

1. Summary

Legislation requires that all firms that carry out statutory audits in the United Kingdom have to be 'Registered Auditors'. This requires them to register with a number of Recognised Supervisory Bodies ("RSBs") and to comply with Audit Regulations governing suitability to act, compliance with ethical codes and auditing standards and quality control. The largest RSB, and the one that registers all of the larger audit firms, is the Institute of Chartered Accountants in England & Wales ("the Institute" or "the ICAEW"). The activities of the Institute in this respect, and the other RSBs, are subject to independent oversight by a framework agreed with the Department of Trade and Industry ("DTI" - the branch of the UK government responsible for audit).

We believe that this process provides an effective and efficient regulatory environment to ensure that audit firms act independently and competently in the public interest, when carrying out statutory audit work.

The elements of this process are described in more detail below.

2. Registration requirement

The regulation of company auditors is a requirement of European Union law[1] and is implemented in the UK by the Companies Act 1989. The Act also includes an additional requirement not in EU law to monitor the work of Registered Auditors.

The regulation and monitoring requirements have been delegated by the government to RSBs. An RSB is permitted to register firms to carry out company audit work in the UK, and firms may not carry out statutory audits without being registered. While they are registered (registration may be withdrawn if firms fail to comply satisfactorily with the Audit Regulations) they may call themselves Registered Auditors. All listed companies in the UK and all medium and large private companies (including subsidiaries of overseas companies) must have their annual financial statements audited by a Registered Auditor.

Only 'Responsible Individuals' within audit firms, may take responsibility for audits and sign audit reports. These are appointed by the firms but approved by the Institute.

Each accountancy body has Audit Regulations governing the conduct of audit work. Firms' compliance with these is monitored directly by the accountancy bodies (see below for further enhancements of this process, currently under way). This process is, in turn, subject to independent oversight.

3. Audit regulations

The key elements of the Audit Regulations are summarised below, but the full Regulations are available on the ICAEW website at

[1] The European Commission Eighth Directive

http://www.icaew.co.uk/auditnews. Alternatively we will be pleased to provide a copy.

The registration application process gathers: name of the firm and any associations; the offices it operates from and the numbers of staff in each location; total income; names and membership details of partners, affiliates, any Responsible Individuals not otherwise listed; any other owners of the firm; the number of audit clients and whether any of them are listed or other public interest entities; and a basic checklist-overview of competence procedures. Other information, for example detail of internal quality control procedures and information backing up 'fit and proper' certifications (see below), is self –certified but further detail is obtained when carrying out monitoring visits.

The Introduction to the Institute's Audit Regulations summarises the requirements for firms to become and remain Registered Auditors. These are, in essence, to:

- carry out audit work with integrity;
- be and be seen to be independent;
- comply with auditing standards;
- make sure that all principals and employees are fit and proper persons; and
- make sure that all principals and employees are competent and continue to be competent to carry out audit work.

These are analysed below under the categories of suitability, compliance and quality control.

Suitability

Qualifications

Registered audit firms must be owned by a majority of qualified individuals, other partners or directors must be members or affiliates of the Institute and the firm must have procedures to ensure that their audit processes cannot be subject to undue influences by other parties. Qualified individuals, in essence , must be members of the ICAEW or one of a number of equivalent bodies.

For some areas of the work of the profession there are particular requirements that have to be met by the qualification. For audit these requirements are set out in the EC *Eighth Directive* and reflected in the Companies Act 1989. Our general requirements for entry and training are determined by this legal framework. In summary form the principal requirements are:

(a) Satisfy certain minimum education requirements;

(b) Complete a minimum three-year period of training with an approved training organisation;

(c) Complete a course of theoretical instruction, pass the ICAEW's professional examinations; and

(d) Be fit to be a member. This is considered further below.

All Responsible Individuals (i.e. those qualified individuals designated with the right to sign audit reports) must have complied with these requirements to become qualified individuals. In addition they must hold a practising certificate. Any member seeking a

practising certificate and/or working in audit must maintain professional indemnity insurance and achieve a minimum level of Continuing Professional Education each year. The purpose of the Continuing Professional Education requirements is to ensure that Chartered Accountants working in specialised areas maintain appropriate levels of technical and ethical competence. The audit firm is responsible for ensuring that such competence is maintained.

Fit and proper status

Audit firms are required to confirm annually that they and anyone in them, who carries out audit work, are 'fit and proper'. Matters to be considered include financial reputation and reliability over the last ten years, criminal convictions and disciplinary proceedings (with no time limit), and relevant civil actions over the last five years. Like other requirements of the Audit Regulations, compliance with this process is subject to overview by the monitoring body (see below). The Audit Regulations give guidance on the maintenance of competence for those involved in audit work.

Affiliates (see above) have to be certified to be fit and proper, as well as agreeing to be bound by the Institute's codes and disciplinary process.

Compliance

The Audit Regulations require the firm and any members involved in audits, to adhere to the Institute's ethical code, which includes requirements to act, inter alia, with integrity and independence. The auditor independence requirements comply with the European Commission Recommendation on Statutory Auditor Independence, published in May 2002.

Auditors are also required by the Audit Regulations to comply with Statements of Auditing Standards (SASs) issued by the independent Auditing Practices Board (see section 4a below). These standards cover a wide range of audit quality and reporting issues. In addition, auditors must comply with a series of other technical requirements, including retaining audit working papers for at least six years and ensuring that financial statements on which a report is given are in accordance with relevant legislation.

Quality Control

Internal

A Registered Auditor must monitor, at least annually, how effectively it is complying with the Audit Regulations. In practice, this means establishing quality control procedures. To confirm this work is undertaken, firms are required to carry out their own Audit Compliance Review (ACR) every year and report the results to the Joint Monitoring Unit (see below). These procedures are reviewed as part of the external monitoring process.

The ACR in its simplest form is in two parts. The first part covers a firm's obligations under the audit regulations such as:

- independence;
- fit and proper status;
- competence;

- appointment and re-appointment;
- professional indemnity insurance; and
- continuing eligibility.

The second deals with 'cold' reviews of completed audit work to ensure that the firm's audit procedures were followed.

Monitoring

Monitoring of firms' compliance is delegated to an independent monitoring inspectorate (in the case of the ICAEW, the Joint Monitoring Unit) but decisions about audit registration are made by a registration committee of the Institute, based on the reports received from the inspectorate. The Audit Regulations give the committee power to require firms to improve their procedures where appropriate or impose restrictions or withdraw registration where there is serious non-compliance.

The Joint Monitoring Unit (JMU) includes 37 independent, full time, experienced Chartered Accountants acting as Inspectors. Monitoring visits are made every year to the 20 largest firms, who audit 95% of the listed companies, and every 3 years to a further 80 firms who audit the remaining 5%. (The timing of these visits is based on an analysis of risk and public interest factors.)

For the 20 largest firms, the results of the ACR are reviewed in detail during the annual JMU visit and parts of it are re-performed by the JMU Inspectors.

Following discussions with the DTI, monitoring of audits of listed companies is to be transferred to a new Audit Inspection Unit operating under the Professional Oversight Board (see section 4a below). This intended to further improve the perception of independent monitoring, rather than to change the fundamental approach to monitoring.

Discipline

Complaints from the public, the JMU and the Financial Reporting Review Panel (see section 4b below) about the conduct of auditors will be investigated and regulatory or disciplinary action is taken where appropriate. This can include fines, required corrective action, withdrawal of firm registration and/or expulsion of individuals from membership (and thus entitlement to practice).Public interest case are considered by the Joint Disciplinary Scheme (referred to in section 4a below).

Oversight

An annual report is made to the DTI on the outcome of audit regulation and monitoring under the delegated self-regulation arrangements. An example DTI report is available at http://www.icaew.co.uk/viewer/index.cfm?AUB=TB2I_34722.

In addition, the accountancy bodies' regulation of the accountancy profession is itself subject to scrutiny by the independent Accountancy Foundation and its subsidiary boards, to ensure that it operates in the public interest. This aspect is considered further below.

4. Independent Oversight of Auditors and the Profession

a) The Accountancy Foundation

Background

A system of non-statutory independent oversight of the accountancy profession's own systems of regulation, monitoring and discipline has largely been in place since early 2002. Changes have been agreed with the DTI following an appraisal of initial operations, published in January 2003. The summary below describes the current system but refers to the prospective changes as appropriate.

The key feature of the system is its independence from control or undue influence by the accountancy profession itself. Its purpose is to ensure that the professional bodies' own systems of regulation, monitoring and discipline operate in the public interest.

The system largely draws on proposals originally developed by the CCAB[2] and published by them in September 1998. These proposals provided a base from which the Government could take forward its commitment to ensure that there was a framework of independent regulation for the accountancy profession.

Set out below is an outline of the key features of the system with particular reference to audit.

Overview

There are five bodies: The Accountancy Foundation; the Review Board; the Ethics Standards Board; a reconstituted Auditing Practices Board; and the Investigation and Discipline Board. The setting or monitoring of accounting standards are dealt with by the Financial Reporting Council ("FRC"), set up some years ago, and which is to take on the overall control of the whole arrangement under the revised structure. (see section 4b).

The system is currently funded by the CCAB bodies. Such an arrangement could be seen as a means by which the profession could exert undue influence. To ensure that this is not the case, funding is channeled through the Accountancy Foundation on the basis of budgets put forward by the Foundation after consultation with its subsidiary bodies. The new funding arrangements will reflect those of the FRC, noted below.

The Accountancy Foundation

The Foundation has three main functions.

- It appoints the members of the Boards of each of the bodies, ensuring that in each case, non-accountants represent a majority of the Board members.
- It acts as the channel for finance and ensures that the new system is adequately funded.
- It has an overall responsibility for the success and good health of the new system and is the key point of contact with the Government, the accountancy profession and others to this end.

[2] The six principal United Kingdom and Ireland accountancy bodies (including the ICAEW) are members of the Consultative Committee of Accountancy Bodies (CCAB).

The members of the Foundation Committee of the Accountancy Foundation are nominated by the bodies specified in its constitution. The Chairman has been Lord Borrie, a barrister and former Director General of Fair Trading. The other current members of the Committee are nominated by: The National Association of Pension Funds; The Bank of England; The Audit Commission, The National Consumer Council, The Trades Union Congress, The Confederation of British Industry and The Central Bank of Ireland.

The Review Board

The Review Board's task is in two parts. It monitors the operation of the three associated bodies in the new system to confirm that they are functioning in accordance with their remit. It also reviews the professional accountancy bodies' arrangements for monitoring the work, training, qualification and registration of auditors, for handling complaints and for the conduct of investigation and discipline cases falling outside the remit of the IDB.

Both the Review Board's recommendations and the responses of the bodies concerned are made public. The Review Board will in any event publish a report annually on the overall operation of the new system.

The Review Board's constitution rules out membership by practicing accountants, and by accountants involved in any way in the governance of any accountancy body. It is of the essence of the system that the Review Board should, to the maximum extent possible, be independent of the accountancy profession and only two of its present members hold an accountancy qualification.

The Review Board will be replaced by a Professional Oversight Board, operating under the FRC but with a similar remit to that described above.

The Auditing Practices Board

The new APB has taken over the functions previously carried out by the current Auditing Practices Board set up by the accountancy bodies. The new Auditing Practices Board's constitution permits no more than 40% of the Board's membership to be accountants who would be eligible for appointment as company auditors. In determining the composition of this 60% element the Accountancy Foundation has been mindful of two factors: firstly the need to ensure that the APB is composed of those interested in, or able to contribute towards, the enhancement of standards of auditing; and secondly the overriding need to ensure that the 60% element brings to the Board a truly independent perspective.

The Chairman of the new APB is Richard Fleck, a barrister. The APB's operation is not to be altered by the revised arrangements, other than that it will report to the FRC and will also take on responsibility for setting auditor independence ethical standards.

Ethics Standards Board

The Ethics Standards Board sets the agenda for what issues need to be covered by the accountancy bodies' ethical guidance and to oversee the result. The CCAB bodies, acting collectively, prepare appropriate guidance and liaise with the ESB to ensure

that the outcome is in the public interest. The functions of the ESB are to be merged into that of the Professional Oversight Board as part of the reorganisation. As noted above, this will no longer include auditor independence, which will be the direct responsibility of the APB.

The Investigation and Discipline Board

The IDB will in due course take over the function of the present Joint Disciplinary Scheme, though this will inevitably take some time to complete as existing cases are completed with the due process of the law. The existing JDS is operated by ICAEW and ICAS but the IDB's role will be extended to cover all the CCAB bodies within the UK.

The focus of the IDB will, as with the JDS, be disciplinary cases of potential public concern; other cases will continue to be dealt with by the individual accountancy body of the member concerned.

The constitution of IDB Limited provides for a Board with a 60% independent element of the membership.

b) Financial Reporting Council

The FRC and its subsidiary bodies the Accounting Standards Board and the Financial Reporting Review Panel were established in1989. In parallel the Government introduced related provisions into company law: the accounting provisions of the Companies Act 1985 were amended by the Companies Act 1989.

A significant company law change affecting annual accounts was provision for the compulsory revision of accounts where the court is satisfied that the original accounts do not show a true and fair view or do not otherwise comply with the requirements of the Companies Act 1985. The legislation also made possible the voluntary revision of defective accounts, and it is this procedure that in practice has so far been followed when correction has been needed.

Among other legislative changes, accounting standards were given legal definition, and large companies are required to disclose whether or not they complied with them.

Although the FRC and its companion bodies have the strong support of Government they are not government-controlled, but rather part of the private sector process of self-regulation and this is reflected in their constitutions, membership and financing. The Department of Trade and Industry, together with the Northern Ireland Department of Economic Development and the National Audit Office, provides around one-third of the FRC's finances, around one-third coming from the CCAB, and the balance from listed companies and the banking and investment communities. It is expected that this financing arrangement will be maintained to cover the operations of the Accountancy Foundation, when they are brought together under the FRC.

The Financial Reporting Council

The FRC's constitution provides for a Council whose function is to determine the general policy. The constitution also provides for a chairman and up to three deputy chairmen of the Council to be appointed by the DTI and the Bank of England acting jointly.

Normally, under the company's constitution, the board of directors can be expected to include representatives from the accountancy profession, the City, and industry and commerce generally.

The chairman of the Accounting Standards Board and the chairman of the Financial Reporting Review Panel are members of the Council, and the Government and the Bank of England each have the right to nominate one member. The remaining members and observers are appointed by the chairman and deputy chairmen. The membership is designed to include wide and balanced representation at the most senior level of preparers, auditors and users of accounts and of others interested in them.

The remit of the Council is to provide support to the operational bodies—the Accounting Standards Board and the Financial Reporting Review Panel—and to encourage good financial reporting generally. The Council publishes an annual report reviewing the state of financial reporting and making known the views of the Council on accounting standards and practice.

The operations of the FRC's existing subsidiaries are not particularly relevant to the PCAOB audit firm registration process but are briefly summarised below for completeness.

The Accounting Standards Board

The ASB's role is to make, amend and withdraw accounting standards. The ASB does not need outside approval for its actions, though it is the practice of the Board to consult widely on all its proposals.

An Urgent Issues Task Force (UITF) has been established as a committee of the ASB. Its main role is to assist the Board in areas where an accounting standard or Companies Act provision exists, but where unsatisfactory or conflicting interpretations have developed or seem likely to develop. The UITF operates in a broadly similar way to its counterparts in Canada and the USA by seeking to reach a consensus on the issue under consideration.

The Financial Reporting Review Panel

The FRRP's role is to examine departures from the accounting requirements of the Companies Act 1985, including applicable accounting standards, and if necessary to seek an order from the court to remedy them. Like the ASB the FRRP does not need outside approval for its actions.

The role of the Review Panel Its authority stems from the Companies (Defective Accounts) (Authorised Person) Order 1991. By agreement with the Department of Trade and Industry the normal ambit of the Panel is public and large private companies, the Department dealing with all other cases.

The Panel does not scrutinise on a routine basis all company accounts falling within its ambit. Instead, it acts on matters drawn to its attention, either directly or indirectly. By

agreement with the Financial Standards Authority (the UK body responsible for, inter-alia, the UK Listing Authority), a more pro-active role is to be adopted between the two organisations going forward.

Where accounts are revised at the instance of the Panel, either voluntarily or by order of the court, but the company's auditor had not qualified his audit report on the defective accounts the Panel draws this fact to the attention of the auditor's professional body.

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#36/J

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March 31, 2003

Mr. Gordon Seymour
Acting General Counsel,
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803
U.S.A.

Dear Mr. Seymour,

We are pleased to send our comment letter and appendix to you by fax because of e-mail system failure on your side. We sent you the same comment letter on March 31, 2003 Japan time, but it did not reach you due to some system trouble on your side. We keep on trying to send you the same document by e-mail, and today we will send it by international currier.

Yours faithfully,

Akio Okuyama,
President and CEO
Japanese Institute of Certified Public Accountants

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March 31, 2003

Mr. Gordon Seymour
Acting General Counsel,
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803
U. S. A.

Dear Mr. Seymour

PCAOB Rulemaking Docket Matter No.001

We have made a comment on the proposed rules that have been issued regarding the registration system for public accounting firms.

The Japanese Institute of Certified Public Accountants (JICPA) is established compulsory under the CPA Law of Japan (Law No. 103, 1948) (as amended) as the only professional accounting body in Japan. Every CPA in practices in Japan is required to be a member of the JICPA. The JICPA's roles under the CPA Law are to effectively exercise guidance to, communicate with, and supervise the members in order to uphold professional standards and to improve and advance the profession. Members are legally required to comply with the JICPA Constitution. The Constitution includes provisions on members' obligations to observe the Code of Ethics and other resolutions of various committees including the Audit Standards Committee, the Quality Control Review Committee, the Audit Practice and the Review Committee. Pursuant to the JICPA Constitution, members are subject to reporting requirements, direction and disciplinary action by JICPA. In addition, CPAs and Audit Corporations (audit firms, known in Japan as *kansa hojin*) that perform audits for publicly held corporations are reviewed periodically by the Quality Control Reviewers of the JICPA.

We understand and appreciate the efforts of the United States to protect investors' interests and its prompt response to the unprecedented crisis in the capital market. The Japanese accounting professional, regulators and other market participants are also concentrating their resources on enhancing the public confidence in the market.

The audit profession in Japan has been developed under strong government leadership in over the last fifty years. The CPA Law provides the basic structure of the audit profession, including the scope of services to be provided by CPAs, mechanisms of the national CPA examination, requisites of the CPA qualification, establishment of Audit Corporations, duties and responsibilities of CPAs, the role and organization of JICPA and disciplinary and criminal sanctions against CPAs. The Financial Services Agency (FSA) is designated to have authoritative power to oversee CPAs, Audit Corporations and the JICPA in accordance with the CPA Law. Regulators' oversight of auditors in Japan has been built-in since the establishment of the modern Japanese capital market several decades ago.

Under the CPA Law and the Code of Ethics, Japanese CPAs should be independent of their audit clients, and CPAs have a duty to perform their work using their professional competence with integrity and objectivity, due care, confidentiality and professional behavior. The CPA's function is one of the most important pillars in the Japanese economy and these CPA requirements are stipulated in order to serve the public interest as professionals in auditing and accounting. It is required that each Audit Corporation rotate engagement partners for particular audit engagements of listed companies at least every seven years. There are two different oversight systems: the Quality Control Review and the Audit Practice Review, both of which are overseen by the JICPA. The Quality Control Review examines whether CPAs properly implement professional requirements concerning independence, integrity, confidentiality and professional behavior. It also examines (a) whether CPAs at the audit firms attain and maintain necessary skills and competence by satisfying continuing professional education requirements, (b) whether audit firms implement the proper assignment policies such as the seven-year partner rotation rule, (c) whether audit engagements are independently reviewed by an independent review partner at the audit firms, (d) whether acceptance and retention of clients are properly controlled and (e) whether monitoring is adequately performed at the audit firms. The Audit Practice and Review Committee examines how CPAs perform their auditing work and determines whether the issued auditor's opinions are proper. Public oversight of these reviews has been provided as JICPA's self-regulatory system, but it will be

strengthened by introducing the CPA and Auditing Oversight Board as part of the FSA consisting of ten members (which includes two full time members). The CPA and Auditing Oversight Board will be created in accordance with the amendment bill of the CPA Law brought in to the current year 2003 session of Diet of Japan.

Section 106 of the Sarbanes-Oxley Act stipulates that, "Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of PCAOB and the Securities and Exchange Commission (SEC) issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the law of the United States..." Accordingly, such Japanese Audit Corporations will be required to provide various detailed periodic information to PCAOB pursuant to Section 102 of the Act and to be periodically inspected by PCAOB pursuant to Section 104.

Information to be required and obtained by PCAOB includes some items not required by, or provided to even the FSA in Japan. Submission requirements may be deemed to infringe upon the confidentiality duties imposed upon CPAs and Audit Corporations and accordingly violate the Japanese laws. Article 27 of the CPA Law stipulates that "a Certified Public Accountant or a junior Accountant shall not without justifiable reason divulge to others or use to his advantage the confidential matters". Also, the Civil Code (Law No. 89, 1896) (as amended) requires confidentiality terms agreed to between an accountant and its client should be stipulated in the service agreement. This duty shall be discharged where disclosure is permitted under the agreement, or where each party has a justifiable reason for disclosure such as the other party's consent, compliance with law, etc. The Code of Ethics of the JICPA prescribes that confidentiality terms between CPAs and Audit Corporations can be discharged only when such justifiable reasons as the client's consent, compliance with legal obligations and the protection of the accountant's professional interest in judicial proceedings are met. It is commonly understood that the Japanese law does not directly extend to include the laws and judicial proceedings of foreign countries and accordingly compliance of foreign countries law as the Sarbanes-Oxley Act or the PCAOB (who is not a government authority but a foreign corporation) requirements would not constitute a "justifiable reason". Thus, we do not believe that an accounting firm can respond to the PCAOB with such information without the risk of being in breach of the duties of confidentiality under the CPA Law.

Therefore, it is understood that CPAs and Audit Corporations are deemed to have violated the confidentiality requirements if they try to meet PCAOB requirements.

It is not appropriate that the U.S. law requires Japanese professionals, who are qualified under the Japanese law and are providing professional services in Japan, to register and to provide PCAOB with certain confidential information. We believe that PCAOB is not recommended to demand registration to foreign accounting firms but it achieves its goals through any bi-lateral cooperation with the Japanese regulating authority. We also believe that the PCAOB inspection of the Japanese CPAs and Audit Corporations, entities that are already overseen by the Japanese oversight system, would be redundant. We propose that the PCAOB apply the exemption clause of Section 106 of the Act for JICPA members on the grounds that the Japanese auditor oversight system is essentially equivalent to that of the U.S. system. We are willing to discuss with PCAOB any other measures that may enable PCAOB to obtain the information it needs without infringing on Japanese laws.

Detailed points

We have highlighted key issues in the preceding paragraphs. We do not agree with PCAOB registration requirements for Japanese accounting firms as well as its inspection procedures. We reiterate these comments as well as provide our opinion on other aspects of your proposed rules that cause the following conflicts with Japanese Laws:

1. The definition of a "substantial role" and the registration requirements of foreign public accounting firms as a condition to playing a "substantial role" in preparation or furnishing of an audit report

Only a parent company and its auditor have information regarding the amount of assets and revenues as well as total engagement hours or fees of the parent company and subsidiaries and can calculate and identify if Japanese Audit Corporations "play a substantial role in the preparation or furnishing of an audit report" (i.e. meet the 20% criterion). It is not feasible for a Japanese Audit Corporation that audits a Japanese subsidiary of an issuer that trades its securities in the U.S. markets to identify whether it is required to register with PCAOB. Certainly, a lower criterion such as the 10 percent threshold should not be set.

2. Information required in Form 1

In principle, we do not agree to the requirement of foreign public accounting firms to be registered with PCAOB and forced to provide it with not only certain prescribed information but also any other information it requests (Rule 2105(c)).
Since it is asked to comment on the information required in Form 1, we describe the following issues that we note cause problems. Obviously, describing these issues does not mean that we are ready to follow the registration requirement.

2-a. Listing of applicant's public company audit clients and related fee and applicant financial information

Foreign registrants have not been required to disclose audit and other professional service fees. Gathering fee information from all of subsidiaries, especially operating outside of Japan, is not feasible in a short period of time. It may also take many months to establish an adequate information system to gather the audit and other professional service fee information of foreign subsidiaries. Therefore, it is not feasible for a foreign public accounting firm to register within 180 days of the date of the SEC's determination that the PCAOB is capable of operation.
Japanese Audit Corporations provide only audit services. They do not provide tax or other significant services. As for tax services, Japanese Audit Corporations are prohibited from providing them by law. Other entities, which are qualified under the Licensed Tax Accountant Law of Japan, using similar names to Audit Corporations are permitted to provide tax services. Under Japanese laws, tax accountant firms and other firms that do not have equity relationships or other relationships with Audit Corporations are deemed independent of Audit Corporations. Therefore, it is not appropriate to include tax service fees of tax accountant firms as well as other service fees not provided by Audit Corporations because they are independent.

2-b. Applicant's quality control policies

For SEC registrants, Japanese Audit Corporations apply a quality control policy different from the policies applied for domestic clients, in accordance with the requirements of the Appendix K of the AICPA SEC Practice Section Reference Manual. Note that this does not mean the quality control policy for domestic clients is less rigorous than the quality control policy for SEC registrant clients. For instance, "peer review" is not considered an appropriate quality control system in Japan. Our understanding is that the proposed rules request that foreign accounting firms need to focus on information on quality control policies for the audits of the SEC registrants.

We believe that PCAOB needs to provide clearer indication on the scope of the required information.

2-c. Listing of certain proceedings involving the applicant's audit practices

Japanese Audit Corporations operate under Japanese laws and regulations. Japanese laws and regulations, as well as the litigation environment are different from those of foreign countries. Submission of the list of certain legal proceedings based on Japanese laws and regulations may occasionally lead to significant misunderstanding. Furthermore it may be almost impossible to describe all of the litigations of the firm during the past 10 years or five years depending on the type of litigation, including out-of-court settlements, in a manner that can be clearly understood by people who are unfamiliar with the Japanese legal system.

2-d. Listing of accounting disagreements

The disclosure of accounting disagreements has been required for registrants, historically. Listing of this information by applicants may be permitted under the U.S. laws but may be unlawful under the confidentiality requirement of the Japanese laws.

2-e. Consent of applicants

We are willing to cooperate with PCAOB if it asks Japanese Audit Corporations for voluntary assistance. However, if it demands that U.S. should have jurisdiction over Japanese Audit Corporations, we disagree to such demands. Japanese CPAs are required to comply with duties and responsibilities stipulated in the Japanese laws and regulations, never those of any foreign country.

3. Registration requirements conflict with the laws of Japan

As described above, it is not appropriate that the U.S. law requires Japanese professionals, who are qualified under Japanese laws, and are providing professional services in Japan, to register and to provide PCAOB with certain confidential information. Submission requirements may be deemed to infringe upon the confidentiality duties imposed upon CPAs and Audit Corporations and accordingly violate the Japanese laws. We stress the fact that CPAs and Audit Corporations are deemed to have violated the confidentiality requirements if they try to meet PCAOB

requirements.

4. Different requirement for "associated" foreign public accounting firms

For foreign public accounting firms that are "associated entity", U.S. public accounting firms play important roles such as quality control review of the audit services provided by the foreign public accounting firms for U.S. registrant companies. Therefore, we believe that PCAOB does not need most of the registration data required of foreign public accounting firms.

5. Board inspection for foreign public accounting firms

We believe that the oversight system in Japan should be relied upon without necessitating PCAOB inspection. Japan has an oversight system that is equivalent to the oversight required of professional accountants in the U.S. Currently, all Audit Corporations and CPAs shall be reviewed once every three years to assess whether they conduct audit practices in compliance with the JICPA Auditing Standards Committee Statement No. 12, which is modeled after the International Standards on Auditing 220 and other related requirements. Considering practicability, especially for smaller firms, JICPA does not employ the firm-on-firm peer review system. The whole review system is monitored by the Quality Control Oversight Board, which has been created within JICPA to monitor the review system's efficiency and independence. This board is made up of five distinguished individuals (from among industry, the financial industry, the stock exchange, the media and academia) and the former JICPA President.

As mentioned above and in the Appendix, the oversight system of auditors in Japan will be strengthened in the amendment bill of CPA Law of Japan. The amendment proposal of the CPA Law stipulates that a CPA and Auditing Oversight Board be created in order to monitor and oversee the JICPA quality control review. This amendment will be effective as of April 2004. The CPA and Auditing Oversight Board will have ten members who are to be nominated by the Prime Minister with the consent of the Diet. At a minimum, the chairperson and one member of the new Board will be full-timers.

6. Other requirements of the Act from which foreign public accounting firms should be exempted

Auditor independence requirements stipulated in the Japanese laws should be applied to Japanese CPAs and Audit Corporations, not auditor independence rules of the U.S. As described in the Appendix, the Japanese auditor independent requirements will be strengthened in the amendment bill of the CPA Law of Japan.

7. Board's oversight of "associated" foreign public accounting firms

As described above, for foreign public accounting firms that are associated with U.S. public accounting firms, U.S. public accounting firms play important roles such as quality control review of the audit services provided by the associated foreign public accounting firms for U.S. registrant companies. Therefore, we believe that PCAOB does not need to inspect associated foreign public accounting firms, because its inspection over the U.S. public accounting firms could extend over practices of "associated" foreign public accounting firms regarding audit engagements of the SEC registrants. In fact, it could obtain necessary information through its inspection over the U.S. public accounting firms.
Again, PCAOB should rely on the Japanese oversight system without necessitating its inspection in Japan that has an oversight system that is equivalent to the oversight required of professional accountants in the U.S.

Appendix

A detailed explanation of the oversight system and independence requirements of the CPA audit in Japan is provided in the appendix.

Very Truly Yours,

Akio Okuyama
President and CEO
The Japanese Institute of Certified Public Accountants

Appendix

Oversight and Independence of CPA Auditing in Japan

Amendment Project of the CPA Law

The bill for amendment of the Certified Public Accountants Law (Law No.103, 1948) (the CPA Law) has been brought in to the current session of the Diet and is expected to be made into law perhaps in May or June 2003.

Amendment of the CPA law, which will be the biggest change since the 1970s , has been called for in several years after the bubble economy crashed in the early 1990s and is finally concluded under strong influences of the U.S. Sarbanes-Oxley Act of 2002.

The following points will be included in the amendment bill to the CPA Law:

1. Auditor independence rules

1-1 Non-audit services

The present CPA Law allows CPAs to provide compiling financial statements, researching or planning financial matters, or responding to consultation on financial matters, to the extent that it does not impede the audit service.

The amendment of the CPA Law proposes to prohibit Audit Corporation from providing certain non-audit services to any audit client in addition to tax services which have been prohibited by the present law.
The list of non-audit services prohibited, which will be provided in the supplemental cabinet ordinance, includes:

1 Services related to book keeping, financial documents, and accounting books,
2 Design of financial or accounting information systems,
3 Services related to appraisal of the contribution-in-kind reports,
4 Actuary services,
5 Internal audit outsourcing services,
6 Any service of dealing in, or being promoter of shares or other interests of audit clients,
7 Other services that are equivalent to the above listed services, which may involve management decisions or lead to self-audit of the financial documents the auditor examines.

It will be prohibited to provide these non-audit services to any clients that are required to be audited in accordance with the Securities and Exchange Law and certain large companies that are statutorily audited in accordance with the Commercial Code. The amendment will be effective as of April 2004.

1-2 Audit partner rotation

Currently, engagement partner rotation is required in the JICPA's Audit Standards Committee Statement as seven years term with two years time-out period. In the amendment of the CPA Law, any engagement partners shall be legally required to rotate every certain period within seven years with time-out period which will be prescribed in a cabinet order. Partner rotation will also be required with regard to statutory audit engagements that are based on the Securities and Exchange Law and the Commercial Code for the certain large companies. In this respect, the audit engagements to which the partner rotation rule shall be applied are the same as those for the prohibition of certain non-audit services.

1-3 Cooling off

The present CPA Law has no clause that prohibits Audit Corporations from having an

audited client that employs a retired partner of the Audit Corporation as management.

In the proposed amendment of the CPA Law, an engagement partner who performs audit services to a client shall not be in the management of such a client as a director or some other important position until at least one year elapses after the end of the accounting period during which this partner was involved in auditing this client. This amendment will be effective as of April 2004.

2. Strengthening auditor oversight

Currently FSA, as the regulator in Japan, oversees auditors and JICPA to protect the public interest. FSA has a Board named the CPA Investigation and Examination Board, and this Board oversees CPA examination and disciplinary action for CPAs.

The amendment proposal of the CPA Law also stipulates that a new CPA and Auditing Oversight Board be established by reorganization of the present CPA Investigation and Examination Board in order to enhance monitoring and oversight of CPAs and JICPA quality control review.

The CPA and Auditing Oversight Board will have ten members who are to be nominated by the Prime Minister with consent by the Diet and at least a chairperson and one member of the new Board will be full-timers.

Also, the amendment introduces the legal authority for JICPA to conduct quality control review. The quality control review will become a legally required measure.

3. Reform of CPA Examination

The amendment proposal of the CPA Law contains the reform of the CPA examination system and this amendment regarding the CPA examination will be effective as of January 2006. The new CPA examination will be simplified to a single step examination (currently three steps).

All candidates who have passed CPA examination are required to take two years practice training, which can be taken before sitting for the examination, one year schooling and the final assessment to be provided by JICPA in order to be acknowledged as CPAs.

4. Introduction of limited liabilities of partners

Presently, every partner of an Audit Corporation is jointly and un-limitedly liable for liabilities. In the proposed amendment of the CPA Law, a new concept named 'designated partner' will be created to alleviate burden of partners who are not designated as engagement partners. This amendment will be effective as of April 2004. Only the partners who performs audits (designated partner) is jointly and severally liable for misconduct and negligence, and other partners who are not involved in the audits in question are liable to their equities, at maximum, in the audit corporation with regard to the liabilities claimed by audit clients.

However, this designated partner system is different from limited liability partnership. Non-engagement partners are still liable for third party claims. In this respect, non-engagement partners are jointly and severally liable for third party claims together with the engagement partner(s).

1. Structure of the CPA Profession in Japan

1-1 Introduction

Historically, the audit profession in Japan developed under strong government leadership over the last fifty years in order to promote sound development of the Japanese capital market.

The first group of professional accountants in Japan is said to have emerged around 1907, but it was not until 1927, when the Accountants Law was enacted, that a fledgling institute of professional accountants came into existence. However, the formal institutionalization of the profession had to wait for the enactment of the CPA Law (as amended) in July 1948, following the enactment of the Securities and Exchange Law (Law No. 25, 1948) in April 1948. The CPA Law was designed to ensure the quality of professionals compared with those in the U.S. mainly, and to establish socially recognized status for CPAs. The Japanese Institute of Certified Public Accountants (JICPA) started in 1949.

Many such measures were introduced under the supervision of the General Headquarters (GHQ) during the Allied Forces occupation period after World War II. These measures helped to respond to the growing post-war demand for the democratization of business, the disclosure of corporate information following the dissolution of *zaibatsu* (conglomerate), and the introduction of foreign capital. Since that time, the audit profession in Japan has been highly regulated by the regulatory authorities.

1-2 The CPA Law

The CPA Law provides the basic structure of the audit profession in Japan. It includes the scope of services to be provided by CPAs, mechanisms of the national CPA examination, requisitions of the CPA qualification, establishment of audit firms (Audit Corporation: *kansa hojin*), duties and responsibilities of CPAs, roles and organization of JICPA, roles of regulatory authority and the disciplinary and criminal sanctions against CPAs. The Financial Services Agency (FSA) is given authoritative power to oversee CPAs, Audit Corporations and JICPA by the CPA Law.
(FSA submitted a bill to amend the CPA Law to the Diet in order to respond to recent environmental changes in the capital market in Japan as well as in the world. The details and the directions of these changes are explained in the first chapter comprehensively as well as various chapters dealing with respective topics in this paper.)

1-3 Financial Services Agency (FSA)

FSA has oversight responsibilities over the accounting profession in Japan.
The CPA examination is conducted by the CPA Investigation and Examination Board established in FSA (Article 15 of the CPA Law). An Audit Corporation cannot be legally established unless it obtains FSA's approval (Articles 34-7 and 34-8). Mergers and dissolution of Audit Corporations shall be approved by FSA (Articles 34-18, (2) and 34-19, (2)). The recently proposed amendment of the CPA law changes FSA's authority to approve

or disapprove the establishment of Audit Corporations to much simpler filing of the Audit Corporations with FSA. The Audit Corporations and CPAs are subject to FSA's requirements of reporting and submission of the necessary materials (Article 49-3) and are subject to disciplinary sanctions including suspension of practice or revocation of qualification registrations (Articles 29 through 31, 34-20 and 34-21). The Audit Corporations and CPAs are subject to examinations and inspections by FSA (Articles 32, 33 and 34-21). FSA also oversees JICPA, the description of which follows.

1-4 The Japanese Institute of Certified Public Accountants (JICPA)

The establishment of JICPA is compulsory under the CPA Law (Article 43, (1) of the CPA Law). JICPA is the only professional accounting body in Japan. It was originally formed in 1949 as a voluntary body, and in 1966 it was reorganized into its present form requiring every CPA in practice to become a member of the Institute.

The most important role of JICPA is to keep a register of CPAs. All qualified CPAs should be registered under his or her own name and address in the Register of the Institute (Articles 17 and 18). Inclusion in the register denotes qualification as a CPA in Japan. JICPA can revoke registration of members who are disciplinary sanctioned as such. In this regard, JICPA may perform the role of the State Accountancy Board in the USA. The Institute's other roles under the CPA Law are to effectively exercise guidance to, communicate with, and supervise the members in order to uphold professional standards and to improve and advance the profession (Article 43, (2)). Members are legally required to comply with the JICPA Constitution (Article 46-3). The Constitution includes provisions on members' obligations to observe the Code of Ethics and other resolutions of various committees including the Audit Standards, the Quality Control Review, the Audit Practice and the Review Committees. Changes in the JICPA Constitution must be approved by FSA (Article 44, (2)). Pursuant to the JICPA Constitution, members are subject to reporting requirements, direction and disciplinary action by JICPA (Article 46-3). In addition, CPAs and Audit Corporations who perform audits for publicly held corporations should be reviewed periodically by the Quality Control Reviewers from JICPA (Article 87, (3) of the JICPA Constitution).

2. Public Practice of CPAs and Audit Corporations

2-1 Qualifications (The CPA Examination System in Japan)

Instituted in 1948 upon the promulgation of the CPA Law, the CPA examination is considered one of the most difficult examinations conducted by the Japanese Government. The examination has been adopted in order to assure that those who have adequate professional ability and practical experience, together with a high level of professional ethics, perform audits. Some amendments have been made according to the demands of the changing times with the aim of improving the quality of Japanese CPAs. All examinations are prepared by knowledgeable experts, such as experienced CPAs and university professors under the oversight of the CPA Investigation and Examination Board established in FSA (Articles 15, 35 and 38 of the CPA Law).

The subjects included in the first examination are Japanese, English, Mathematics, and an Essay. Its aim is to measure a candidate's general literacy (Article 6). University graduates and their equivalents are exempt from the first examination. The subjects of the second examination are Accounting Theory, Accounting Practice (bookkeeping), Cost Accounting, Auditing Theory, the Commercial Code (Law No.48, 1899), Economics, Business Administration, and the Civil Code (candidates select two from among the last three subjects). The second examination aims to measure whether a candidate holds a university graduate's level of competency (Article 8). Successful candidates of the second examination are qualified as junior CPAs. Before taking the third examination, junior CPAs are required to go through the minimum of three years of professional training, including two years of internship, and one year of schooling (Article 11). The third examination measures the level of professional competency in the subjects of Auditing Practices, Financial Analysis Practices, Taxation Practices and an Essay (Article 10). After passing the third examination, candidates are given the title CPA. The following chart shows the number of candidates and the number of successful candidates from among them.

The amendment proposal of the CPA Law reforms the CPA examination system and this amendment regarding the CPA examination will be effective as of January 2006. The new CPA examination will be simplified to a single examination. People who satisfy certain requirements, successful candidates of certain other professional examinations and people who are qualified professionals are exempt from taking certain subjects in the CPA examination.

However, all candidates who have passed CPA examination are required to take two years practice training, which can be taken before sitting for the examination, one year schooling and the final assessment to be provided by JICPA in order to be awarded a CPA qualification.

Historical Trends of Candidates/Successful Candidates of the CPA Examination

	First Level			Second Level			Third Level		
	Apply	Pass	%	Apply	Pass	%	Apply	Pass	%
2002	150	30	20.0	13,389	1,148	8.6	n.a	n.a	n.a
2001	119	19	16.0	12,073	961	8.0	1,154	710	61.5
2000	141	28	19.9	11,058	838	7.6	1,143	679	59.4
1999	221	34	15.4	10,265	786	7.7	1,154	654	56.7
1998	227	27	11.9	10,006	672	6.7	1,150	651	56.6
Cumulative Total since inception	29,040	4,435	15.3	274,970	20,482	7.4	48,203	15,124	31.4

2-2 Audit Corporations and CPAs

As of March 31, 2002, there were 13,721 CPAs, 4,301 junior CPAs and 147 Audit Corporations in Japan. An Audit Corporation is a corporation that consists of only CPAs who are all unlimited liability contributors and are also expected to participate in management (Article 34-4). These CPAs are not legally regarded as partners since Japanese law does not provide for this form of partnership common in the United States and Europe for professional services (but "partner" is used hereafter for the readers of this paper). An Audit Corporation is a legal entity performing an audit. The Audit Corporation system was introduced by the CPA Law amendment of 1966 in order to take advantage of a larger business base that would justify the establishment of large professional firms to have organized audit services and acceptable competence of CPAs that can be comparable to world best practices. It was hoped that Audit Corporations would assist CPAs in better maintaining their independence and integrity as professionals and increase the public trust in the profession.

Presently, every partner of an audit corporation is jointly and un-limitedly liable for liabilities. In the proposed amendment of the CPA Law, a new concept named 'designated partner' will be created to alleviate burden of partners who are not engagement partners. This amendment will be effective as of April 2004. The only partners who perform audits (designated partner) are jointly and severally liable for misconduct and negligence, and other partners who are not involved in the audits in question are liable, at maximum, to their equities in the audit corporation with regard to the liabilities claimed by audit clients.

However, this designated partner system is different from limited liability partnership. Non-engagement partners are still liable for third party claims. That is, if their equities in the audit corporation are not enough to pay off all the third party claims, they have to pay for the third party claims with their personal properties. In this respect, non-engagement partners are jointly and severally liable for third party claims together with the engagement partner.

One of the future agenda for the CPA profession is the introduction of limited liability system which is not permitted in Japan. Therefore, limited liability partnership system for the audit

corporation shall continue to be considered in the future amendment of the CPA Law.

147 Audit Corporations account for 50.5% of CPAs and 60.7% of junior CPAs. Even though there are many Audit Corporations, most of them are very small while four Audit Corporations are very large as shown below.

Number of CPAs at the four large Audit Corporations

Audit Corp.	Number of CPAs
A	1,361
B	1,255
C	1,242
D	1,126
Total	4,984

There are almost 4,500 companies subject to the statutory audits required by the Securities and Exchange Law of Japan (both listed and non-listed). The largest four Audit Corporations in Japan provide audit services to almost 3,400 companies in accordance with the Securities and Exchange Law, accounting for 76.4% of all companies.

The breakdown of auditors for companies subject to statutory audits based on the Securities and Exchange Law are as follows:

	No. of audit clients	Share
Large four Audit Corp.	3,397	76.4%
Small Audit Corp.	744	16.7
Sole practitioners	305	6.9
Total	4,446	100%

The practice of the Audit Corporation is limited to audits and other services including 1) compilation of financial statements, research, advice and consulting services relating to financial matters for clients and 2) schooling of junior CPAs; as long as such work does not impede the audit service (Article 34-5). Any Audit Corporation is not permitted to provide tax services; however, an individual CPA is permitted to provide tax services (Article 3 of the Licensed Tax Accountant Law).

Accordingly, all large Audit Corporations concentrate on providing audit services. Consulting and tax services are provided by legally separated entities of each group. The revenue of consulting and tax services is relatively small compared with similar groups in the U.S. and other countries. The following table shows the fee split of these groups.

Fee split of the four large Audit Corporation groups (in billions of yen)

Audit Corp. Groups	A		B		C		D	
	Revenue	%	Revenue	%	Revenue	%	Revenue	%
Audit Corporation	¥48.1	72.6	¥42.5	82.3	¥40.5	55.3	¥36.8	64.5
Consulting entity	9.2	13.9	1.4	2.8	28.6	39.0	14.9	26.1
Tax entity	9.0	13.5	7.7	14.9	4.1	5.7	5.3	9.4
Total	¥66.3	100.0	¥51.6	100.0	¥73.2	100.0	¥57.0	100.0

(Source: Nihon Keizai Shimbun, August 21, 2002)

2-3 Professional Competency

The Japanese CPA examination does not require a candidate to have a university degree in accounting or management. However, the second CPA examination tests whether a candidate has a thorough knowledge (equivalent to an undergraduate level) of accounting, auditing and related business subjects and the third examination tests professional knowledge obtained through three years of professional training. In this sense, de facto pre-qualification education is required for Japanese CPAs.

The mechanism for the maintenance of post-qualified professional competency is provided by Continuing Professional Education (CPE). CPE has been mandatory since April 2002 for CPAs, who are full members of JICPA (Article 83, (2) of the JICPA Constitution). Junior CPAs are not required to satisfy CPE requirements because the majority of junior CPAs are enrolled in the three-year practice training courses. Furthermore, junior CPAs have to take the third examination in order to be qualified as CPAs.

In April 1997, the CPE program was recommended by the CPA Investigation and Examination Board under, "Recommendations to Strengthen CPA Audits." In April 1998, CPE was first introduced to JICPA members as a voluntary program that each member was recommended to follow. JICPA sets forty hours of training as an annual target for CPE.

JICPA classifies CPE training as self-study and seminar. Self-study is a broad category that includes not only reading but also watching videos, listening to audio tapes, taking distance educational programs, and attending small study-group meetings. A member can earn required credits by applying one or more self-study methods. For example, a

member can earn certain credits by reading books and articles. Up to twenty credits a year can be earned by self-study of reading the articles in the JICPA Journals and Newsletters, both of which are JICPA monthly publications. When a member reports which articles he/she has read, he/she has to write a short essay on each article.

Members usually earn at least twenty credits by attending seminars to satisfy forty credits a year. Now that CPE is mandatory effective April 2002, members have even more incentive to take seminars. They can earn credits by attending seminars organized by various institutions: JICPA, Audit Corporations, the Bar Association or the Licensed Tax Accountants Association.

JICPA holds topical subject seminars frequently throughout the year. In addition, it holds three- or four- day intensive seminars five times a year. More than 4,000 people attended winter seminars held in thirteen cities throughout Japan between January 24 and 26, 2001. More than 5,400 people attended summer seminars held in Tokyo and Osaka between August 23 and 31, 2001. JICPA held the following four-day seminars in early December 2002. A member can choose from any topic to attend.

The following is a sample of the four-day seminars JICPA held in early December 2002:

Date	Credits	Topics
12/3/02	2	Newly created company-reorganization-law: basics
12/3/02	2	Case studies of CPA ethical code violations
12/3/02	2	Comparative studies of US GAAP, Japanese GAAP and International Accounting Standards
12/4/02	2	The Information Technology Committee statement No. 1 entitled, "Evaluation of control risks in information technology in the financial statement audits"
12/4/02	2	Capital transfer tax: case studies
12/4/02	2	Taxes on sales of properties and securities: case studies
12/5/02	2	New consulting area: actuaries
12/5/02	2	Business plans to raise funds for venture businesses
12/5/02	2	Corporate income taxes: case studies
12/6/02	6	External auditors for local governments
12/6/02	6	Accounting for retirement-benefit plans

When members fail to submit CPE reports, JICPA follows up by sending them a reminder. CPE results are maintained in JICPA website to which members can access. JICPA members are required to earn forty credits a year. If he or she does not earn forty credits in a year, he or she has to earn extra credits in the following year(s). If a member did not earn forty credits for a year without any reasonable excuse, he or she will be sanctioned. CPE credit completion for audit team members of Audit Corporations is an important review subject for the Quality Control Review.

3. Standard Setting

3-1 Audit Standard Setting in the Business Accounting Council

In Japan, audit standards are developed by FSA's Business Accounting Council (BAC) and JICPA's Auditing Standards Committee. The BAC Audit Standards Sub-Group consists of nineteen members who are drawn from universities, businesses and Audit Corporations, and develops core audit standards through a consensus among stakeholders. Core audit standards underline basic concepts for audits of financial statements.

In January 2002, BAC issued new auditing standards. This issue was prompted by both the need to harmonize with the present international state on auditing standards including the International Standards on Auditing (ISA) and the changes in the Japanese corporate and audit environment. In these new standards, the following basic concepts have been introduced in audit practices:

a) Audit objectives emphasizing that auditors obtain reasonable assurance that the financial statements taken as a whole are free from material misstatement.
b) Recognizing that company management is responsible for preparing financial statements, while the auditors are responsible for forming and expressing opinions on the financial statements. The responsibility for preparing and presenting the financial statements lies with the management, and an audit of the financial statements does not relieve management of their responsibilities.
c) Company management is required to disclose serious going concern issues that may jeopardize the viability of the company in financial statements. Auditors are required to audit the appropriateness of such disclosures and are obligated to refer to such going concern issues in the audit report to provide information to the public. In addition, auditors must state adverse opinions when they have determined that it is not appropriate for the company to prepare its financial statements based on the going concern assumption.
d) In the new auditing standards, JICPA is clearly recognized as the auditing-guideline setter. The preface to the new auditing standards states that the auditing standards together with the guidelines issued by JICPA form generally accepted auditing standards (GAAS) in Japan.

3-2 JICPA's Audit Standards Committee

In the last ten years, BAC and JICPA have been sharing in the process of standard setting. Thus, the JICPA Auditing Standards Committee has issued more than 20 statements, which are largely modeled after ISA. In addition to the Auditing Standards Committee, the Auditing Committee has issued various statements and guidelines regarding practical issues that have emerged during audits. JICPA members should follow these committee statements and guidelines (Article 20 of the JICPA Constitution). These statements and guidelines issued by the Auditing Standards Committee and Auditing Committee are integral part of GAAS in Japan.

There are thirty-four members on the Auditing Standards Committee (all of them are JICPA members). The Committee organizes a plenary session and several steering committees that prepare statements based on consultation with the JICPA Council. The JICPA Council issues the final approval on statements. There is also an advisory forum: the Audit Issues Discussion Forum, which consists of members from academics, users, preparers (public companies) and CPAs in order to gather views and opinions outside CPA profession. Major proposed drafts of the standards are exposed to the public for comments. Between August 2001 and July 2002, twenty-four plenary sessions and eighty-one steering committee meetings were held.

The Auditing Committee includes ninety-six members (all of them are JICPA members) who meet in plenary sessions, chair & vice-chair sessions and steering committees, which are established for each project (currently nine steering committees exist). Certain drafts are exposed to the public for comments. Between April 2001 and March 2002, four plenary sessions, ten chair & vice-chair sessions and forty-five steering committee meetings were held.

3-3 The Code of Ethics

JICPA develops the Code of Ethics for its members. In 2000, JICPA's annual assembly approved a revision of the Code of Ethics that was proposed by the Enhancement of Professional Ethics Project Team in JICPA. The new Code of Ethics is harmonized with the, "Code of Ethics for Professional Accountants" (revised in 1998) of the International Federation of Accountants (IFAC). Further development of the Ethics Code is under way in the newly established Independence Study ad-hoc Committee, in order to reflect IFAC's new principle-based independence rules, which were announced in 2001.

The Code of Ethics prescribes that "Certified Public Accountants have a duty to perform their work with professional competence, integrity and objectivity to benefit the public interest and to contribute to the development of a sound society as professionals in auditing and accounting," and requires CPAs to have integrity, objectivity, professional competency, due care, confidentiality and professional behavior.

4. Independence Requirements for CPAs

Independence requirements for external auditors exist in laws and the Code of Ethics.

4-1 CPA Law

4-1-1 Individual CPAs

In accordance with Article 24 of the CPA Law, a CPA shall not render audit services in the followings cases:

(a) The financial statements of those corporations or any other organizations in which he/she or his/her spouse is, or was, within the past year an officer or staff member corresponding thereto or a responsible official in charge of affairs concerning financial matters.

(b) The financial statements of those corporations or any other organizations for which he/she is, or was an employee within the past year.

(c) In addition to those coming under the preceding items, the financial statements of those corporations or any other organizations which he/she has substantial interests.

"Substantial interests" prescribed in item (c) above of the preceding paragraph shall include business, financial or other relationship between a CPA or his/her spouse and the corporations or any other organizations (clients) in order to maintain fairness in an audit by a CPA described as follows:

i) A CPA or his/her spouse was a director and/or an officer of the client during the audit period.

ii) A CPA's spouse is or was an employee of the client during the past one year.

iii) A CPA's spouse is or was a government official that had a close relationship with the client during the past two years.

iv) A CPA or his/her spouse owns stock of the client and/or debt or credit.

v) A CPA or his/her spouse has special economic interests such as office rent or borrowing money with free or unreasonably low rent or interest.

vi) A CPA or his/her spouse provides tax services for the audit client.

vii) A CPA or his/her spouse is provided special economic interests described above in v) by any director of the audit client, or provides tax services for any director of the audit client.

viii) A CPA or his/her spouse is a director of an affiliated company of the audit client.

ix) A CPA or his/her spouse is an employee of the parent company or subsidiary of the audit client.

A CPA who was once a national or local government official shall not conduct, during his tenure of office or during the two years following his termination, an audit practice with respect to the financial affairs of those business enterprises closely related to the duties of the office held during the two years preceding his retirement.

4-1-2 Audit Corporations

Also in accordance with Article 34-11 of the CPA Law, an Audit Corporation shall not conduct audit practices relating to those financial statements falling under one of the

following items:

(a) Financial statements of the companies or entities whose stock the Audit Corporation owns or in which the Audit Corporation is investing.

(b) In addition to those stipulated in the preceding item, financial statements of companies or others in which the Audit Corporation has substantial interests.

"Substantial interests" in item (b) above of the preceding paragraph shall include such businesses, finances, and so on between the Audit Corporation or its partners and the company or others as described below:

i) An Audit Corporation is either a debtor or creditor of the audit client in any amount.

ii) An Audit Corporation has special economic interests such as office rent or borrowing money with free or unreasonably low rent or interest.

iii) An Audit Corporation is provided special economic interests described in the above from a director of the audit client.

iv) Any partner of an Audit Corporation is a director, a corporate statutory auditor and/or an employee of the audit client and/or the parent company or subsidiary of it.

v) Any partner of an Audit Corporation provides tax services for the audit client.

vi) The majority of partners of an Audit Corporation have any kind of relationship as described in Article 24 of the CPA Law (relationship of individual CPAs as referred to above).

Further, any partner of an Audit Corporation who has a relationship as described in Paragraphs (1) to (3) of Article 24, with the company or others shall not be engaged in an audit practice concerning the financial statements of such companies or entities conducted by the Audit Corporation.

Audit Corporations are permitted to provide financial advisory and consulting services for any clients as long as such services do not impede the audit service (Article 34-5), but they are prohibited from providing tax services. On the other hand, individual CPAs are permitted to provide tax services excluding the ones for audit clients (Article 3 of the Licensed Tax Accountant Law).

4-2 JICPA's Code of Ethics

Article 14 of the Code of Ethics requires independence of auditors as follows:

(1) When undertaking or performing an audit, CPAs shall not accept any position prohibited by law or ordinance, or to hold any financial interest in clients or concerned parties, and shall take care to avoid relationships or appearances which may impair their independence.

(2) The positions and relationships described in the preceding paragraph shall include situations applicable to any of the following:

i) A CPA who is engaged with audit for an entity as a support staff has such relationships as detailed in the CPA Law.

ii) Any relatives within the second degree of a CPA who is engaged with audit for an entity, as a sole practitioner or as a engagement partner of an audit corporation, has such relationships as detailed in Article 24 of the CPA Law.

Appearances that may impair a CPA's independence are described in the Interpretation Guidance for Article 14 of the Code as follows:

(1) Audit fee received from a certain client or its group exceeds fifty percent of total revenue of a CPA or an Audit Corporation.
(2) A partner or partners have been engaged with an audit client for a long (more than seven year) period.
(3) A lawsuit exists or will exist with an audit client.
(4) Unreasonably expensive gifts are provided by an audit client.
(5) A CPA was once an officer of an audit client.
(6) A CPA or an Audit Corporation owns an audit client's stock.

Another Interpretation Guidance of the Code also prevents a CPA or Audit Corporation from executing or consummating management authority or responsibility when non-audit services are provided for an audit client.

Further development of the Ethics Code is under way in the newly established Independence Study ad-hoc Committee in order to reflect IFAC's new principle-based independence rules and recent U.S. developments.

4-3 Securities and Exchange Law and Commercial Code

Similar independence requirements are provided in these laws as follows:

(a) All provisions required in Article 24 (for individual CPAs) and 34-11 (for Audit Corporations) of the CPA Law are applicable to CPAs and Audit Corporations performing the audit required by the Securities and Exchange Law. In fact, independence rules are stricter in the Securities and Exchange Law than in the CPA Law, and auditors are required to comply with these more rigorous rules for the Securities and Exchange Law audits. For example, the coverage of related persons described as "CPA and his/her spouse" is widened to "CPA, his/her spouse and relatives within the second degree." Economic relationships with the client "company" are widened to the client "company and any of its affiliates included in the consolidated financial statements" (Article 2 of the Cabinet Ordinance relating to the audit of financial statements).
(b) All CPA Law provisions are applicable to CPAs and Audit Corporations performing Commercial Code audits (Article 4 of the Law Concerning Special Measures under the Commercial Code with respect to the Audit of Corporations).

4-4 Audit Partner Rotations

The JICPA Audit Standards Committee Statements No. 12 "Quality Control for Audit" recommends that each Audit Corporation rotate engagement partners for particular audit engagements of listed companies at least every seven years with time-out period of two

years.

In the amendment of the CPA Law, any engagement partners shall be legally required to rotate every certain period within seven years with time-out period which will be prescribed in a cabinet order.
Partner rotation will be required in the Securities and Exchange Law audit and certain large company audit pursuant to the Commercial Code. The amendment will be effective as of April 2004.

4-5 Prohibition of Tax Practice
As previously described, an Audit Corporation is not permitted to provide tax services (Article 3 of the Tax Accountant Law).

4-6 Scope of Audit Corporation Services
As previously mentioned, the scope of Audit Corporation services is limited to audits and audit-related services: including compilation of financial statements, research, advice and consultation on financial matters as long as such services do not impede conducting the audit service (Article 34-5 of the CPA Law). This requirement virtually prevents Audit Corporations from providing extensive consulting services to their audit clients.

The amendment of the CPA Law proposes to restrict audit firms in providing certain non-audit services to any audit client.
The list of non-audit services prohibited will be provided in the supplemental cabinet order as follows:

1 Services related to book keeping, financial documents, accounting books,
2 Design of financial or accounting information systems,
3 Services related to appraisal of the contribution-in-kind reports,
4 Actuary services,
5 Internal audit outsourcing services,
6 Any service of dealing in, or being promoter of shares or other interests of audit clients,
7 Other services that are equivalent to the above listed services, which may involve management decisions or lead to self-audit of the financial documents the auditor examines.

These non-audit services will be prohibited to any clients that are required to be audited in accordance with Securities and Exchange Law and certain large companies that are required audit by Commercial Code. The amendment will be effective as of April 2004.

4-7 Cooling off
Previously, there were no rules regarding whether an engagement partner is permitted to accept a management position in the audit client.
In the proposed amendment of the CPA Law, an engagement partner who performs audit services to a client shall not be in the management of such a client as a director or some other important position until at least one year elapses after the end of the accounting period during which this partner was involved in auditing this client. This amendment will be effective as of April 2004.

5. Oversight of Statutory Audits in Japan

5-1 FSA

5-1-1 Regulator Function of Statutory Audits by FSA

FSA is responsible for ensuring the stability of the financial system in Japan, and the protection of depositors, insurance policy holders, and securities investors by inspecting financial institutions and conducting surveillance of securities transactions.

Pursuant to these responsibilities, FSA inspects and supervises banks, securities companies, insurance companies, and other financial institutions, and FSA also performs activities related to corporate disclosure and securities markets such as: supervision of CPAs and Audit Corporations, surveillance of rules governing securities markets, and the establishment of rules for trading in securities markets.

The Office of the Director for Corporate Accounting and Disclosure in FSA Planning and Coordination Bureau monitors both auditing activities of Audit Corporations and CPAs, and reviews financial statements of certain publicly owned companies that are filed pursuant to the Securities and Exchange Law.

(1) Monitoring of Audit Activities

1) Approval of establishment of Audit Corporations

FSA has various oversight responsibilities over the accounting profession in Japan.

For example, Audit Corporations cannot be legally established unless they obtain FSA's approval (Articles 34-7 and 34-8 of the CPA Law). When an Audit Corporation plans a merger with another Audit Corporation, they are required to obtain FSA's approval (Articles 34-18, (2) and 34-19, (2) of the CPA Law).

However, the recently proposed amendment of the CPA law changes FSA's authority to approve or disapprove the establishment of Audit Corporations to much simpler filing of the Audit Corporations with FSA. In the proposed amendment, the procedures for establishing, dissolving an audit corporation, merging an audit corporation with some other audit corporation, and modifying the articles of incorporation of Audit Corporation shall be changed from requiring FSA's approval to simply filing with FSA.

2) Review of Audit Corporations' annual report and the summary of individual audit engagements

Every year FSA reviews the Audit Corporations' annual business reports including financial statements. Audit Corporations are required to file these documents with FSA (Article 34-16 of the CPA Law).

FSA also reviews the summary reports of individual audit engagements, described below, prepared by CPAs or Audit Corporations. CPAs and Audit Corporations are required to file with FSA the summary report of all individual audit engagements for audits required under the Securities and Exchange Law. CPAs and Audit Corporations are also required to file with JICPA a copy of the above summary and other similar summaries for audits required under the Commercial Code. These summaries may serve as a basic measure to evaluate whether adequate engagement hours were spent, and determine whether key

audit procedures were conducted. They are not disclosed to the public.
The summary to be submitted to FSA is required to include the following descriptions:

a) The qualifications (namely "lead auditor or engagement partner," "CPA," "junior CPA," and "other audit staff") and names of audit staff.
b) Any changes in the lead engagement partner, Audit Corporation, or responsible CPA in case of a sole practitioner engagement.
c) Total engagement hours spent on the audit work for each facility of the client (separately described according to the auditors' qualifications).
d) Audit fee amount for the year and previous year.
e) Information related to major audit procedures on financial statements including:
   (i) Confirmation of balances
   (ii) Observation of inventory taking (the adopted method has to be disclosed)
      ① Balance sheet amount of inventories (α)
      ② Observed inventory taking amount (β)
      ③ Coverage ($\beta/\alpha \times 100$) (%)
      ④ Criteria for selecting the sites auditors visited.
f) Information of reliance on other auditors' audit results, if any.
g) Additional explanations of an auditor's opinions when unqualified opinions are not expressed.
h) Information on the independent review.

Furthermore, if FSA finds it necessary to obtain additional reports from Audit Corporations and/or CPAs, it is entitled to collect such reports (Article 49-3 of the CPA Law).

3) Enhancement of FSA oversight function
The amendment proposal of the CPA Law enhances FSA authority by introducing the general authority of on-site inspections of Audit Corporations while presently FSA's on-site inspections shall be conducted for the purpose of taking disciplinary actions. In this amendment, FSA will also introduce the authority of administrative direction against Audit Corporations while currently FSA is not empowered to take administrative directions and simply authorized to take such disciplinary actions as business suspension orders and revocation of approvals of establishment. Furthermore, the amendment will newly grant FSA to have business improvement order against JICPA while presently FSA does not have such power.

(2) Review of financial statements of certain companies
All Japanese publicly owned companies file their annual securities reports including financial statements audited by CPAs or Audit Corporations with FSA (actually local finance bureaus of the Ministry of Finance (MOF)) within three months after the close of the fiscal year (Article 24 of the Securities and Exchange Law). There are eleven regional finance bureaus that are spread all over Japan. The Kanto Local Finance Bureau received and reviewed 3,068 securities reports, accounting for approximately 68% of the total 4,486 securities reports received by all local bureaus in fiscal 2001.

5-1-2 CPA Investigation and Examination Board

The CPA Investigation and Examination Board has two responsibilities:

(1) administer the CPA examination by establishing items necessary for the administration of the examination;
(2) consider the disciplinary actions against CPAs or Audit Corporations that have committed audit failures, and advise to FSA whether the proposed disciplinary actions are adequate.

The CPA Investigation and Examination Board consists of nine distinguished people: three executives from listed companies, three academics, the former Japanese Governmental Accounting Office Chief, a representative from the Japanese Securities Dealers Association, and the JICPA President.
Each resolution will be decided by majority rule at the CPA Investigation and Examination Board. The meetings are held several times a year.

The amendment proposal of the CPA Law stipulates that a new CPA and Auditing Oversight Board be created in order to monitor and oversee CPAs and the JICPA quality control review. This amendment will be effective as of April 2004. The CPA and Auditing Oversight Board will have ten members who are to be nominated by the Prime Minister with consent by the Diet and at least a chairperson and one member of the new Board will serve full-time. The new Board will replace the current CPA Investigation and Examination Board which oversees CPA examination and disciplinary action for CPAs.

5-2 JICPA

As previously described, FSA is given authoritative power to oversee JICPA by the CPA Law. JICPA has two different oversight systems. First, the Quality Control Review oversees quality control of members' audit engagements. Second, the Audit Practice and Review Committee oversees individual audit engagements.

5-2-1 Quality Control Review

(1) Introduction

During the 1990's economic recession, the Japanese accounting and auditing system was under scrutiny, and improvement of the system was considered necessary. Faced with increasing public attention over external auditing, JICPA introduced a post-audit review system. In March 1997, JICPA established a project team for Quality Control. In April 1997, the CPA Investigation and Examination Board, then an advisory body to the Finance Minister, recommended a post-audit review system. Meanwhile, JICPA's Auditing Standards Committee issued the Auditing Standards Committee Statement No.12 "Quality Control of Audits" that requires all Audit Corporations and CPAs to perform quality control of audit practices. In March 1998, the Quality Control Project Team issued an important statement regarding the implementation of quality control reviews in Japan proposing that JICPA's full-time professionals conduct quality-assurance monitoring reviews of all Audit Corporations and CPAs who are

engaged in the listed company audits. All such Audit Corporations and CPAs shall be reviewed once in every three years to assess whether they conduct audit practices in compliance with the Auditing Standards Committee Statement No.12, which is modeled after the International Standards on Auditing 220 and other related requirements. Considering practicability, especially in smaller firms, JICPA did not employ the firm-on-firm peer review system. At the JICPA General Assembly in July 1998, its members approved a proposal to require quality control reviews. The quality control review teams began conducting their reviews in April 1999.
In the amendment of the CPA Law, a clause will be newly created to provide JICPA with the legal authority to conduct quality control review.

The JICPA quality control review is performed for audit practices only, not management-consulting services. In March 2001, there were 308 auditors (including sole practitioners and Audit Corporations) that were subject to the quality control review from among the audits of 3,843 listed companies.

(2) Review Organization and Procedures
In order to implement the quality control review system, JICPA created a Quality Control Review Committee consisting of predominantly JICPA council members and other well-experienced members that plans quality control reviews and directs the Quality Control Review Team that executes reviews. The Quality Control Review Team is independent of other JICPA organizations and reports directly to the Quality Control Review Committee. The team consists of full-time reviewers including one chief reviewer and five- qualified reviewers. Each reviewer must be independent of the reviewed firm and is required to have enough current and additional knowledge on audit practices. Also, the reviewers are required to preserve the confidentiality of information that they may find during the course of review.

The reviewers must establish a reasonable basis for expressing an opinion on whether the firm's system of audit quality controls, both firm-wide and on an individual engagement basis, has been well designed in accordance with the JICPA Quality Control Standards, and that such quality control policies and procedures have been adequately implemented. The review does not determine whether auditors' conclusions are appropriate, rather it reviews the audit process conducted by the auditors.

The review procedures include interviews with professional personnel at various levels and the review of relevant audit working papers. In accordance with the JICPA's Auditing Standards Committee Statement No. 12 and other standards, reviewers are to examine whether audit firms (including both Audit Corporations and sole practitioners) properly adopt the professional requirements of independence, integrity, confidentiality and professional behavior. Also, reviewers examine (a) whether necessary skills and competence are attained and maintained through CPE, (b) a proper assignment policy such as the JICPA's seven-year partner rotation rule is adopted, (c) audit engagement is independently reviewed by an independent concurring partner, (d) acceptance and

retention of clients are properly controlled and (e) monitoring is adequately provided. Based on the review, a written report is addressed to the firm's chief executive partner. If reviewers find that anything needs to be improved or the reviewed firm has not conformed to the quality control policies and procedures, the findings and recommendations are to be reported to the firm. The firm must respond in writing in due course. Sometimes it takes some months for an audit firm to determine the corrective measures.

The review team usually spends an average of two-three man-days for a sole practitioner office and five-six man-days for a small audit firm while it spends over a hundred man-days for a large audit firm as shown in the following table.

Average number of man-days for quality control review by the number of auditors for a two- year period (April 1999 to March 2001):

	No. of firms or offices	Man-days	Average man-days
Large audit firms	6	645	107.5
Small audit firms	109	639	5.9
Sole practitioner offices	215	502	2.3
Total	330	1,786	

The total JICPA cost of these reviews is almost ¥100 million per year. It mainly consists of salaries for reviewers and travel expenses. In order to cover these costs, fees are collected from all JICPA members who are engaged in audits of publicly held companies based on (approximately 0.1 percent of) their audit engagement fee.

(3) Review results

In fiscal year 2001 (between April 2001 and March 2002), the Quality Control Review Teams reviewed 107 audit firms, including eleven audit firms whose review began in fiscal 2000. The Review Teams issued the review reports of 104 audit firms and also issued letters of recommendations to ninety-nine audit firms. The Review Teams will issue the review reports to the five remaining audit firms in fiscal 2002 because the review reports were not completed as of March 31, 2002. In the six months between April and September 2002, the Quality Control Review Teams issued review reports to three audit firms. However, they have not issued review reports to the remaining two audit firms. These two cases are related to sole practitioners, and it took some time for these practitioners to reply to the inquiries or recommendations proposed by the Quality Control Review Teams.

In the first six months of fiscal 2002 (between April 2002 and September 2002), the Quality Control Review Teams completed their fieldwork for thirty-seven audit firms, and issued review reports to eleven audit firms. However, they have not issued review reports for twenty-six audit firms yet because they have not received the audit firms' preliminary responses to their draft recommendations, or they are still preparing the letters of

recommendations, or the review committee's internal review has not been completed.

(4) Quality Control Oversight Board

The whole review system is monitored by the Quality Control Oversight Board, which has been created within JICPA to monitor the review system's efficiency and independence.

This Quality Control Oversight Board evaluates whether the Quality Control Review Committee and Team adequately performs the quality control reviews. This board is made up of five distinguished individuals (from among industry, the financial industry, the stock exchange, the media and academia) and the former JICPA President.

The Quality Control Oversight Board, for example, reviewed the whole process of the quality control review in the year, for example, which ended March 2001 and recommended a few important agenda items to the JICPA Quality Control Committee in July 2001 as follows:

(a) Risk approach will be formally required in the new auditing standards to ensure widespread use of risk approaches among Audit Corporations and CPA offices.

(b) Some small-to-medium sized firms have not ensured in written confirmation whether potential breach of independence exists between audit clients and audit supporting staff. Since auditor independence is one of the most important building blocks in external audits, it is highly recommended that JICPA prepare practical guidelines on this matter, including a revision of ethical rules.

(c) Faced with increasing public attention over auditing, clearly determine whether the results of quality control reviews should be disclosed; and if it should be disclosed, what the criterion for disclosure will be, and what the method of informing to the public will be. Credible and transparent disclosure will enhance the integrity and fairness of the quality control review.

The Quality Control Oversight Board will be reformed in accordance with the creation of the CPA and Auditing Oversight Board that oversee the quality control review system as an independent third-party board that is established within FSA.

(5) JICPA's reaction to the board's recommendations

In accordance with the above recommendations, JICPA drafted a guidebook that explained the auditing techniques based on risk approaches especially for smaller firms to use as a reference in applying audit practices, and it also renewed rules on confirming the independence of auditors in November 2001 under the Implementation Guidance for Article 14 of the Code of Ethics, which are provided for reference in audit practices.

JICPA has decided to gradually increase its disclosure of Quality Control Review results to the public. JICPA continues to strive to ensure even more transparency by increasing the amount of information disclosed based on the results of the review.

5-2-2 Individual Engagement Review

(1) The Audit Practice and Review Committee

1) Purpose and structure

The purpose of the Audit Practice and Review Committee, which was established in 1978 in order to respond to reinforcement requirements of JICPA self-regulatory functions at that time, is to support JICPA members to properly perform and develop their auditing work. Namely, the Review Committee examines how the CPAs perform their auditing work and whether their audit opinions are well substantiated. The Review Committee picks out from the news covered in major newspapers' articles describing suspicions of window dressing in financial statements, fraudulent accounting, massive loss disclosures and bankruptcies. In addition, the Review Committee examines whistle-blowing information given to JICPA as necessary.

When the Review Committee decides upon review that the auditing work has been carried out in a considerably improper manner, it may give a corrective recommendation to the CPAs concerned. When the Review Committee determines that an audit client has exercised significantly improper accounting treatments, it may recommend to the relevant CPAs that they propose a correction of such improper accounting treatments as well as change their audit opinions. In the event that the Review Committee decides further examination is necessary from an ethical point of view, it refers the case to the Audit and Disciplinary Investigation Committee, where the case is investigated as to whether further procedures are necessary in the Ethics Committee.
Most importantly, the Review Committee holds a position that furnishes CPAs with guidance for strengthening their auditing work and does not go beyond the line of taking disciplinary actions against them.

The Review Committee consists of fifteen members of which seven are JICPA executive directors. Occasionally, the case being reviewed involves a company audited by an Audit Corporation to which one of the members of this Committee belongs. When a member has an interest in a case being reviewed by the Review Committee, that member may not participate in the decision making of the case. In addition, all the members of the Review Committee are held responsible for confidentiality. Consequently, any matters discussed or reviewed by the Review Committee will not be disclosed to the public.

2) Review procedure and results

The types of cases handled by the Review Committee are generally divided into (a) Suspicious engagement cases and (b) Concurring cases.

(a) Suspicious engagements review

When the Review Committee picks up a case, it first assigns two members who have no interests in the case, and then they make a written inquiry and set up an interview with the auditor in question as necessary. The Review Committee is entitled to require reports from CPAs for inquiring on matters thereof and to request submission of

reference material, as considered necessary for the purpose of the CPAs to carry out their audits (Article 89-2-2 of the JICPA Constitution). The examination results are reported and reviewed at a general meeting with the full committee member to be held once a month in principle.

The conclusions determined at the general meeting will be notified to the relevant CPAs in one of the following forms:

i) The review was closed with no problems.
ii) The review was closed with comments given to the pertinent CPAs.
iii) The review was suspended for the time being, but the final decision is reserved until later since future moves need to be observed.
iv) Recommendation as to improvement in certain audit procedures.
v) Further examination is required from the Audit and Disciplinary Investigation Committee.

Breakdown of the review results of the Review Committee for the period from April 2001 to March 2002 are as follows:

Breakdown of the Cases	Number of Cases
Cases carried over from the previous period	
1) Securities and Exchange Law Audit	
Suspicion of window dressing	2
Massive loss reported	4
Bankruptcy	3
Other	2
2) Educational Institution Audit	
Miscellaneous	3
Total	14
Newly picked-up Cases	
1) Securities and Exchange Law Audit	
Suspicion of window dressing	4
Massive loss reported	2
Bankruptcy	21
Other	4
2) Commercial Code Audit	
Suspicion of window dressing	1
Bankruptcy	1
3) Educational Institution Audit	
Miscellaneous	1
Sub-Total	34
Total number of cases reviewed in the period	48
Cases concluded	
Review closed without any problem	4
Review closed with comments noted	10
Suspended	4
Sent to Audit and Disciplinary Investigation Committee	8
Total	26
Cases outstanding	22

(b) Concurring case review

The Review Committee also examines some issues that are broad in nature and not limited to certain audit engagements. There are two types: one is related to appropriateness of level of auditing practices such as unreasonably low fees, insufficient staff assignments or insufficient field work hours indicated in the summary report of individual audit engagements filed with JICPA. The other is related to emerging accounting issues.

Small study groups are formed for the respective cases. Then, with the leadership of the study group leaders, the cases are examined (including inquiries to particular CPAs as necessary) and analyzed. The conclusions and necessary actions are discussed at a general meeting of the Review Committee.

(i) With respect to the level of auditing practice issue, for example, the Review Committee has recently examined and discussed the following two cases:

At first, based upon audit summaries, the Review Committee examined and analytically compared the audits performed in the three consecutive periods from FY1998 to FY2000 in relation to the Securities and Exchange Law audit with a special focus on issues that are unique to each industry. The Review Committee finished analyzing the data and noticed some cases where sufficient auditing time and fees were not relatively secured in certain industries. The Review Committee, therefore, is considering measures to improve the quality of audits by those CPAs. Second, after discussions with the JICPA regional chapters, the Review Committee discovered that the usage rate for the independent review by other CPAs, which was a substitution measure for sole practitioners or small practices that have no independent review partner, is low. In response to this finding, the Review Committee is considering measures to be taken.

(ii) With respect to the emerging accounting issues, for example, the Review Committee recently pointed out an issue whether necessary accrued cost provisions are properly accounted for in the "sales-point system" in the financial statements of retail industries. The sales-point system was widely introduced as a means of promoting retail sales in which small portion of the sold amount is later paid back to customers in the form of goods or services. In order to conduct a field survey, the Review Committee randomly selected forty major companies in retail industries and implemented inquiries to the relevant CPAs. As a result, the Review Committee decided no special measure is required at the moment. However, it sent to the CPAs who responded to the inquiries results of its analysis and points to be noted in the auditing practice.

(2) Audit Practice Monitoring Board

In order to improve the transparency of JICPA activities, the Audit Practice Monitoring Board was established as a permanent institution at the JICPA 2001 General Assembly. In December 2001, JICPA formally established the Audit Practice Monitoring Board, to:

(a) Examine activities of the JICPA Audit Practice and Review Committee, the Ethics Committee and the Audit and Disciplinary Investigation Committee and,

(b) Publish the annual report regarding JICPA's audit practice monitoring to the public.

JICPA President initially chooses the board candidates. The board members are as follows: as Chairperson, the former JICPA President, and five other members: the director of the Tokyo Stock Exchange, a member of the Editorial Board/Editorialist of a leading newspaper company, an executive vice president of a large manufacturing company, a law professor at the University of Tokyo and a business professor at another university.

6. Corporate Governance and Oversight of CPAs

6-1 Corporate Governance Structure of Japanese Corporations

The corporate governance structure of Japanese companies consists of two organizations: the Board of Directors and the corporate statutory auditors. The board of directors of Japanese corporations usually performs both the management function as well as the oversight of each director and officer. Corporate statutory auditors are unique in the Japanese corporate governance structure. They are independent of the board of directors and oversee and monitor the board of directors and directors.

In a large corporation, which is either capitalized with 500 million yen or more, or has a total amount of liabilities of 20 billion yen or more, it is required to be audited by corporate statutory auditors, as well as by CPAs or an audit corporation (hereafter "external auditors") (Article 2 of the Audit Special Law)." Such large companies are also required to have at least three corporate statutory auditors, and at least one full-time corporate statutory auditor and at least one outside corporate statutory auditor under the Audit Special Law.

Pursuant to the Securities and Exchange Law, all listed companies and other companies that have raised capital from the public exceeding a certain number of subscribers and a certain number of subscriptions are required to have their financial statements audited by external auditors, namely CPAs or an Audit Corporation in addition to the Audit Special Law requirement (Article 193-2 of the Securities and Exchange Law). Accordingly, a large Japanese corporation is required to be audited in accordance with the requirements of the two different laws, the Commercial Code (Audit Special Law) and the Securities and Exchange Law.

In practice, the same external auditor is usually engaged to audit the company following both the Audit Special Law and the Securities and Exchange Law audits requirements. Audit standards and practices are the same for these two audit engagements; however, audit opinions of the external auditors are different in wording. External auditors' opinions prepared for the Audit Special Law requirement is published in an annual operation report together with financial statements to be sent to shareholders as an invitation to the general shareholders' meeting. Another audit opinion for the Securities and Exchange Law requirement is attached to the annual securities report to be filed with MOF's local finance bureaus after the general shareholders' meeting.

6-2 Oversight of external auditors

6-2-1 Appointment and dismissal of external auditors

Under the Audit Special Law, external auditors shall be appointed at the general shareholders' meeting and consent of board of corporate statutory auditors to board of directors' proposal on the appointment of external auditors shall be necessary when board of directors proposes it to the shareholders' meeting (Article 3 of the Audit Special Law). Dismissal of the external auditors can be made at any time if it is approved by shareholders at the general shareholders' meeting (Article 6 of the Audit Special Law).

Corporate statutory auditors can dismiss external auditors due to their malpractice or health condition with subsequent report to the general shareholders' meeting (Article 6-2 of the Audit Special Law).

6-2-2 Oversight of external audits by corporate statutory auditors

Monitoring of external auditors is important in the corporate governance structure, and corporate statutory auditors assume this responsibility in Japan. The Audit Special Law requires external auditors and corporate statutory auditors to have a close relationship in a due course of audits. At year-end, external auditors report results of their annual audit of the company's financial statements (Article 13 of the Audit Special Law). Each corporate statutory auditor is required to examine the external auditors' audit results and to report to the board of corporate statutory auditors and report each auditor's audit result to the board of directors (Article 14 of the Audit Special Law). Corporate statutory auditors are also required to report their audit results at the shareholders' meetings (Article 275 of the Commercial Code). In order to fulfill their duties, corporate statutory auditors usually request assistance of internal audit functions and external auditors. Corporate statutory auditors can also require external auditors to report on any issue at any time (Article 8, (2) of the Audit Special Law).

6-3 Corporate statutory auditors

Corporate statutory auditors are important and indispensable in the corporate governance of a Japanese corporation. The Commercial Code and Audit Special Law protect their positions and carefully designs their duties and responsibilities.

6-3-1 Appointment and dismissal of corporate statutory auditors

Corporate statutory auditors are elected at the general shareholders' meeting where not less than one-third of the total number of outstanding shares is represented. The Commercial Code provides qualifications for corporate statutory auditors. A director or employee of the company or its subsidiary cannot be a corporate statutory auditor (Article 276 of the Commercial Code). Corporate statutory auditors are not required to be qualified public accountants.

A corporate statutory auditor has the authority to express opinions at the shareholders' meeting regarding the election of other corporate statutory auditors (Article 275-3 of the Commercial Code). The term of corporate statutory auditors is three years (Article 273 of the Commercial Code). This is one year longer than directors' term. The term of a corporate statutory auditor has been extended by a year in a recent revision of the Commercial Code so that a company will need to elect a corporate statutory auditor for a four-year term starting with the shareholders' meeting for the first fiscal year-end after May 1, 2002.

Shareholders may resolve to dismiss a corporate statutory auditor (Article 280, (1) of the Commercial Code) before expiration of the term. However, a corporate statutory

auditor has the right to claim to the company compensation for damages due to dismissal without justifiable cause. When a corporate statutory auditor wishes to state his/her opinion at the shareholders' meeting about the proposal for dismissing him/her, his/her opinion shall be summed up in a proxy statement that is distributed to shareholders (Article 275-3 of the Commercial Code).

A corporate statutory auditor may resign at any time. The revised Commercial Code empowers a resigning corporate statutory auditor to state his/her reason for the resignation at a shareholders' meeting (Article 275-3-2 of the Commercial Code). A company must send a notice of a shareholders' meeting to the resigning corporate statutory auditor.

If a company uses a proxy-voting method to obtain shareholders' decisions about the proposed agenda of the shareholders meetings, it has to include the summary of opinions of the resigning corporate statutory auditor in the proxy statement.

Other incumbent corporate statutory auditors are entitled to state their opinion about the resignation of a fellow corporate statutory auditor at the shareholders' meeting. Therefore, even if the resigning corporate statutory auditor has failed to come to the shareholders' meeting, other corporate statutory auditors can speak their views about the resignation of the fellow corporate statutory auditor at the shareholders' meeting.

The corporate statutory auditor's position is well protected. Company management cannot dismiss him/her at will because it has to call a shareholders' meeting and explain to shareholders why it wants to dismiss him/her.

6-3-2 Remuneration

Remuneration for corporate statutory auditors must be set in the articles of incorporation or by a resolution at the shareholders' meeting, separately from the compensation for directors (Article 279, (1) of the Commercial Code).

6-3-3 Power and responsibility

Corporate statutory auditors examine the activities of directors (Article 274 of the Commercial Code). They must attend the board of directors' meetings and express their views and opinions about company management (Article 260-3, (1) of the Commercial Code). When corporate statutory auditors believe any director's activities fall outside the company's business purpose or are in violation of laws or the company's articles of incorporation, they must report it to the other directors or request convening board of directors' meeting (Article 260-3, (2) of the Commercial Code). If there is a possibility that a director's action is in violation of laws or the company's articles of incorporation or if it will cause considerable damage to the company, then corporate statutory auditors have the power to request the director to stop the action (Article 275-2 of the Commercial Code). If a director discovers a fact that is expected to cause serious damage to the company, he/she shall immediately report it to a corporate statutory auditor (Article 274-2

of the Commercial Code).

If corporate statutory auditors fail to fulfill their duties, they are liable to pay compensation for damages. If they have neglected any of their duties, they should be jointly and severally liable in damages to the company (Article 277 of the Commercial Code). When corporate statutory auditors are at fault for not performing their duties properly, company directors are almost always responsible for damages to the company or shareholders. Therefore, when both directors and corporate statutory auditors are liable in damages either to the company or to a third party, they shall be jointly and severally liable (Article 278 of the Commercial Code).

6-3-4 Independence

(1) Each corporate statutory auditor has autonomous power and responsibility

As described above, each corporate statutory auditor is independently required to examine directors' behavior and activities and external auditors' audit results and to report to the other corporate statutory auditors (Article 14 of the Audit Special Law). The board of corporate statutory auditors is not expected to make a resolution on the audit result as a board. Instead, each auditor's audit result must be independently reported to the shareholders' meeting because there may be differing opinions between or among corporate statutory auditors. This is because each corporate statutory auditor is independent, and each has a variety of skills and experience such as outside corporate statutory auditor or inside corporate statutory auditor; full-time corporate statutory auditor or part-time corporate statutory auditor.

(2) Outside Corporate Statutory Auditor

The present Commercial Code stipulates that out of three or more corporate statutory auditors, at least one must be an outside corporate statutory auditor. This outside corporate statutory auditor requirement was added to the Commercial Code in its 1993 revision. However, the number of outside corporate statutory auditors will be increased to at least half the total number of auditors in 2005 pursuant to the recent revision of the Commercial Code. Since the outside corporate statutory auditor system was introduced to provide objective audit over the directors' activities, the Commercial Code stipulated an independence rule. The Audit Special Law Article 18 (1) stipulates the definition of an outsider as someone who has not worked for the company as a director or an employee of the company or its subsidiary as a director or an employee.

The Commercial Code stipulates a restriction on who can be elected as an outside corporate statutory auditor. Before the recent revision of the Commercial Code, a former director or employee of the company or its subsidiary could be elected as an outside corporate statutory auditor as long as he/she had not been a director or employee of the company or its subsidiary for the last five years. In the revised Commercial Code, the five-year rule was changed. The new rule requires that an outside corporate statutory auditor must have never been a director, executive or employee of the company or its subsidiary. It is noted that a director, executive or employee of the parent

company can be an outside (corporate) auditor of its subsidiary.

6-4 Newly Created Audit Committee Framework in Japan

In early 2002, the Audit Special Law was amended to add an audit committee system as an alternative option to the present corporate statutory auditors system. This change is effective as of April 1, 2003, so it will be possible for a Japanese company to establish an audit committee by dissolving the board of corporate statutory auditors. It should be noted that it is not mandatory for a Japanese company to establish an audit committee.

If a Japanese company establishes an audit committee, the Audit Special Law requires the audit committee to include at least three directors, and the majority of them must be outside directors. This means that if the committee consists of three directors, then two of them must be outside directors.

The audit committee system is linked to the executive officer system where the board of directors is designed to strictly supervise the CEO and his/her subordinates. Under the new system, the authority and responsibility of the position is clearly distinguished by a complete separation of officers such as the CEO and the directors who are often outsiders. Under this system, officers are responsible for the management of the company, but they are also accountable to the management-supervisory organization consisting of the directors. In the audit committee system, a company has to set up (1) an audit committee, (2) a nominating committee, and (3) a compensation committee.

7. Disciplinary Actions and Sanctions of CPAs

7-1 JICPA

7-1-1 Audit Practice & Review and Audit & Disciplinary Investigation Committees

The Audit Practice and Review Committee oversees CPAs audit practices and makes inquiries when they find any irregularities. As a result of inquiry, in the event that the Review Committee decides further examination is necessary from an ethical point of view, it refers the case to the Audit and Disciplinary Investigation Committee, where the case is investigated as to whether further procedures are necessary in the Ethics Committee.

The Audit and Disciplinary Investigation Committee consists of eight CPAs who are JICPA vice presidents, executive directors or directors. This committee must carefully study and investigate each case referred from the Audit Practice and Review Committee as to whether the case shows any violations of ethics or CPA requirements. When it is tentatively concluded that members under review may have violated the Code of Ethics, the Committee recommends that the President of JICPA requests the Executive Directors Board to discuss whether the case is to be referred to the Ethics Committee for disciplinary actions or not (Article 89-3 of the JICPA Constitution, Article 5 (2) of Ethics Committee Rule).

When the Executive Directors Board determines that the case should be referred to the Ethics Committee, the President asks the Ethics Committee to investigate the case for possible disciplinary action.

7-1-2 Ethics Committee

The Ethics Committee consists of twenty-seven members who investigate CPAs or Audit Corporations involved in the referred cases. CPAs are subject to inquiry and requirements of reporting and submitting of necessary materials to the Ethics Committee (Article 8 of Ethics Committee Rule). Disciplinary sanctions are as follows: a) a reprimand, b) a suspension of the right of a member for a certain period, and c) a request to FSA to revoke the CPA's or Audit Corporation's qualifications and other sanctions stated in the CPA Law. For junior CPAs, the Ethics Committee may expel them from JICPA's membership.

The following table shows the disciplinary actions taken by JICPA between 1990 and 2002.

Year	Audit failures resulted in suspension, revocation or reprimand	Violation of the Licensed Tax Accountant Law or other resulting in suspension or other	Failure to pay membership dues resulted in suspension of memberships	Failure to pay membership dues resulted in expulsion of junior accountants
1990			2	
1992			3	
1993	2 suspensions 1 reprimand			
1995			8	
1996			8	3
1997(1)	1 suspension		7	
1998			11	
1999	1 revocation request to FSA		10	2
2000(2)	1 suspension ii)		6	
2001(3)		3 suspension	1	
2002(4)	1 suspension of audit corporation	1 suspension 1 reprimand t	13	6 junior CPAs were removed
Total	7	5	69	11

7-2 FSA

The Audit Corporations and CPAs are subject to the requirements of reporting and submitting necessary materials to FSA (Article 49-3 of the CPA Law) and are subject to disciplinary sanctions including suspension of practice or revocation of qualification registration or approval of establishment (Articles 29 through 31, and 34-21 of the CPA Law). Under the CPA Law Article 46-10, when JICPA finds facts regarding its members that fall under a disciplinary provision, it is required to report them to FSA. FSA hears the opinions of the CPA Investigation and Examination Board that reflects public opinion before FSA determines what sanctions are appropriate for CPAs and/or Audit Corporations.

FSA makes public notices of its disciplinary actions (Articles 34, (3) and 34-21, (2) of CPA Law). For example, in October 2002 FSA made a public notice of revocation of two CPAs who conducted a faulty audit on a transportation company. In addition, a FSA disciplinary action was made public: a suspension of the auditing practice of an Audit Corporation for one year was posted in FSA homepage. The penalty to suspend practice of an Audit Corporation virtually means its closure because it is not permitted to provide

auditing services to any of its clients for a year. In fact, audit clients of the aforementioned Audit Corporation changed auditors one after another as soon as the practice suspension was made public.

The following table shows the disciplinary actions taken by FSA between 1990 and 2002.

Year	Revocation of registration of CPAs	Suspension of practice	Reprimand
1993		2 (suspensions)	1(for an audit firm)
1997[1]			
1999	1 (due to audit failure)		
2000[2]		2 (CPAs)[i] 1 (CPA)[ii]	1 (an audit corporation)[i] 2 (CPAs)[ii]
2001[3]	1 (insider trading violation)	2 (due to violation of Tax Accountants Law)	
2002[4]	2 (due to an audit failure)	2 (due to violation of Tax Accountants Law) 1 (an audit corporation)	
Total	4	10	4

In some years discrepancies exist between the disciplinary actions of FSA and JICPA. Here is a year-by-year summary.

(1) In 1997, JICPA suspended the membership of a CPA. However, the MOF (presently FSA) did not reprimand this CPA.

(2) In 2000, i) an Audit Corporation and its two partners were involved in an audit failure. JICPA withheld disciplinary action for these three members because they were involved in civil litigation. However, FSA suspended the qualifications of the two CPAs for months and gave a reprimand to the Audit Corporation, and ii) a CPA in charge and two supporting CPAs were involved in another audit failure. JICPA and FSA suspended the qualifications of the CPA for months. As for the two supporting CPAs, FSA reprimanded them, but JICPA did not.

(3) In 2001, a CPA, who enriched himself from insider information, was sentenced to imprisonment for one year. As a result, FSA revoked this CPA's registration. However, JICPA was unable to do any disciplinary action since he was arrested and not available for JICPA questioning. In addition, both FSA and JICPA suspended the two CPAs' practice licenses because they evaded their own income taxes. Another CPA was alleged to have embezzled money, and JICPA suspended his practicing license. However, FSA did not suspend his practicing license because the lawsuit was not finalized yet.

(4) In 2002, an audit corporation and its two partners were involved in an audit failure. FSA revoked the practicing licenses of the two CPAs and suspended the license of the Audit Corporation. Since FSA revoked the practicing licenses of the CPAs, these CPAs were no longer members of JICPA. Therefore, JICPA was no longer able to remove or suspend the CPAs' licenses.

7-3 Civil Sanctions

Articles 21, 22 and 24-4 of the Securities and Exchange Law provide that a securities issuer's management and external auditors may be liable to compensate for damages resulting from the false statements or omissions in securities registration statements or annual securities reports.

Article 9 of the Audit Special Law requires that if the external auditors have caused damages to the company due to negligence of their duties, such external auditors shall be liable to jointly and severally compensate the company for damages. Article 10 of the Audit Special Law requires that if the external auditors have caused damages to a third party by having made a false statement in the audit report required by the Audit Special Law, such external auditors shall be jointly and severally liable for the damages to the third party. However, if the external auditors prove that they had not failed to exercise due care in performing their functions, then they will not be held responsible for damages. Article 11 of the Audit Special Law also requires that in the case where the external auditors are liable to compensate the company or a third party for damages, the directors or the corporate statutory auditors are also liable, the external auditors, directors and corporate statutory auditors are all jointly and severally liable.

Japanese Audit Corporation partners are required to assume unlimited liabilities even when the partner himself/herself is not personally responsible for the cause of the lawsuits.

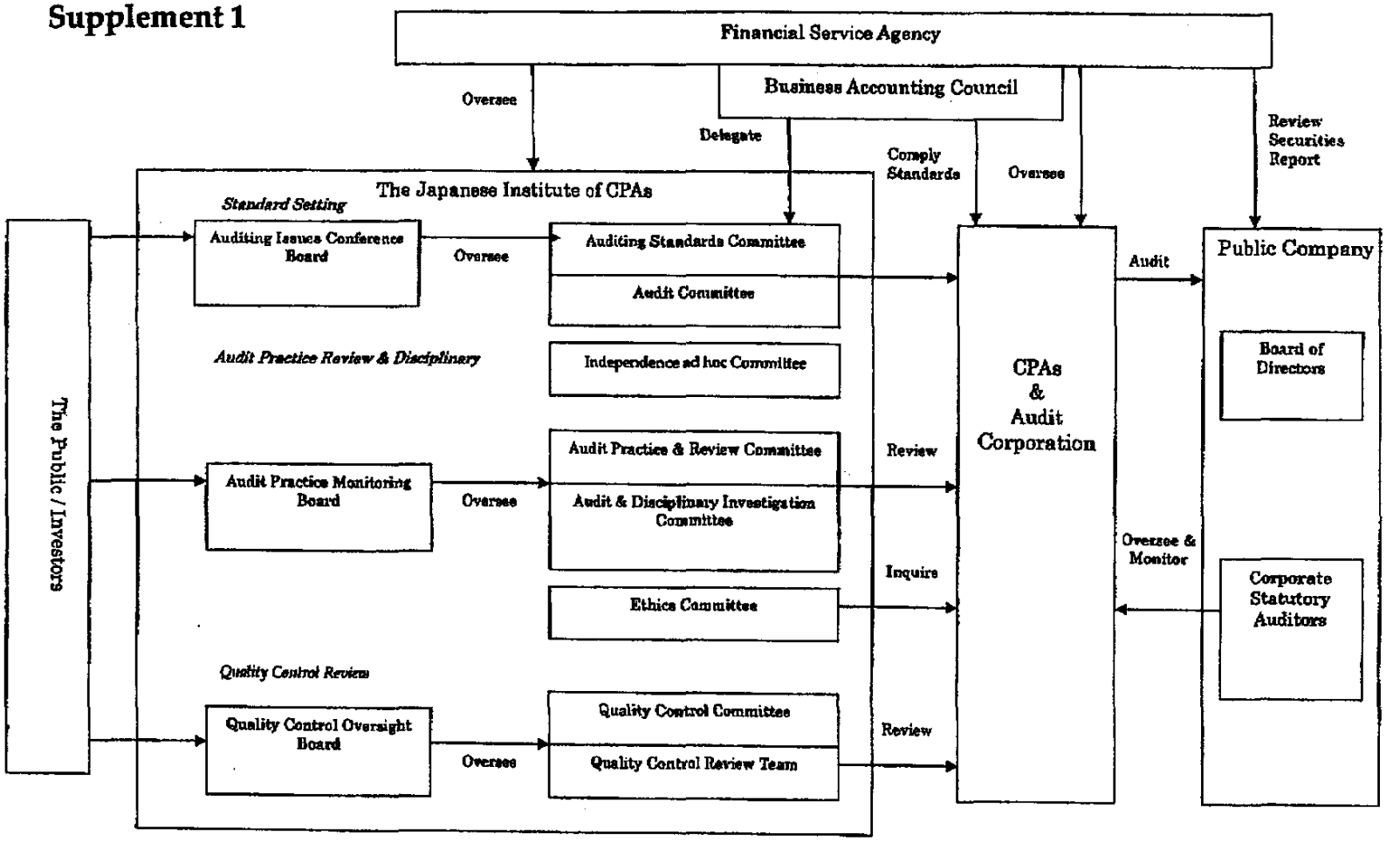
7-4 Criminal Sanctions

The Securities and Exchange Law requires that any person who prepares a false securities registration prospectus or annual securities report filed with MOF local finance bureaus shall be imprisoned for not more than five years and/or fined not more than five million yen (500 million yen, in case of accused juridical person) (Articles 197 and 207 of the Securities and Exchange Law).

The Audit Special Law requires that any external auditor who obtains, by means of false or fraudulent pretenses, or who requires or promises any money in connection with his/her duties, shall be imprisoned for not more than five years or fined not more than five million yen (Article 28 of the Law).

Supplement 1

Oversight of Auditors in Japan (before the CPA Law Amendment)



Supplement 2 Japanese Companies Registered with the SEC

1) The number of Japanese companies listed in the US capital market and registered with the SEC as of December 2002 was thirty-three, the names of which are as follows:

Japanese Companies Registered and Reporting With the U.S. Securities and Exchange Commission (As of December 4, 2002)		
	Company Name	Market
1	Advantest Corp.	NYSE
2	Amway Japan Ltd.	OTC
3	Canon Inc.	NYSE
4	Crayfish Co. Ltd.	NMS
5	Crosswave Communications Inc.	NMS
6	Hitachi Ltd.	NYSE
7	Honda Motor Co. Ltd.	NYSE
8	Internet Initiative Japan Inc.	NMS
9	Ito-Yokado Co. Ltd.	NMS
10	Komatsu Ltd.	OTC
11	Konami Corp.	NYSE
12	Kubota Corp.	NYSE
13	Kyocera Corp.	NYSE
14	Makita Corp.	NMS
15	Matsushita Electric Industrial Co.	NYSE
16	Millea Holdings Inc.	NMS
17	Mitsubishi Tokyo Financial Group, Inc.	NYSE
18	Mitsui & Company Ltd.	NMS
19	Mitsui Sumitomo Insurance Co. Ltd.	OTC
20	NEC Corp.	NMS
21	Nidec Corp.	NYSE
22	Nippon Telegraph and Telephone Corp.	NYSE
23	Nissin Co. Ltd	NYSE
24	Nomura Holdings, Inc.	NYSE
25	NTT Docomo Inc.	NYSE
26	Orix Corp.	NYSE
27	Pioneer Corp.	NYSE
28	Ricoh Company Ltd.	OTC
29	Sony Corp.	NYSE
30	TDK Corp.	NYSE
31	Toyota Motor Corp.	NYSE
32	Trend Micro Inc.	NMS
33	Wacoal Corp.	SM CAP

Legend:

NYSE - New York Stock Exchange

NMS - Nasdaq Stock Market-National Market System

SM CAP - Nasdaq Stock Market-Small Cap Market

OTC - Over-the-Counter Market

Unless otherwise noted under "Market," registered securities are common equity securities.

(Source: http://www.sec.gov/divisions/corpfin/internatl/geographic.htm etc)

2) The number of subsidiaries and affiliates of non-Japanese companies (including U.S. companies) registered with the SEC and operating in Japan and audited by the Japanese largest four Audit Corporations are estimated to be approximately 380 as of November 2002.

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Office of the Secretary
Public Company Accounting Oversight Board
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Washington, D.C. 20006-2803

Our ref njl/am/lj

28 March 2003

Dear Mr Secretary

Rulemaking Docket Matter No. 001

KPMG greatly appreciates the opportunity to comment on both the Public Company Accounting Oversight Board's (Board) proposed rule, *Proposal of Registration System for Public Accounting Firms*, (Proposed Rule) issued 7 March 2003 pursuant to Section 102 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley), and the issues to be discussed at the roundtable on the registration of non-US auditors to be held on 31 March 2003.

The overarching objective, we believe, of the provisions of Sarbanes-Oxley, including Section 102, is one of furthering the public interest through improving financial reporting, governance, and audit quality. KPMG wholeheartedly supports the efforts of the Board in helping to achieve this objective.

KPMG International is a Swiss non-operating association which functions as an umbrella organisation to approximately 100 KPMG member firms in countries around the world, to whom it licenses the KPMG name. Each KPMG member firm is autonomous, with its own separate ownership and governance structure. The KPMG member firms do not share profits amongst themselves, and they are not subject to control by any other member firm or by KPMG International.

The observations set forth in this letter reflect the assessment by KPMG LLP (the US member firm of KPMG International) and other member firms of KPMG International (collectively, KPMG) of the Proposed Rule's potential effect on US as well as non-US firms. Many of the KPMG member firms outside the United States have a direct interest in the new rules because of the number of issuers and affiliates of issuers domiciled outside the United States that they audit. Adoption in final form of all the provisions in the Proposed Rule without consideration of the

matters discussed in this letter, will in our view result in significant cost and other inefficiencies, conflicts with overseas requirements and potential delays in registration and therefore delays in issuers' financial reporting processes.

We set out for your consideration in the attached memorandum our comments on the Proposed Rule, including suggestions that we believe will improve the overall quality and effectiveness of the final rule in a cost-effective manner, consistent with the objectives of Sarbanes-Oxley. Our principal comments are summarised below.

General comments on the Proposed Rules

- The Board's registration process should be complete and fair and comport to the standards of constitutional due process. We have provided suggestions to improve the transparency of the application process, including: clarification of acceptance criteria; institution of procedures governing disapproval of an application, including a hearing and appeals process; establishment of procedures for the withdrawal of an application; provisional registration and acceleration of review of re-submissions in response to requests for additional information; and, designation of "as-of" dates for information provided by the applicant.

- The proposals require applicants to provide fee information relative to their issuer audit clients and the applicant's entire practice. Fees to clients for professional services are not consistently defined in the Proposed Rule, and are not consistent with fee information that is required to be provided to other regulatory bodies, in particular, the Securities and Exchange Commission (Commission or SEC). We believe this will create confusion to the public and require unnecessary duplication of costs and efforts in reporting fee information. Fee information should be based on the fees disclosed in public filings by the issuers. Provision should be made for such data to conform to the Commission's fee disclosure rules utilised by issuers.

- Certain terms as defined in the Proposed Rules are overly broad, resulting in unintended consequences. Our observations and recommendations relate to *accountant, associated entity, person associated with a public accounting firm (and related terms),* and *play a substantial role in the preparation or furnishing of an audit report.*

- The proposals that the applicant agree to "secure and enforce" from each associated person a consent to "cooperate in and comply with any request for testimony or the production of documents made by the [Board]" raise concern. The legal ability of the applicant to force existing employees to waive any rights that they may have in this

regard as a condition of their continued employment is a matter of local law and could represent an unlawful material change in conditions of employment.

- The Proposed Rules in Part V require reporting of legal and administrative proceedings in five categories covering a prior period of one to ten years. The Board should balance the considerable burden on the applicant of assembling this material, in the form requested (which could potentially involve the manual review of many hundreds of case files) with the limited value of such material to the Board. We believe the information required in Part V should be limited to pending matters as provided for in Sarbanes-Oxley.

- Overall the Proposed Rules require applicants to provide a large amount of information all of which will require the Board to establish a complex and costly infrastructure to collect, maintain and analyse. We question both the need for the Board to obtain certain specific information, and whether Sarbanes-Oxley provides a basis to request such information. We believe that the Board should provide an analysis of the costs and benefits of its proposals, and specifically address and provide its rationale for requesting information that is not explicitly contemplated by Sarbanes-Oxley.

Issues unique to foreign firms

- The inspection of foreign public accounting firms should be exercised by a competent regulatory authority, either national (such as exists in Canada or the United Kingdom) or supranational (such as the European Union) where one exists, otherwise there will be dual oversight for audit firms operating in major countries outside of the US. Such dual oversight is undesirable as it will be inefficient, costly, will potentially lead to conflicts with national regulators and finally in some instances will be illegal where it breaches national sovereignty. In relation to disciplinary matters, the Board should work together with national regulators to ascertain how the disciplinary process could operate without creating conflict.

- The registration process is complicated for foreign public accounting firms by the existence of local laws. Certain obligations associated with the proposed registration requirements conflict with domestic legislation in a number of countries (including in Germany, Japan, Switzerland Israel and UK) in particular around the issue of client and third party confidentiality, data protection and employment law. All of these conflicts must be resolved before foreign public accounting firms can register with the Board since foreign firms cannot register if it means breaching local laws.

- To obtain the requested information for the very large number of individual practices that will need to register, most public accounting firms will need to develop new systems and processes, all of which will take time. The registration process will be further complicated by the need to 'translate' certain parts of Form 1 into non-US equivalents (especially for determining local equivalent legislation). Consequently, we believe that an extension of at least one year should be granted to foreign public accounting firms before registration is required.

Finally, we would emphasise that we believe that all of our suggestions can be implemented in a manner which would improve the functioning of the Board whilst remaining faithful to the overall objectives of Sarbanes-Oxley.

If you wish to clarify any comments you find unclear or answer any questions our comments raise, then please call or write to Neil Lerner + (44) 207 311 8620, neil.lerner@kpmg.co.uk. with regard to the matters affecting non-U.S. firms, and Michael A. Conway, (212) 909-5555, mconway@kpmg.com, with regard to matters affecting the U.S. firm.

Yours faithfully,

KPMG

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Page locations for our detailed comments are given in the abbreviated table of contents below.

PART 1 – GENERAL COMMENTS

The constitutional requirements of administrative due process

The Board is domiciled in the United States of America. US constitutional privileges and due process protections, including Fourth, Fifth, and Fourteenth Amendment rights, provide protection against governmental action. To be sure, Sarbanes-Oxley explicitly states that the Board is not a government agency. Section 101(a) of Sarbanes-Oxley states that the Board is a non-profit corporation, and Sec. 101(b) states that "[t]he Board shall not be an agency or establishment of the United States Government." However, these statements are not determinative of whether the Board is subject to constitutional restraints. Courts have held that a statutory pronouncement that an entity is a private corporation and not a government actor will not prevent that entity from being deemed to be a government actor if it is otherwise sufficiently governmental in character. See Lebron v. National R.R. Passenger Corp., 513 U.S. 374, 392-93, 397 (1995)[1]. The factors set forth in Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982), demonstrate that the actions of the Board are "fairly attributable" to the government.[2]

Factors that are determinative here include: (1) the establishment of a Board is required by Congress (see Sec. 101(a)); (2) Board members will be appointed by government officials (see Sec. 101(e)(4)); (3) Board members can be removed by the Commission (see Sec. 101(e)(6)); (4) the Board will enforce the federal securities laws relating to the preparation and issuance of audit reports (see Sec. 101(c)(6)); (5) Board members will enjoy immunity from civil liability "in the same manner and to the same extent as an employee of the Federal Government in similar circumstances" (Sec. 105(b)(6)); and (6) the Board is given the government-like power to levy fees on issuers (see Sec. 109(b)).

Consequently, KPMG believes that it is in the best interests of the Board and the public to ensure that the Board's rules and conduct comport with the standards of constitutional due process, including its procedures governing the registration process. We believe that result will ultimately enhance the effectiveness and integrity of the Board and its processes. Portions of

[1] In Lebron, for example, the Court held that Amtrak was a government actor for First Amendment purposes despite the fact that Amtrak's authorisation statute stated that it was not an agency or establishment of the federal government. The Court stated that the federal government "is not able to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form" (id. at 397), and held that "where the Government creates a corporation by special law, for the furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that corporation, the corporation is part of the Government for purposes of the First Amendment." Id. at 400.

[2] In *Lugar*, the Supreme Court concluded that otherwise private conduct may constitute state action where: (i) the state has exercised its coercive power on a private actor, or provided significant encouragement, either overt or covert, to a private actor; (ii) the private actor has been delegated a public function of the state; (iii) the private actor is controlled by an "agency of the state," or when the private actor is entwined with governmental policies or when government is entwined in the private actor's management or control.

this letter will comment on the specific features of the proposed rules that appear not to comport with the minimum due process requirements.

The Registration Application Process

The Board's registration process should be complete and fair. However, we believe that some elements of such a process may be missing and one element in particular should be modified.

Application process and acceptance criteria

Proposed Rule 2105 provides little indication of the process the Board will follow when taking action on an application, and provides no criteria to be considered when deciding whether to approve or disapprove an application. Indeed, proposed Rule 2105(a) provides essentially complete discretion to the Board in both of these matters. We believe that it is in the interests of the public, the Board, issuers, and the applicants that the Proposed Rule describe the Board's process and identify the criteria to be applied when making a decision on an application. It will help all interested parties better understand the conditions necessary for approval. It will provide the Board with a standard against which to measure its performance relative to this important responsibility. It will provide applicants with an understanding of the Board's expectations, which will facilitate an effective and efficient application process. Moreover, it will help ensure that the process is fair and is conducted uniformly for all applicants.

Absence of a procedure governing disapproval of registration

KPMG has concerns arising from the failure to provide an applicant the opportunity to be heard in the event that the Board disapproves or delays approval of the application for registration under proposed Rule 2105(b)(2)(ii), and the failure to include procedures permitting review of an adverse decision following such a hearing. We believe that the Board should acknowledge that administrative due process requires these procedures at a minimum when the Board seeks to take ultimate action. There can be no doubt of the significance of an adverse application decision, which would represent the death knell for many firms. The lack of protective procedures for application disapproval is placed in even starker contrast by Section 102(c)(2) of Sarbanes-Oxley, which provides that disapproval results in an automatic disciplinary sanction; while the Board observes (at footnote 19 of its proposing release) that the disciplinary sanction is subject to SEC review, no such review is provided for the disapproval decision itself.

Accordingly, KPMG recommends that the Board provide by rule for procedures permitting a hearing on a determination of disapproval of an application, and permitting meaningful review of a final disapproval decision.

Amendment or withdrawal of application

Proposed Rule 2105 does not provide rules and forms governing the amendment or withdrawal of pending registration applications and withdrawal from registration after approval of a registration application. Footnote 20 of the Board's proposing release indicates that the Board may consider such rules and forms. We believe such elements of the registration application process are essential and should be implemented concurrent with the registration process.

Requests for additional information and provisional registration

Under proposed Rule 2105(c), if the Board requests more information from an applicant, the application, as supplemented with the additional information, is treated as if it is a new application. This has the effect of re-starting the 45-day period the Board is allowed to take action on an application. Although the proposed rule may be within the statutory authority permitted by Section 102(c)(1) of Sarbanes-Oxley, we do not believe that this approach is reasonable, particularly as it relates to an application prepared and filed with the Board in good faith, as it may result in the unnecessary delay of an otherwise timely-filed application beyond the date registration is required by law.

In recognition of the vast amount of information that is required to be filed with the application, much of which accounting firms have not previously been required to accumulate and report, the Board should adopt a different approach to the receipt and amendment of applications. Provided that the applicant demonstrates a good faith effort to comply with the proposed Rules, the Board should recognise receipt of the application and allow for subsequent amendment to address additional information requests by the Board without re-starting the 45-day period. The Board also should provide for a provisional registration for a reasonable period after the required registration date during which the applicant may accumulate and submit any remaining information necessary for a complete application. In making a decision on whether to provide such a provisional registration, we recognise that the Board may need to exercise judgment regarding the significance of any missing information. One could analogise to the Commission's procedures pertaining to SEC staff comments provided to an issuer with respect to its regulatory filings. In such situations, the Commission has the authority to halt public trading of the issuer's stock, but generally would not do so simply because the SEC staff had requested some additional information, even though the comment process may extend over several months. To the extent the Board does not provide for a provisional registration, the response time after providing additional information pursuant to the Board's request should be limited to 10 days or less.

Other registration matters

The Board should acknowledge that individual accountants are not required to register even though certain jurisdictions may require individual accountants to sign the auditor's report in their name rather than or in addition to the name of the firm.

A number of items in the application, such as in Part II, relating to issuers and fees, Part V relating to proceedings, Part VI relating to accounting disagreements, and Part VII, relating to the roster of accountants, require substantial data accumulation. The form should make it clear that the applicant may designate an "as of" date for purposes of accumulating this data. The "as of" date should be allowed within 180 days of the registration date. A shorter time frame could result in the need to re-accumulate data should an applicant be required to file an amended application or, worse, the inability to accumulate the data in time to file an initial application.

Definitions of Terms Employed in Rules

Accountant

Proposed Rule 1001(a) defines the term "accountant." We recognise that the Board's definition of accountant applies to a natural person rather than a legal entity. However, as currently defined, the term "accountant" is too broad and could cause unnecessary reporting of certain individuals. As defined in proposed Rule 1001(a), accountants include those who possess either an undergraduate or higher degree in accounting or a license or certification authorizing them to engage in the business of auditing or accounting. For example, a literal interpretation of the definition requires an applicant to include in its registration form (Roster of Associated Accountants) any firm employee who holds an accounting degree, regardless of whether the individual participates in or contributes to the preparation of audit reports for an issuer. For instance, many KPMG member firms employ individuals with undergraduate degrees in accounting who perform only administrative or ministerial functions for the firm and are not associated with providing audit or other professional services to issuers. However, as the term "accountant" is currently defined, these individuals would be included as part of the registration process.

We do not believe the foregoing interpretation is the intention of the Board. As such, we recommend that the Board revise the definition of accountant to include certified public accountants who hold current valid licenses, and natural persons who hold an undergraduate or higher degree in either accounting or another field and who participate in audits of issuer audit clients. Only these persons should be recognised as associated with a registered public accounting firm included in the applicant's Roster of Associated Accountants.

Similar revisions also would be required for Appendices 2 and 3 – Part VII – Roster of Associated Accountants.

Additionally, there may be some confusion in trying to apply one definition of accountant to both U.S. domestic and foreign natural persons because of differences in local country licensing and educational requirements. The Board may wish to consider including a separate definition of accountant as it applies to foreign natural persons.

Associated entity

Proposed Rule 1001(c) defines the term "associated entity," and goes on to indicate in 1001(c)(2) that associated entities include any "associated entity," as used in Rule 2-01(f)(2) of Regulation S-X that would be considered part of that firm for purposes of the Commission's auditor independence rules. In the Section-by-Section Analysis, the Board indicates that the definition of associated entity is meant to give the term the same meaning as in the Commission's auditor independence rules. However, the term "associated entity" is not defined in either Regulation S-X or the Commission's independence rules.

In addition, the Board cites footnotes 490 and 491 contained in the Final Rule: Revision of the Commission's Auditor Independence Rules (Release Number 33-7949) as a guiding factor in determining whether an entity is an associated entity with respect to a public accounting firm. We caution the Board that this rule adopted by the Commission did not provide accounting firms with the certainty of the definition and thus is open to individual interpretation, which may cause inconsistencies in the application of the rule.

Because of the lack of a precise definition of associated entity, we recommend that the Board define associated entity without reference to the Commission's rules or other similar rules. We suggest that the Board consider defining the term "associated entity" as: an entity domiciled inside or outside of the United States and its territories that is a member of or similarly connected with an international firm or association of firms with which the applicant holds itself out as being associated.

Person associated with a public accounting firm (and related terms)

Proposed Rule 1001(m) defines the terms "person associated with a public accounting firm" and "associated person of a public accounting firm." We believe that the proposed definition is too broad and ambiguous. Rather, we recommend that the Board clearly define the terms "professional employee," "independent contractor," and "agent." We do not believe the Board intended to include within this definition third-party specialists (for example, a specialist engaged by the auditor who provides chemical analysis of inventory samples of petroleum products to an audit engagement team). The Board also may wish to consider whether a materiality concept should be applied to compensation paid to independent contractors or agents and thus allow a firm to exclude such individuals, not having a substantial role in the audit, from the registration reporting requirements. Finally, we believe that the Board should exclude the words "or otherwise" from the phrase "participates as agent or otherwise" from its definition, as it either is meaningless or impermissibly vague. We believe that this amendment will provide helpful clarification to the language contained in Section 2(a)(9) of Sarbanes-Oxley, consistent with the Board's amendment in the proposed definition removing the "any other" phrase from this statutory definition.

Play a substantial role in the preparation or furnishing of an audit report

Proposed Rule 1001(n) defines the term "play a substantial role in the preparation or furnishing of an audit report." The Board has proposed several tests to determine if an entity has met the substantial role in preparing or furnishing an audit report. We believe that the Board should reconsider whether the proposed rule will result in meaningful data or results, and whether the rule is applicable in all situations. For instance, in a particular country, personnel costs may be low and relatively more hours are incurred on the engagement (for example, in early career training of professionals), thus causing a situation where the audit firm may be construed to have played a substantial role in the audit although the subsidiary entity is immaterial to the issuer. In addition, in circumstances where the principal auditor and the auditor of a subsidiary company are not with the same international network of firms, the information necessary to make the measurement may not be available to the auditor of the subsidiary.

Situations may exist where the scope of the audit changes (due to the issuer acquiring companies, etc.) whereby the firm auditing the subsidiary may not previously have met the criteria to cause it to be registered. In these circumstances, we have concerns with respect to the Board's processes for registering such a firm or whether the issuer's subsidiary will be forced to change auditors to meet the proposed rule pertaining to "playing a substantial role". We recommend that the Board adopt a simpler and more meaningful test for determining whether an entity or individual played a substantial role. We believe a consistent criterion is to measure the role based on the factor contained in proposed Rule 1001(n)(2), which is whether the assets or revenues of the subsidiary or component constitute more than 20 percent of the consolidated assets or revenues of the issuer. As noted by the Board, this definition would be consistent with the standard used in the independence rules for partner rotation.

Additionally, the determination should be performed at a fixed point in time. We believe application of the rule to the issuer's prior fiscal year revenues and total assets as of the end of the prior fiscal year would provide a reasonable measure of substantial role.

In the event the Board concludes that the proposed multiple tests are preferable, we believe the Board should consider a protocol for determining when and how the test will be applied. For instance, some significance items, such as the hours and fees, may not initially be considered to have been met, but the criteria may be met upon issuance of the audit report. The Board should consider safe-harbour provisions in these types of events to avoid encountering the possibility for last-minute re-audits by another firm. In addition, including hours and fees as criteria could cause some firms to register and de-register if these factors change annually.

Fees for Professional Services

The proposed Form 1 requires applicants to provide fee information relative to their issuer audit clients for the year the audit report is prepared or issued and the applicant's entire practice. Fees to clients for professional services are not consistently defined in the Proposed Rule, and are not consistent with fee information that is required to be provided to other regulatory bodies, in particular, the Commission. We believe this will create confusion to the public and require

unnecessary duplication and cost of efforts in reporting fee information. Accordingly, we recommend that the Board define the fee information required consistently among the various proposed Rules (or explain why the basis for the fee calculation is different), and conform the fee disclosure to the fee disclosure requirements of the Commission. Additionally, we question what interest of the Board or investors would be served by requiring applicants to provide fee information relative to their non-issuer clients. We will discuss each of these matters in more detail.

Definition of fee information is inconsistent

Items 2.1 and 2.2 of proposed Form 1 require that fees be accumulated based on fees billed to the issuer. Item 3.1 of proposed Form 1 requires that aggregate fees of the applicant for its fiscal year be aggregated based on fees received. It is unclear why the fee information is being requested on an inconsistent basis. Accordingly, we recommend that the Board define the required fee information uniformly among the various proposed Rules, consistent with the Commission's fee disclosure rules, or explain why the basis for the fee calculation and disclosure is different. Such reporting would provide the investing public with more uniform data with respect to fees. Further elaboration pertaining to uniformity with the Commission's fee disclosure rules is delineated in the next section.

Conform requirements to Commission's fee disclosure rules

Items 2.1, 2.2, and 3.1 require that fees be reported in accordance with four categories, as follows: (a) audit services, (b) other accounting services, (c) tax services, and (d) services provided to the issuer other than those in (a), (b) or (c). These categories, as defined by the proposed rule, are not consistent with the fee disclosures required either by the Commission's existing proxy rules or the new fee disclosure rules in the Commission's *Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence*, released January 28, 2003 (Commission's Final Rule). We cannot envision a justification for requiring an aggregation of fees different from those required by the Commission.

If the Board requires use of a different aggregation method, the data likely will not be reconcilable to or consistent with the data reported publicly by each issuer. Indeed, no issuer has nor will be required to report primary fee data consistent with the Proposed Rule. We believe it is inappropriate to report this information on an inconsistent basis, because users of the information will not understand that it is not comparable, or that it cannot be reconciled. In addition, the inconsistencies in the definition of required fee data likely will result in additional data accumulation outside the normal operating systems of the applicant, and quite possibly outside of the normal internal control processes of the applicant. This will increase the risk of inadvertent errors and create significant costs and inefficiencies by requiring the aggregation of the same data in two different ways. Many applicants will not have common systems with member firms around the world and will use a substantially manual process for this data accumulation.

Accordingly, we recommend that the categories of fees used in the final rule be modified to conform to the Commission's fee disclosure rules used by the issuers in filing their applicable fee information with the Commission.

Obtain information directly from the Commission

The uniform reporting of fee data would be further enhanced if the Board were to obtain the data directly from the proxy or information statements already filed with the Commission. Applicants would then be required to provide fee information only for its issuer audit clients that are not required to comply with the Commission's proxy rules. Such a process would provide data that is more current, eliminate a significant duplication of efforts, and reduce the possibility of errors in reporting. Thus, we recommend that the Board work with the Commission's staff to develop a mechanism to obtain this information directly from the Commission. In the interim, audit firms could gather the fee data, albeit in an efficient manner, and supply it to the Board.

Board lacks a basis to require certain applicant information

We are particularly concerned with Part III of proposed Form 1. It requires the applicant to provide fee information with regard to all services provided to all of the applicant's issuer, non-issuer, audit and non-audit clients. Firstly, many applicants do not account for fee information related to their non-issuer and non-audit clients in a manner to be able to aggregate the fees in accordance with the proposed Form 1. If the Board proceeds with this requirement, we recommend that firms be able to provide such fee information in a manner consistent with the way the applicant manages its business. This would be similar to the way in which issuers report segment information pursuant to *Statement of Financial Accounting Standards No. 131, Disclosures about Segments of an Enterprise and Related Information*. We believe that a prudent action for the Board would be to allow similar reporting by an applicant.

Secondly, we question the need for the Board to require applicants, most of which are non-public entities, to provide information relative to their non-issuer clients, and relative to the results of the operations of their businesses. We recognise that Sarbanes-Oxley Section 102(b)(2)(C) provides that, in addition to disclosing fees received from issuers, the applicant shall submit "such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request, and Section 102(b)(2)(H) permits "such other information . . . as necessary or appropriate." However, the Board has not provided an analysis of the public interest objectives that would be served by this disclosure. We also recognise that some of this information is reported in a summarised manner in the media in the US; however, it is not reported in the same level of detail as is proposed by the Board and it generally is not reported by firms around the world (particularly for firms who do not have large public company audit practices). Therefore, at a minimum, we recommend that the Board reconsider its need of this information, and in the alternative afford automatic confidential treatment of this information if required by the final rule.

Other fee reporting matters

We believe that the Board intended that the fee information required by Items 2.1.and 2.2 of proposed Form 1 discussed above be presented including fees of associated entities on a basis consistent with the fee disclosure requirements of the Commissions. Such fee data would represent gross fees not only of the applicant, but also of other member firms of the same global network. The Board should clarify this requirement in the final rule. We reiterate our position that the Board should conform its reporting requirement with the Commission's fee disclosure rules.

The application of Items 2.1.and 2.2 of proposed Form 1 to investment company issuers requires clarification. It is not uncommon for a single trust, comprised of multiple series of portfolios with varying fiscal year ends, each of which is audited, to be registered as an issuer. A firm may audit some or all of the series of portfolios in the trust. We believe Items 2.1 and 2.2 of proposed Form 1 should require trusts to be listed as a single issuer with (1) disclosure of aggregate fee data for the series and (2) the date of the audit report listed as "various" where series of portfolios have multiple fiscal year ends. Listing each series of portfolio in a trust on the application provides no meaningful additional information and results in significant duplication of data, as generally the fee data for the investment advisor and its affiliates that provide ongoing services to the issuer will be the same for each series of portfolios.

Finally, we request clarification of certain registration issues for those issuers who are required by local law or custom to have joint audits. For example, the final rule should indicate whether one or all of the firms involved in a joint audit must register, and indicate the portion of the audit fee that must be reported by each firm (for example, if all firms in a joint audit are required to register, each firm should report the amount of fees it billed, not the fee for the entire audit).

Consents of Employees

Proposed rule 8.1(b) requires that the applicant agree to "secure and enforce" from each associated person a consent to "cooperate in and comply with any request for testimony or the production of documents made by the [Board]." The proposed rule presents three significant issues concerning the interests of individual employees and partners of the applicant.

As the Board does not have the legal authority to compel the production of information or testimony, we appreciate the need for cooperation by applicants to permit the Board to perform its oversight functions effectively. At the same time, individuals have a substantial personal interest to not waive for the future their right to refuse voluntarily to provide information or especially testimony that could be used against them in collateral proceedings, pursuant to Section 105(c) of Sarbanes-Oxley. The legal ability of the applicant to force existing employees to waive these rights as a condition of continued

employment is a matter of the law in various jurisdictions around the world, and as discussed later in this letter in several jurisdictions could represent an unlawful material change in conditions of employment.

A second concern is whether the Board can impose this condition on professionals as, effectively, a condition of the continuation of their careers as auditors of public companies. Legal standards require that actions with significant impact on individuals' liberty interests cannot be imposed by governmental bodies without procedures permitting a meaningful opportunity for comment and review. In addition, procedural concerns are implicated by the potential collateral effects discussed later in this letter, such as legal or professional liability, that are certain to follow the waiver of rights imposed by the proposed rule.

Finally, the applicant's ability to compel consents from an "independent contractor or entity" as currently included in the definition of "associated persons" is even more limited, and to the extent that the term incorporates individuals or entities with only a tangential relationship to the audit would appear to be of marginal utility to the Board's investigative responsibilities.

For these reasons, we suggest that proposed Rule 8(1)(b) be rewritten to require that the applicant "use its best efforts to secure and enforce" the consents of cooperation from its associated persons.

We also suggest that proposed Rule 2104 be changed to permit applicants the option to gather the consents of their partners and employees through an electronically generated response, similar to the method of certain firms for confirming individuals' compliance with independence rules, as opposed to requiring the gathering of manual signatures of many thousands of partners and employees.

Objections to Reporting of Prior Criminal, Civil and Administrative Proceedings

Part V Exceeds the Statutory Authority of the Board

The proposed rules in Part V require reporting of legal and administrative proceedings in five categories covering a prior period of one to ten years. It is conceded by the Board in the Section-by-Section Analysis discussion of Part V that to the extent that these items cover proceedings that are no longer pending, or that do not relate to audit reports, they are broader than permitted by Sarbanes-Oxley. While Section 102(b)(2)(H) of Sarbanes-Oxley permits the Board to gather "other information" in addition to that specifically identified in Section 102, we do not believe that it is legally sound construction of Sarbanes-Oxley to rely on the provision as permitting the Board to ignore the express restriction included in Section 102(B)(2)(F): "Information relating to . . . proceedings pending against the firm . . .." We submit that any attempt of the Board to gather information or regulate behaviour beyond that expressly permitted by Sarbanes-Oxley, to which the Board owes its existence and which both provides and limits its powers, is

ultra vires. Consequently, the proposed rules in Part V must be redrawn to conform to the limited powers of the Board.

The Information Requested is Overbroad and Will be Unduly Burdensome on the Applicants

In addition to and apart from the legal defects of Part V, we request the Board reconsider the breadth of these rules on several grounds.

Firstly, we do not believe that the Board has balanced the considerable burden on the applicant of assembling this material, in the form requested, with the limited value of such material to the Board. KPMG member firms have not organised their information systems in a manner that permits retrieval of much of the material requested, and for certain categories and for earlier years the only way to identify responsive information is a manual review of many hundreds of case files.

To take one example, Item 5.4 of proposed Form 1 calls for records of all administrative and disciplinary actions against the applicant or associated persons "in which a violation was rendered, or a sanction entered" in the previous ten years. While we believe such matters were relatively few, our record keeping systems do not allow us to identify them without reviewing the records of many hundreds of investigations and inquiries over this time period, retrieving tremendous amounts of material from storage, and performing detailed legal reviews to determine which of those matters meet the Board's criteria. That burden is exacerbated by the ten year time frame, by the fact that information is sought even with respect to personnel no longer with the firm, and for matters related to reports for non-issuer clients.

Item 5.5 also presents practical problems insofar as it requires the reporting of felony or misdemeanour convictions of individuals unrelated to their activities as employees. A firm, in most cases, would not have had direct involvement in the matters, which might in fact have taken place before the individual's association with a firm. Institutional memory may be a source for some such information, but will not be complete or reliable.

Similar difficulties are presented to a lesser degree concerning the other categories of prior proceedings. We accordingly request the Board to consider the relative need for the information about older proceedings in light of the probable thousands of hours of personnel time required for applicants to review materials in order to generate required responses, and suggest that three years coverage of prior proceedings under Items 5.2, 5.4 and 5.5 would appropriately balance the burden associated with this element of the applications.

A different problem presented by Item 5.4 is the requirement that concluded proceedings that remain confidential by their terms or by law nevertheless require disclosure to the Board. Any individuals involved in these proceedings are entitled to continued confidentiality, and the applicant is not in a position to waive that right on their behalf, especially with respect to

individuals who are not currently employees or partners of the applicant. There may be similar circumstances pertaining to proceedings which must be identified under other Items of Part V. We believe that Part V must be amended to permit applicants to omit information from their responses "where disclosure would violate confidentiality rights of individuals protected by law." Another difficulty posed by the rule is the virtual impossibility of compliance to the extent that "persons associated with the applicant at the time that the events in question occurred" includes any "independent contractor or entity". KPMG suggests that the applicant only should be charged with the responsibility to use its "best efforts" to assemble information regarding proceedings involving those who are not partners or employees of the applicant.

Information concerning administrative and legal matters is confidential and should be protected from disclosure

Finally, we believe that the procedures for the protection of confidential information under Rule 2300 offer an ineffective and cumbersome means of protection of the sensitive public and non-public information submitted under Part V. This information could be damaging to the interests and reputations of individuals and be subject to misuse by the competitors and adversaries of the registrant. Conversely, we cannot contemplate how permitting unrestricted access to this data would advance the Board's mission or serve the legitimate interests of the public. We comment on the problems presented by the mechanics of Rule 2300 below; with respect to the Part V information, however, KPMG suggests that the nature of this information supports amending the Board's proposed rules to provide confidential treatment of all information in this portion of the application.

Listing of Filings Disclosing Accounting Disagreements with Public Company Audit Clients

In our foregoing comments, we raised questions as to the reasons why the Board was requesting from the applicant information that is already filed with and publicly available from the Commission. Item 6.1 of proposed Form 1 requires disclosures with respect to the existence of disagreements with issuers. We believe that the Board should consider whether reporting of such situations by a US public accounting firm is timely or simply a duplication of publicly available information. Under current practice, the issuer must file a Form 8-K that discloses the nature of the disagreement, along with correspondence from the public accounting firm that denotes the firm's agreement or disagreement with the information contained within the Form 8-K.

We believe that a more cost efficient and timely method for the Board to obtain information pertaining to such accounting disagreements with respect to US firms is to have the Board incorporate into its electronic data system, a direct link to the SEC EDGAR database in which it can access the pertinent Forms 8-K on a real-time basis.

We also note that in Item 6.1(b) of proposed Form 1 the Board is requesting additional information with respect to matters pursuant to Item 304(a)(3) of Regulation S-K, 17 C.F.R.

229.304(a)(3). We believe that the request for the disclosure information, as currently defined in Item 6.1(b), is too broad and inconsistent with the information request in Item 6.1(a) and with the correlating provisions of Sarbanes-Oxley. As we recommended in the foregoing paragraph, we believe the Board should consider sources that are already readily available in the public domain for such disclosures or information.

Protection of Confidential Information

Proposed Rule 2300 provides a procedure for guarding certain confidential information provided in the registration application. The procedure is burdensome to the applicant and, apart from the Board's comment in footnote 11 of its proposing release (PCAOB Release No. 2003-1) that the Board is not an agency of the government and thus not bound by laws restricting disclosure of information, there is no rationale advanced why the Board nonetheless should not follow the familiar and effective Freedom of Information Act (FOIA) procedures instead. The procedures under proposed Rule 2300, especially those requiring an individualized and detailed justification of the need for confidential treatment in connection with each request (proposed Rule 2300(d)(2)), are unwieldy and compliance by applicants will be unnecessarily time-consuming. The resolution of these confidentiality issues will saddle the Board with a significant burden as well. A FOIA-type approach is preferable, permitting the applicant in good faith to designate information as confidential under the terms provided by proposed Rule 2300, and honouring the presumption of confidentiality unless challenged, at which point the applicant will be required to support its claim.

In this respect, there should also be a general presumption for all foreign public accounting firms that if the registration information provided is not publicly available in the foreign country then there should be an automatic presumption that it will also not be made public in the US.

In addition, the Board has set no criteria or standard of proof for its resolution of confidentiality requests, and has provided no opportunity to be heard and no form of review of its decisions, contrary to the standards of administrative due process.

PART II – ISSUES UNIQUE TO FOREIGN FIRM REGISTRATION

KPMG is pleased to note that the Board has recognised that there are issues associated with non-US firms' registration and encourages the Board to continue to work with overseas governments, regulators and professional bodies to resolve these issues.

We wish to stress, however, that registration outside of the US is complicated by both the existence of local laws and regulatory bodies. We believe that as a general principle, the registration process itself must not cause any foreign firm to breach local laws. Where such conflicts exist the Board must work with national governments and regulators to resolve the issue. In addition, we believe that the registration process itself should be harmonised, in so far as is possible, with registration information already required by equivalent overseas regulators (to minimise inefficiencies and unnecessary costs).

In its proposing release, the Board indicated its intent to convene a public roundtable discussion concerning the registration and oversight of foreign public accounting firms, and invites commentators to address a number of questions. Our thoughts on these questions are set out below.

Question 1 - 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?

This is the first time this much information (both in terms of volume and detail) has ever been requested from foreign public accounting firms by any national regulator. Many firms will not be sufficiently prepared to produce this detail of information within the short time frame proposed in the rules.

Obtaining reliable and complete information for a very large number of individual practices (we currently believe that KPMG would be required to register in at least 40 countries) would involve the development of new systems and processes in many jurisdictions (all of which must be rigorously tested).

A further issue for non-US firms is that the proposed Form 1 is written explicitly with US accounting firms in mind. Non-US firms are inevitably going to encounter difficulties in translating some of the requirements into local equivalents. Legal advice will have to be obtained to determine what the local legal equivalent codes and statutes are for the required disclosures of various civil, criminal and other proceedings, in particular in identifying specific local law equivalents for the direct sections of the United States Code quoted in Item 5.5 a (3) of proposed Form 1.

In addition, in many countries outside the US, the overall fee information requested under item 3.1 of proposed Form 1 (analysed by audit, other accounting, tax and other services) is unlikely to be readily or consistently available from domestic accounting firm's information systems. Indeed in many countries there is no requirement for accounting firms to analyse audit and non-audit fees in such a way, except for the information required for US proxy statement purposes, which, in many countries, is accumulated for relatively few companies largely through manual processes. Accordingly it will be extraordinarily difficult for many accounting firms to analyse total fee income in the required format. It is very unlikely that this information could be reliably produced within 180 days. Not only will this be an enormous effort for the initial registration; as we also expect the Board to require that this information be periodically updated, we believe it will be a substantial effort each time a firm is required to provide an update.

Based on all of these issues we suggest an extension of at least one year should be granted to foreign firms before the initial registration is required. This extension would give more time to non-US firms to establish appropriate systems and processes to enable reliable information to be submitted during the registration process. However, the practical difficulties cannot be overestimated and time alone will not necessarily enable the legal obstacles discussed in question 4 below to be overcome. This period should also therefore be used to continue discussions between the Board and overseas governments and regulators to agree how conflicts with local laws could either be resolved or be addressed during the registration process.

Question 2 - Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?

There are certain portions of the proposed Form 1 which we believe should be modified for non-US applicants.

Firstly, we suggest that Item 3.1 (Applicant's Revenue) of the proposed Form 1 should be modified to take account of the difficulties described above in analysing total firm revenue in the manner required. We suggest that (if a total revenue analysis is required at all) foreign firms should be permitted to analyse their total revenue in a manner consistent to that in which they manage their business.

In addition, the fee disclosures required under Part II of the Form 1 are not required disclosures in many non-US countries. This information will not be readily available from many firm's accounting systems. We suggest therefore that for foreign public

accounting firms that this information only be required for those issuers for which the applicant has prepared an audit report during the current calendar year.

We also believe that Item V (Listing of Certain Proceedings Involving the Applicants Audit Practice) is unduly onerous for all accounting firms (our general comments on this proposal are given on page 15). In addition though, we believe that the information requested on any criminal, civil, government or administrative and disciplinary action or other proceedings brought against individuals has little relevance to the Board if the individual concerned does not participate in or contribute to the preparation of an audit report of an issuer. The provision of such sensitive information (which may not previously have been on the public record especially where the case is pending) could be seriously prejudicial to both the accounting firm and the individual concerned. We suggest therefore that, for non-US applicants, the information required for individuals be limited to those involved in the preparation of an issuer's audit opinion during the periods required for disclosure. We would also like to draw to your attention the legal impediments which exist in certain jurisdictions to providing much of the information required under Item V.

We believe that the consent required under Item 8.1 must be modified for those foreign jurisdictions where an employer is prohibited under local employment laws (e.g., Germany and Canada) from making it a condition of an employee's employment that the employees consent to co-operate with the Board. In addition, we believe that legally this consent could not be given for those countries where legal impediments to registration exist (e.g., in Switzerland where it is the individual rather than the public accounting firm who is held personally liable for any Swiss law violations) until those impediments have been appropriately resolved.

The issue of legal impediments to registration is discussed further in Question 4 below.

Question 3 - In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?

The Board needs to have a detailed understanding of the oversight and monitoring processes already in operation by national regulators. However, it would be more efficient for the Board to request this information directly from the local regulatory agencies themselves, rather than from individual applicants. Thus, the Board should implement a process to identify the primary regulatory body that oversees the accounting profession in each significant jurisdiction, and communicate directly with such regulators about these matters.

Question 4 - 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?

The obligations that are associated with registration (e.g., consenting to give testimony or making documents available to the Board together with the general presumption that all registration information would be made public) conflicts with the domestic legislation of a number of countries.

In helping determine the legal impediments to registration the major accounting firms (Ernst & Young, KPMG, PricewaterhouseCoopers and Deloitte Touche Tohmatsu) have commissioned Linklaters and Alliance ("Linklaters") to undertake legal research on key countries. Much of the legal interpretation included in our letter is based upon the Linklaters report. We refer the Board to this report for full details of actual and potential conflicts with law in the countries investigated.

Based on the Linklater's work, there are common legal issues associated with the registration process for many countries; specifically conflicts around the issues of client and third party confidentially, data protection and employment law. We believe that there are specific issues that the Board will need to resolve in this respect for many countries; across the European Union (EU) generally (for data protection issues), France, Switzerland, Germany, Japan, Israel and the UK to name but a few. Also in Canada there are client confidentiality and privacy law issues which must be resolved. Accordingly, whilst domestic applicants in these countries may want to register with the Board, their domestic legislation might make this a criminal offence.

EU wide issues

The major legal issue for EU member states is that much of the information required by the Board would amount to "personal data" under European Commission (EC) directive 95\46\EC dealing with data protection. Such data includes the details of all accountants associated with each firm and information relating to criminal, civil or administrative actions or disciplinary proceedings pending against each firm. Consent by the proposed "data subject" is one relevant condition for processing the data without breaching the requirements of the directive. However, whilst issuers might accept that they need to provide consent in order to enable their auditor to register, the issue is less clear for employees and associated persons.

In addition, the directive prohibits transfers of personal data to countries outside the European Economic Area which do not provide adequate data protection or which are not prepared to enter into appropriate contractual arrangements to provide that

protection. This principle would be relevant to the disclosure of any personal data required by the Board.

France

In France, legal issues would arise if client or other information (i.e. testimony) were required by the Board as part of the registration process. Articles L225-240 of the French Commercial Code decrees that audit firms are prohibited from communicating any knowledge gained by the auditor in the course of his engagement to a third party. There are criminal and disciplinary sanctions as well as possible civil liabilities for violation of this principal. Client consent would allow the auditor to gain protection from civil liability but not the criminal liability associated with the transmission of this information.

Current French legal provisions provide for a release from professional secrecy obligations to the benefit of the French Market regulator (i.e., Commission des Operations de Bourse (COB)). However, no specific French legal provision provides for a waiver to the benefit of a foreign controlling body such as the Board. Therefore, any communication to the Board would be considered as a breach of professional secrecy.

Switzerland

Swiss accounting firms are subject to several secrecy provisions under Swiss law, the violation of which is a criminal offence. Some of these provisions are contained in the Swiss Penal Code and others in specific acts regulating certain types of Swiss company. As a general rule it is the individual who is punishable for violations of these laws rather than the firm itself. Article 321 of the Swiss Penal Code requires that auditors maintain the confidentiality of their client's affairs. A breach of this article is a criminal offence. It is irrelevant whether the information is revealed orally, in writing or by furnishing copies of working papers; all of these methods are considered to breach the confidentiality duty imposed by Article 321. In addition to the Swiss Penal Code, client confidentiality is also protected under Article 47 of the Banking Act (for Swiss banks) and Article 43 of the Federal Act on Stock Exchanges and Securities Trading Act (for issuers on the Swiss stock exchange).

However, these provisions not only protect the confidentiality interest of the audited company but also the confidentiality interests of any relevant third parties affected. Obtaining consent of clients to release papers would not prevent a breach of the Code as this would not protect the third parties affected (e.g., in the case of a Swiss bank consent would also have to be obtained by all of the bank's clients).

In addition to the above, legal impediments exist regarding the provision of details of legal proceedings against Swiss applicants which is not publicly available information. Specifically, Article 273 of the Swiss Penal Code prohibits the forwarding of information that is not publicly known to foreign governmental bodies. Client consent could not exempt an accounting firm from any liabilities arising from breaching this article.

Germany

In Germany audit firms are required to maintain client confidentially under both professional regulations and under Section 323 of the German Commercial Code and Section 43 of the Accountants Ordinance. Any breach of these provisions is a criminal offence. The accountants duty to keep information confidential is mirrored by a personal right to refuse to testify (under Section 383 of the Civil Procedures Act and Section 53 Criminal Procedures Act). Furthermore, in accordance with the accountants right to refuse to testify under Section 97 of the Criminal Procedures Act, the working papers of an accountant cannot be seized for use as evidence in criminal proceedings where the accountant has refused to testify.

In order to address issues of client confidentiality and secrecy, as required by the German Commercial Code, specific consent would be required. Whilst issuers might have little choice but to provide consent if they are not themselves to breach the Board's rules, it is by no means certain that individual employees of the firm could be forced to give consent, particularly if they are not themselves involved in the audit of issuers. In addition, it is pertinent to note that the constitutional right of individuals not to give self-incriminating testimony could not be waived by German registered public accounting firms as the right does not belong to a firm but rather to the individual.

Similarly, under the German data protection law, any disclosures made under items 5.1 to 5.5 of proposed Form 1 need to be subject to the consent of all parties involved. It is unlikely that non-issuers would ever give consent to release this information.

Finally, it is doubtful as to whether amending an employee's contract of employment to force them to co-operate with the Board (or otherwise face dismissal) would be upheld in German Courts as it appears to contravene the German Protection from Dismissal Act.

Japan

In Japan registration with the Board is likely to give rise to client confidentiality issues under Article 27 of the Law concerning Certified Public Accountants (Law No 103 of 1948). This law prohibits an accountant from providing client confidential secrets to a

third party without due reason. Similar client confidentially issues arise for auditors under their Obligations under the Civil Code (Law No.89 of 1896). Client consent would not totally resolve these issues as the consent could not cover any third party confidential information obtained during the course of the audit.

In addition, much of the personal data required under the Proposed Rules for registration would likely contravene a new proposed Japanese Data Protection Law.

Finally, both the employee consent (required as part of registration) and the proposed disciplinary powers of the Board potentially conflict with Japanese Employment law.

Israel

In Israel potential issues with registration arise in respect of conflicts with the Israeli Privacy Protection Law (1981) which prohibits the violation of the privacy of another person without that person's consent and potentially with Israeli labour law (where even if consent is given a court may rule that the consent is not validly given).

United Kingdom (UK)

In the UK there are potential legal conflicts arising in respect of data protection (described above), client confidentiality and employee confidentiality.

The duty of an auditor to maintain client confidentiality is embodied in English Common Law. Although express client consent for releasing this information to the Board could be given this could never release the auditor from confidentiality obligations to any relevant third party (to whom a common law duty of confidentiality is also owed).

In addition, the requirement for a public accounting firm to agree to secure consent from all employees regarding their compliance with requests for testimony and the production of documents could give rise to potential employment liabilities (in particular liability for unfair dismissal). Even if consent is obtained (i.e., being made a condition of employment) employees may have the right to refuse to testify or disclose documents on the grounds of the privilege against self-incrimination. Finally, UK public accounting firms could find themselves subject to unfair dismissal claims if required by the Board to dismiss or suspend employees when such sanctions are unreasonable in the circumstances.

It is important to note that in those countries where there are legal impediments over access to working papers, this will not only hinder the ability of those foreign accounting firms concerned to register with the Board, but it will also hinder the ability of those US accounting firms that rely upon the opinion of those foreign firms to comply with Section 106 (b) (2) of the Sarbanes-Oxley Act (i.e. consenting to provide the working papers of that foreign public accounting firm to the Board).

These conflicts are by no means an exhaustive list but are indicative of the types of issues that the Board will have to address before many foreign public accounting firms can register. There are a number of possible solutions available to the Board depending on the circumstances in each jurisdiction. The Board could either try to negotiate with overseas governments for a waiver of the respective laws or it could enter into a specific agreement (through the extension of existing memoranda of understanding with overseas regulators) to delegate any issues that breach local laws to the local regulator. Failing this, the Board must exempt foreign public accounting firms from that aspect of the registration (or oversight) which causes the breach in local law.

Question 5 - In the case of non-U.S. firms that are required to register because they play a substantial role in the preparation and furnishing of an audit report on a U.S. issuer, is the Board's definition of "substantial role" appropriate?

Our comments on the definition of 'substantial role' are given on page 11.

Question 6 - 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?

No, we do not believe that the registration requirements of foreign public accounting firms that are 'associated entities' of US registered public accounting firms should be any different from those that are not associated with US registered firms.

Question 7 - 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?

Firstly, it is acknowledged that the Board has certain oversight obligations under Sarbanes-Oxley which it needs to fulfil.

However, KPMG believes that the inspection of foreign public accounting firms should be exercised by a competent regulatory authority either national or supranational (such as the EU) otherwise there will be dual oversight for audit firms operating in major countries outside of the US.

Dual oversight is undesirable as it may be unlawful where it breaches national sovereignties, will be inefficient, costly and will potentially lead to conflicts with national regulators. For example, certain countries' regulatory and legal systems forbid foreign inspectors from conducting inspections of local audit firms on their national territory (e.g. Germany, Switzerland, UK, Israel and Japan). In the case of Switzerland and Germany, the consent of the relevant registered public accounting firm would not suffice to overcome the legal impediments, for these countries the Board needs the permission of the local governments concerned. However, for the UK, Israel and Japan inspections could be undertaken as long as the public accounting firm gave their consent. However, where consent was refused the local courts would be unlikely to find in favour of the Board (as parallel regulatory powers for these countries to exercise oversight on US public accounting firms do not exist).

In order to bridge the obligations that the Board has under Sarbanes-Oxley and the issues and conflicts described above, we suggest that the Board continue its dialogue with regional and national regulators. This dialogue should establish firstly where equivalent oversight regimes exist and secondly ascertain how the Board can obtain the reliance that it needs from other national regulators, who in turn may take account of the applicable firm quality control procedures.

Question 8 - 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?

KPMG does not believe that the Board should be responsible for undertaking investigations and disciplinary actions where a competent local regulator already fulfils this role. We believe that the existence of two regulators undertaking investigations and disciplinary actions is a cause for major concern.

Firstly there may be conflicts between the two regulators, specifically where diverging decisions are reached by the differing bodies on the same issue. This will be complicated by registered public accounting firms having to operate two sets of standards (be they auditing, quality control or ethics). A further undesirable consequence would be loss of investor confidence if the differing findings were publicised.

The disciplinary system envisaged by the Sarbanes-Oxley Act would also create a double jeopardy for many auditors who will also be subject to national disciplinary systems. This would contravene the principles of natural justice enshrined in domestic laws as well as under the Universal Declaration of Human Rights.

Question 9 - 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?

See responses to previous questions.

Question 10 - 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?

With regard to the first question, we do not see why a firm should be treated differently based on whether it is affiliated with a US registered firm.

However, to the extent that national or supranational regulators consider unique characteristics of networks of firms in their oversight regimes, then the Board should consider such differences.

With regard to the second question, we do not believe that a US firm should be assigned any responsibility for a foreign registered firm's compliance with the Board's rules and standards.

PART III – OTHER COMMENTS

Electronic Submission of Application

Proposed Rule 2101 requires applicants to file the application and exhibits thereto electronically through the Board's Web-based registration system. We recognise the efficiency of an automated registration process. However, we have two concerns with the Board's proposal.

KPMG's most significant concern is related to the security and confidentiality of the information submitted. The Board recognises that all applications will contain some confidential information, and our concern relates both to the transmission of the information to the Board and security of the data once it has been accepted into the Board's system.

The Board proposes that applications be submitted over the Internet, an unsecured public network. The Board should recognise that confidentiality could be compromised during the transmission of information over the Internet and design the system to provide for an appropriately secure method of transmission. The Board should advise potential applicants of the measures taken to ensure security. Additionally, the description of the system as "Web-based" suggests that the system will be perpetually connected to the Internet. Similar to our previous recommendation, we recommend that the Board design the system to appropriately secure confidential information from unauthorised access, secure all information available on its system, both public and confidential information, from unauthorised tampering, and advise potential applicants of the measures taken to ensure security and confidentiality. We believe it is incumbent that the Board's system should undergo a thorough, independent review resulting in an attestation report that such controls are secure.

Our second concern relates to the design of the information submission process. As proposed, applicants will need to submit vast amounts of information to the Board. To do so efficiently, the system should be designed so that an applicant may download from the Board's system the form of application, input the required information "off line," and then submit the completed application form. Additionally, the system should allow information to be gathered in an appropriate data storage medium by the applicant and electronically uploaded into the Board's system. We believe that a system design in which the data must be entered into the system on line in real time would be unduly burdensome.

Registration Fee

In the Analysis of Proposed Registration Rules, the Board contemplates that the amount of the registration fee required by Proposed Rule 2103 will be determined by formula and that fees will vary based on the size of the applicant. We believe that the Board has selected the wrong criterion for determining the amount of the registration fee. The size of the applicant is not a direct measure of the amount of regulated audit services rendered by the applicant to its issuer audit clients. The mix of audit and non-audit services provided by accounting firms, as well as the mix of issuer and non-issuer clients, can vary considerably among firms. Fees based solely on the size of the firm thus may not be equitable among the firms; for example, if equal fees are

assessed to two firms and the first firm provides a smaller percentage of services to issuer clients as compared to the second firm, we believe the fee assessment will not be fair to the first firm. Criteria that are more appropriate are the number and size of the applicant's issuer audit clients – the same criteria used to determine the amount of fees that are to be levied directly on issuers. Additionally, a fee should be assessed with respect to all issuer audit clients; therefore, for issuers with relatively small market capitalisation, the Board should establish a minimum fee. This will increase the likelihood that the registration fees assessed will bear an appropriate relationship to the level of auditing relating to an applicant's issuer audit clients.

Additionally, any registration fee should not include the cost of creating and maintaining the Board's systems and other infrastructure, and should be restricted to the administrative costs of processing applications. Otherwise many activities relating to the "examination/inspection" process will be assessed to applicants, which conflicts directly with the provisions of Sarbanes-Oxley.

Other Comments on Proposed Form 1

Item 1.6, Associated Entities of Applicant

Item 1.6 of proposed Form 1 pertains to associated entities of the applicant. The Board should clarify what information a registered public accounting firm that is a member of an international network or international association of firms is required to provide with respect to such members in its registration application. We believe the Board's intent is for the applicant to report the name and national office address of such other member firms, and not detailed information about the member firms' financial matters, personnel, litigation and other proceedings. (For example an individual KPMG member firm would have no ability or recourse to compel compliance with a demand for such information, if requested to do so by the Board). We recommend that the Board state this more explicitly in its final rules.

Item 1.7, Applicant's Licenses

Item 1.7 of proposed Form 1 pertains to the applicant's licenses. The Board should reconsider whether requiring the applicant to provide every license or certification number is desirable. We believe the Board's intent is for the applicant to provide a listing of licenses and certificates from relevant state or national boards of accountancy (or form of entity with similar jurisdiction) evidencing the regulatory permission for the firm to practice public accounting in that jurisdiction. However, as the proposed Item is currently written, the applicant could construe the requirement to include business licenses from municipalities, counties, etc. The Board should clarify the type of license or certification that it is requesting of the applicant.

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

In our foregoing comments, we raised questions as to the reasons why the Board was requesting from the applicant information that is already provided to the Commission by issuers. Item 2.3 of proposed Form 1 pertains to the issuers for which the applicant expects to prepare audit reports during the current calendar year. Because of the timing of the annual audit cycle, it is not uncommon for a firm to be in a position of having to conduct a timely review of the interim financial information for an issuer audit client's first fiscal quarter prior to the completion of the annual client continuance process. It is not until that client continuation process is complete that the firm is in a position to conclude on whether it will enter into an arrangement to prepare or issue an audit report for the current year. For individual issuers, client continuance procedures occur over different periods of the year. In addition, situations may exist at the time of filing an application with the Board, where the applicant may expect to perform the annual audit, but where execution of a formal arrangement or engagement contract has not occurred. Another factor that has a direct effect on reporting such arrangements is that for public companies, the audit committee and shareholders must ratify or approve the appointment of the external auditor and such appointments take place continuously during the calendar year. As such, we believe the Board should reconsider the purpose and usefulness of this proposed requirement.

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

Item 2.4 of proposed Form 1 pertains to issuers for which the applicant played, or expects to play, a substantial role in the audit. As noted in our comments with regard to Proposed Rule 1001 (n), we believe that accumulating this data may be difficult, especially if the Board imposes the time and fees criteria for determining "substantial role". We reiterate that the Board should reconsider requesting information with respect to those situations where the applicant audited or expects to audit more than 20 percent of the issuer's consolidated assets as of the end of the issuer's preceding fiscal year or revenue for the issuer's preceding fiscal year.

Cost of Compliance

The Proposed Rules require applicants to provide a large amount of information regarding their issuer audit clients and related fees, and overall firm revenues, much of which is not readily summarised from existing information systems. It also is proposed that firms provide a substantial amount of information regarding all of the accountants employed and litigation against the firm and its accountants and similar proceedings related to its audit practice. In addition, the Board is establishing a complex and costly infrastructure to collect, maintain and analyse this information. We observe, however, that the Proposing Release does not discuss the justification for the significant costs of complying with the Proposed Rules and the related infrastructure. We also have a concern that the largest firms will bear a disproportionate amount of these costs, especially for the creation of the Board's systems and infrastructure. Also, as indicated elsewhere in this letter, we question the need for the Board to obtain certain specific

information, and whether Sarbanes-Oxley provides a basis to request such information. We believe the Board should provide an analysis of the costs and benefits of its proposals, and specifically address and provide its rationale for requesting information that is not explicitly contemplated by Sarbanes-Oxley.

Comment Period

Finally, we wish to respond to the Board's deadline for receiving comments with respect to its proposed rules for the registration process. While we recognise that the Board is attempting to meet its April 26, 2003 operating deadline to the Commission, parties wishing to respond to the Board's proposed rules had only 24 days in which to read, interpret, and comment on the proposals. Many of the Board's proposed rules appear ambiguous and contain intricacies that may have far reaching implications for an applicant. We have met the Board's deadline in the spirit of cooperation and support; however, we believe a longer comment period would have been an appropriate decision by the Board, in which it would have afforded respondents the time needed to better understand the proposed rules. Accordingly, we recommend that comment periods for future Board proposals be more consistent with customary due-process procedures.

Leading Edge

March 31, 2003

Mr. Gordon Seymour,
Office of the Secretary
PCAOB
1666 K Street, N.W.
Washington, DC 20006-2803

Re: PCAOB Rulemaking Docket Number 1

Dear Mr. Seymour:

This letter is the response of ***The Leading Edge Alliance*** to your request for comments regarding the PCAOB's Proposed Rule Number 1. ***The Leading Edge Alliance*** is an alliance of major independently-owned accounting firms that have the combined revenues of over $600 million with over 4,000 staff. A LEA member directory is located at www.LeadingEdgeAlliance.com .

We strongly support the need to strengthen the public's perception of auditor independence and to restore the quality (perceived and, in some cases, real) of the audits of issuers of financial statements, and we appreciate the responsibility that the PCAOB is undertaking. In that regard, we agree with many aspects of the aforementioned proposed rules particularly those that would require all public accounting firms, including foreign firms, to register with the Board and meet similar quality standards as enforced by direct inspection of the PCAOB. While we support these constructive changes to enhance financial reporting in the United States, we believe that some of the Board's proposed rules may not benefit investors or serve the public interest. On the contrary, while these proposed rules are broad in scope, the implementation of them may lead to an impediment to the capital markets by smaller issuers. For decades, the capital market system in the United States has been the world's leader; we should strive for the continence of this in our generation. Therefore, we believe that consideration of the concerns delineated below should be made before adopting final rules, as these rules defined in rulemaking docket number 1 may unfairly penalize smaller issuers and smaller quality accounting firms.

Summary of the thrust of the Sarbanes-Oxley Act as it relates to the PCAOB:

In July 2002, congress passed the Sarbanes-Oxley Act of 2002 (the "Act"). The Act, and the many rules the Securities and Exchange Commission is in the process of

adopting, make sweeping changes to improve the reliability of corporate reporting. A portion of the act empowers the PCAOB and is intended to improve the oversight of the auditing profession. In this regard, the PCAOB will:

- Require accounting firms that audit public companies to register with the PCAOB;
- Have the authority to set auditing standards;
- Perform annual inspections of accounting firms that audit more than 100 issuers (and at least triennially for other accounting firms that audit issuers);
- Investigate and discipline accounting firms and individual auditors.

Implementation concerns related to the Proposed Rule Number 1

We agree with most of the general rules outlined for registration of accounting firms which seem to be appropriate for the implementation of the responsibilities now undertaken by the PCAOB some of which are listed above. However, we believe that some of the information may not be germane to the task at hand or undefined in the proposed rule. These include:

- The roster of accounting firm employees needs to be registered with the PCAOB;
- Disclosure of audit fees charged by issuer for past, present and estimated future year;
- The allocation of the PCAOB's fees charged to accounting firms is not delineated in the proposed rule;
- Independence and audit fees.

Roster of accounting firm employees

The necessity of accounting firms registering their employee roster, we believe, would not be an appropriate implementation of the spirit of the Sarbanes-Oxley Act. We concur that the appearance of independence is impaired if an accounting firms employee, or partners, become an employee of a registrant for whom the accountant previously audited within the past year. However, we firmly believe that the registration of the roster of employees is unnecessary and raises the cost of doing business for accounting firms.

In public accounting, our most important assets are our reputation and our people. While we have no reservation of making our roster of employees available to the PCAOB during the inspection process, and, furthermore, a listing of the companies that our ex-employees were hired by upon leaving our firm, we believe that making

the roster available to all interested parties in a real time format will lead to an increase in corporate recruiting of our professional staff and partners.

While this could be viewed as the free market working in the accounting firm labor market, we believe that the added turnover that employee roster registration will bring about will lead to more costly and less effective audits. This is because the experience level of auditors within an accounting firms audit methodology will decrease due to professional staff turnover which will increase as a result of this aspect of the proposed rule. This lack of familiarity of professional staff with their new firms audit methodology, the companies they are auditing, and the capabilities of the fellow professional auditors they are working with will cause an unintended erosion of the effectiveness of accounting firms' audits.

As an alternative, we suggest that the "roster" be limited to the partners of the individual firms as these "owners" will generally be the ones with the responsibility for signing attest reports for publicly-held companies.

Disclosure of audit fees

Audit fee disclosure for the most recent year is currently required in registrant's filings. To require this information from accounting firms, and anticipated fees for the next year in filings with the PCAOB, is a duplication of effort. In addition, the fee estimate for the next fiscal year could change materially if the situation with the registrant changes. Currently, fees are generally negotiated on an annual basis with the audit committees of registrant companies. Many factors can enter into the consideration of fees each year, such as changes in the registrant's business, economic factors, competition, implementation of new accounting standards, and performance of additional audit procedures as being contemplated under the Act and proposed Statements on Auditing Standards. Therefore, we believe that this information, which is already available on an actual, historical basis, adds little value in the PCOAB discharging it's above stated responsibilities.

Allocation of the PCAOB charges

The allocation of fees that are anticipated to be imposed on accounting firms is also potentially disruptive to small registrants and small accounting firms. It is generally anticipated that many accounting firms in the United States that will cease auditing of registrant even though the partners and employees may be some of the best and brightest serving clients in the market space. William Ezzell, Chairman of the American Institute of Certified Public Accountants, made a speech at the Orange County Public Company Forum on February 27, 2003. In that speech, he suggested there will be a further consolidation of accounting firms such that the estimated 775 public accounting firms that audit public companies will be reduced to

400-500 in within one year and be further reduced to 200-300 in subsequent years. The potential economics of a decreasing number of accounting firms as compared to an as yet unspecified PCAOB budget requirement may make it infeasible for many accounting firms to continue to service the public company market. Since the cost to the investing public of the audit failures of the past few years has been overwhelmingly skewed toward large accounting firms servicing large registrants, and these audit failures are the reason for this legislation, we believe that the allocation of the fee charged by the PCAOB to accounting firms and registrants should be based on factors of size, such as number of personnel in the accounting firm, market capitalization of registrants served by the accounting firms, or registrants under audit by the accounting firm, or some formula considering all such factors.

The purpose of the PCAOB appears to be to assure all firms are operating on the same quality standard based on merit of work performed and knowledge of it people. To simply implement an economic disincentive to smaller firms is counter to the intent of the Act and the PCAOB's responsibilities. We believe that in accounting firms, bigger does not necessary mean better made evident by the large number of audit failures by large national firms.

Independence

An issue that has not been discussed directly in the PCAOB's proposed rules or in the Act, but appears to be a commonly held misperception, is that fees from the audit of registrants impact smaller accounting firms independence more than larger firms as they represent a larger proportion of the firms overall revenue.

The compensation system of most national firms is based on the profitability of the office in which the individual partner practices. In addition, many of the offices are able to service clients without seeking technical expertise or review outside of the local office. The argument on independence by national firms is that the fees received by the firm from a single client as a proportion to the firm's fees is not enough to sway the firm. However, this is an inappropriate measure of the true pressures an individual partners or office may be under. If a partner in a national firm has two clients whose annual billings are $1,200,000 each, and the firm's compensation is based on the profitability of offices, then the amount of leverage that any one individual client has over that partner is immense compared to a smaller accounting firm partner who may have 10 clients each of whom is charged $30,000 to $150,000 for audit services.

However, the impression many smaller practitioners has is that the focus of the efforts of the PCAOB is to restrict their ability to practice, not based on merit or quality at first, but merely based on the size of the firm. Noting Mr. Ezell's

comments above regarding the expectation of a decreased number of accounting firms serving the public-company market, smaller accounting firms, as a result, may then have an economic incentive to join larger firms, which will in and of itself do nothing to improve the quality of financial reporting.

Summary of the potential effect to smaller accounting firms and registrants

We are concerned that the proposed rule, as written, may have effects of running counter to the public interest upon implementation by:

- Placing undue reporting burdens on accounting firms, especially "smaller" firms,
- Increasing the cost of audits through increased fees assessed on the accounting firms and registrants alike,
- Treating all registrants and accounting firms in essence, unfairly, without giving due consideration to relative size of registrants and firms.

We appreciate this opportunity to express our views. We would be pleased to answer any questions the PCAOB or its staff might have about our comments. Please contact Wayne Pinnell at 949-450-6200.

Very truly yours,

Gary S. Shamis, CPA
MANAGING DIRECTOR SS&G FINANCIAL SERVICES, INC
Chair Leading Edge Alliance

Wayne R. Pinnell, CPA
HASKELL & WHITE LLP
Chair, Leading Edge Alliance Accounting, Auditing & Assurance Special Interest Group

Linklaters

Memorandum

31 March 2003

To	Office of the Secretary of the PCAOB
From	Linklaters
Direct Line	020 7456 2750

Legal Implications for Foreign Accountancy Firms in consequence of Registration with the PCAOB under the Sarbanes-Oxley Act 2002

1 Introduction

We have been instructed by the Big Four accountancy firms (the "**Firms**") to draft a report highlighting areas where there are significant potential conflicts between the requirements of the proposed rules giving effect to the Sarbanes-Oxley Act 2002 (the "**Act**") and the laws and regulations of jurisdictions outside the United States (the "**Report**"). These potential conflicts arise from the requirement for Firms which carry out audit or audit related work on behalf of companies which have reporting obligations to the Securities and Exchange Commission (the "**SEC**") to register with the Public Company Accounting Oversight Board (the "**PCAOB**") and to comply with the rules and regulations imposed by the PCAOB, pursuant to the provisions of the Act.

This memorandum is intended to address the PCAOB's request in its Release No. 2003-1 dated 7 March 2003, for potential conflicts to be identified.

In the time available, it has not been possible to conduct a comprehensive review of a large number of territories affected by the Act. A more limited survey has therefore been undertaken, focusing on a representative cross-section of territories in order to provide the PCAOB with an indication of some of the significant issues with which the Firms are faced. The jurisdictions that participated in our review are the United Kingdom, Germany, Japan, Israel, Switzerland, Mexico and, in respect of certain issues, France and Brazil.

We have considered each area of potential conflict, highlighting legal restrictions which create obstacles to the compliance of Firms outside the United States with the obligations of the Act and examples of sanctions that will be applicable where such restrictions are breached. Potential exceptions which may legitimise compliance with the Act's requirements have also been identified. Clearly, we would expect that further work and dialogue between relevant authorities will be required to resolve potential conflicts.

2 Executive Summary

2.1 There is significant potential conflict between the Act and the laws and professional regulations within those jurisdictions surveyed, including in relation to data protection, confidentiality, employment, bank secrecy and the extent to which a foreign legal obligation can be enforced.

The effect of this would be to prevent full compliance with the requirements which the Act places on Firms to disclose information upon registration with the PCAOB or pursuant to requests for testimony or the production of documents made by the PCAOB[1].

2.2 The conflicts identified can be summarised as follows:

2.2.1 **Confidentiality** – all of the jurisdictions raised issues of confidentiality. The duty of confidentiality between a Firm and its client is very strict and places significant restrictions on a Firm disclosing any client or third party information which has become known to it during the course of business. Furthermore, a duty of confidentiality also arises in the context of disclosure of employee data.

2.2.2 **Data Protection** – data protection legislation in some of the jurisdictions surveyed prohibits the disclosure of personal data to the PCAOB and the transfer of such data into a jurisdiction which is not considered to have an equivalent level of data protection, unless relevant exceptions apply.

2.2.3 **Legal Enforcement** – all of the jurisdictions raised issues in relation to the PCAOB conducting inspections of a Firm's operations and practice. These issues relate to national sovereignty and consequential restrictions on extraterritorial enforcement of foreign legal obligations.

2.2.4 **Employment Liability** – some of the jurisdictions raised employment liability issues in relation to the requirement under the Act for Firms to agree to secure consent from all associated persons regarding compliance with requests for testimony. In particular, these issues will arise where a Firm makes it a term of an employee's employment to provide such consent, it being a ground for dismissal where they refuse.

2.2.5 **Banking Secrecy** – some of the jurisdictions have banking secrecy legislation which requires banks, their officers and employees to keep secret the identity of their clients and details of their relationship with them. This raises particular concerns where a Firm has banking clients.

2.2.6 **Official Secrets** – some of the jurisdictions have rules that exist to protect national security which prevent unauthorised disclosure of certain information to protect the state from espionage. In such cases, conflicts with the Act will arise where a Firm has in its possession documentation of relevance to national or economic security.

2.3 Most of the relevant jurisdictional laws and regulations are expressed in general language, in particular the various exceptions to provisions which conflict with the Act's requirements. The existence or extent of a conflict will to a large extent depend on how such language is interpreted. A sympathetic court or regulator may use the flexibility provided by such general language to reconcile any potential conflict between the local and United States requirements. Conversely, a court or regulator that was not so predisposed may find a real conflict. Simply relying on these potential interpretations raises risks which are not insignificant. These risks include exposure to criminal and civil liability.

2.4 Obtaining express consent from relevant individuals may provide a way around the potential conflict between the United States and local requirements to the extent that such requirements

[1] Section 102 (b) (3) of the Act

arise in relation to Firms' clients, who would presumably give their consent. However, consent only deals with some of the issues and does not provide a means of overcoming all conflicts:

2.4.1 in France, for example, prior consent of the client would not release a Firm from criminal and civil disciplinary sanctions where they breach obligations of client confidentiality;

2.4.2 in Switzerland, prior consent of a client would not release a Firm from criminal liability where they are in breach of the anti-espionage legislation, which is broadly applied, making it an offence to make available business information to a foreign authority where it is deemed not to be in the interests of the Swiss Confederation;

2.4.3 in some jurisdictions, such as the United Kingdom, Germany and Japan, consent given by certain individuals, especially employees, may not be valid and in the United Kingdom and Germany would not in any event override the privilege against self-incrimination;

2.4.4 the PCAOB, as a result of its broad powers under the Act, may request the disclosure of or, in the course of an inspection, become aware of information which contains personal details relating to individuals not connected to clients who are SEC registrants or issuers and who would not therefore be similarly motivated to consent to the disclosure;

2.4.5 in some territories (for example, Switzerland) restrictions on extraterritorial enforcement of legal obligations cannot be overcome by consent of the Firm.

Similarly, drawbacks exist in relation to other potential exceptions including disclosures made in the public interest or required by a legal obligation.

2.5 In light of these conclusions, it seems desirable that the Firms discuss these matters further with relevant government and regulatory bodies in the United States and in their respective jurisdictions in order to identify an acceptable way forward.

3 Data Protection

3.1 Restrictions

Many of the jurisdictions we surveyed have data protection or privacy legislation in place which will pose significant restrictions on a Firm's ability to disclose information to the PCAOB.

Essentially, data protection legislation seeks to regulate the use of "personal data",[2] which means data (this may include electronic and manual data) relating to an identifiable individual (a "data subject"). The various laws impose certain obligations on an entity which collects and controls the use of the personal data ("data controller") and, more importantly in the context of the Act, there are significant restrictions on who that personal data can be disclosed to.

Data Protection legislation in the European Union is based on the Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) (the "**EU Data Protection Directive**"). The EU Data Protection Directive has been implemented in the various EU member states in broadly the same fashion, although it is

[2] In many jurisdictions personal data covers only data relating to identifiable living individuals, however, it is worth noting, that there are some jurisdictions, outside the scope of this submission that also regulate the processing of data relating to legal entities, for example, Italy.

worth noting that significant variations exist between member states that are free to implement stricter requirements if they wish.

Data protection legislation is not limited to the EU and there are many other jurisdictions that have legislation setting out similar requirements to the EU Data Protection Directive, such as Switzerland[3], Israel[4], Japan[5] and Hong Kong[6].

The most significant restrictions imposed by data protection legislation can be summarised as follows:

3.1.1 Restrictions on Disclosure

Disclosure of personal data to the PCAOB is prohibited unless a relevant exception applies (see further paragraph 3.3 below). This raises potential conflicts with the requirements under the Act including those which:

(i) compel registrants to provide a list of all accountants associated with the Firm who participate in or contribute to the preparation of audit reports including the person's name, social security number (or comparable non-United States identifier), and all license or certification numbers authorising the person to engage in the business of auditing or accounting[7];

(ii) compel registrants to reveal information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against any associated person of the Firm in connection with any audit report[8];

(iii) allow the PCAOB to demand from the registrants any other kind of information that the PCAOB has specified as necessary or appropriate in the public interest or for the protection of investors[9]; and

(iv) entitle the PCAOB to require Firms to report more frequently than in its annual report in order to update its application and other information concerning the Firm and all accountants associated with the Firm[10].

The disclosure requirements of the Act relate to employees, clients and third parties. Although certain information relating to the Firms' clients is not required per se as part of the process of registration with the PCAOB, the Firms are compelled to give their consent to co-operate in and comply with all requests for testimony or the production of documents made by the PCAOB[11]. Such documents or information may relate to the Firms' clients or third parties, for example, copies of audit work papers. To be able to give such consent the Firms need to be in a position vis-à-vis their clients and any other third parties to justify such co-operation and disclosure.

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3 Federal Act on Data Protection 1992.

4 The Privacy Protection Law 1981.

5 Japan is currently implementing data protection legislation. Our analysis is therefore based on the provisions of the draft legislation.

6 The Personal Data (Privacy) Ordinance.

7 Section 102 (b) (2) (E) of the Act.

8 Section 102 (b) (2) (F) of the Act.

9 Section 102 (b) (2) (H) of the Act.

10 Section 102 (d) of the Act.

11 Section 102 (b) (3) of the Act.

It is clear from our survey that the disclosure of the information required by registration or in connection with the ongoing oversight of the PCAOB will be significantly restricted by data protection requirements in certain jurisdictions.

In the United Kingdom the first principle of the Data Protection Act 1998 ("DPA") requires that personal data be processed fairly and lawfully. To this end the disclosure of information to the PCAOB will only be permissible if one of the exceptions identified in paragraph 3.3 below apply. This is also the case under the German Data Protection Act 1990 (as amended in 2001).

Data which is classified as "sensitive personal data", pursuant to the EU Data Protection Directive, attracts a higher degree of protection from disclosure and the relevant exceptions are generally more difficult to satisfy (see further paragraph 3.3 below). The requirement under Section 102(b)(2)(F) of the Act to disclose information relating to offences or alleged offences or disciplinary proceedings will be categorised as sensitive personal data whether or not they are in the public domain.

3.1.2 Restrictions on Transborder Data Flow

Transfer of personal data to a jurisdiction which is not considered to provide an equivalent level of data protection is prohibited unless a relevant exception applies (see further paragraph 3.4 below). Of the territories surveyed, the United Kingdom, Germany, Switzerland and Israel[12] place such restrictions of the transfer of data outside their jurisdiction to the United States, which is not considered to have an equivalent level of data protection for these purposes. Similar restriction apply in respect of all EU Member States, Poland, Hong Kong and Canada.

3.2 Sanctions

Breaches of data protection legislation attract both criminal and civil sanctions, including exposure to regulatory fines and individual claims for damage and distress. In the United Kingdom, for example, a person would be criminally liable where they breached the Data Protection Act 1998 and failed to comply, or falsely purported to comply, with an enforcement notice issued by the Information Commissioner to remedy the breach. In Switzerland, a person who wilfully and without authority discloses sensitive personal data can be punished by fine or imprisonment[13]. The legislation in Germany and Spain also provides for criminal sanctions.

In addition, regulatory fines can be substantial. Although Spain is not one of the jurisdictions we surveyed, we are aware that the Spanish Data Protection Agency imposed a fine on Telefonica Espana of €840,000[14].

3.3 Exceptions to Restrictions on Disclosure

[12] The Privacy Protection (Transfer of Data Outside of Israel) Regulations 2001 set out this requirement for the transfer of *databases* outside Israel. Although information held by Israeli accountancy firms and requested by the PCAOB is unlikely to be classified as a "database" for these purposes, it is reasonable to assume that similar criteria will be applied by Israeli courts regarding the transfer of sensitive data outside Israel.

[13] For these purposes sensitive personal data will be data relating to religion, political beliefs, trade union activities, health, race, social assistance or criminal records.

[14] A subscriber had opted out of the use of his data for anything other than the provision of the telephony service for which he was subscribing. Despite this, Telefonica Espana proceeded to share that individual's data with one of its subsidiaries, Telefonica Data and the individual in question then reported Telefonica Espana to the Spanish Data Protection Agency.

The most relevant exceptions to the restrictions outlined above are:

3.3.1 Consent

Consent of the "data subject" in all the jurisdictions surveyed would permit Firms to disclose the requested data to the PCAOB without breaching the relevant data protection legislation.

In relation to the disclosure of "sensitive personal data", obtaining the explicit consent of the relevant individual is the only relevant exception.

The consent is not required from the corporate client[15] but from each and every individual whose data is contained in the information to be revealed to the PCAOB.

Whilst it may be expected that clients who are SEC registrants or issuers would readily consent to the disclosure of their data to the PCAOB, it should be noted that:

(i) the PCAOB, as a result of its broad powers under the Act, may request the disclosure of or - in the course of an inspection - become aware of information which contains personal details relating to individuals not connected to the SEC registrant or issuer clients and who would not therefore be similarly motivated to consent to the disclosure. This information may, for example, be contained in audit work papers. Obtaining the consent of all clients/third parties, including non-SEC listed clients/third parties would be a logistical challenge, if not practically impossible in some circumstances;

(ii) gaining the consent of an issuer with whom a Firm has played a substantial role, rather than the main role, in respect of preparing or furnishing them with an audit report is also likely to be logistically challenging;

(iii) even if given, consent can be withdrawn at any time;

(iv) Firms are unlikely to have obtained the consent of certain data subjects, such as its employees, particularly given that most data collected about them will have occurred prior to the implementation of the Act. It is clear that obtaining such consents will involve substantial effort. For example, the information required by the PCAOB on criminal convictions in connection with audit reports relating to the Firm or "any person associated with" the Firm and dating back 10 years [16], may pertain to a large number of individuals;

(v) there is a real risk that in certain circumstances consent may not be regarded as legal, especially where such consent is required of employees. For consent to be valid, it must be freely given. For example, in accordance with the EU Data Protection Directive, the relevant United Kingdom and German implementing legislation requires that the consent must be "freely given, specific and informed".

Obtaining consent in the employment context – for example, from a Firm's employees – may be difficult to establish. In the United Kingdom and Germany, in accordance with

[15] Except where personal data is defined to include corporate data, such as under Italian data protection laws.

[16] Part V, item 5.1 of the PCAOB's proposed rules.

the Article 29 EU Data Protection Working Party[17], it has been questioned whether consent given in an employment context constitutes "freely given consent" as employees do not have the option to refuse their consent without possible adverse consequences.

It also remains questionable how a client's consent can be freely given if, without such consent, a client would not be able to retain a registered Firm.

It remains unclear how this requirement of "freely given consent" will be interpreted in respect to the disclosure obligations by accountants under the Act and whether the United Kingdom and German regulators will choose to take a pragmatic view of consents given by such highly-remunerated, well-informed employees and consider them to be legitimate. There has been no official view disclosed by regulators in either jurisdiction in this respect; and

(vi) in relation to "sensitive personal data", it may be even more difficult to obtain valid consent in circumstances where potentially incriminating activities are being investigated: individuals are less likely to willingly consent to the disclosure of information relating to criminal actions pending against them.

3.3.2 Public Interest

The United Kingdom and Israel will allow disclosure of personal data to the PCAOB where the processing of such data is in the public interest. However, the interpretation of what is in the public interest is a question for the regulators and courts in each jurisdiction to decide.

It may be felt that this exception can be relied upon to legitimise the disclosure and inspections required by the Act in view of, amongst other things, the "public interest" nature of the Act and the harm it is intended to counter. However, to date "public interest" has been narrowly construed and it is unclear whether the obligations under the Act will be interpreted as being in the public interest of the local territory as well as the United States.

In the United Kingdom, for example, disclosure may be permitted where it is necessary "*for the exercise of any functions of a public nature exercised in the public interest by any person*" where a Firm can show that it is exercising a function of a public nature in the public interest. The definition of public interest has to date been narrowly interpreted by the United Kingdom regulators and courts[18] and there is no precedent for this exception being successfully relied upon in circumstances such as these.

Use of this exception in Israel is also questionable given that the public interest arguably relates to that of another jurisdiction.

As such, it remains unclear whether this exception can be relied on.

3.3.3 Compliance with a legal obligation

[17] The working party set up pursuant to Article 29 of the EU Data Protection Directive. It is an independent advisory body whose opinions are not legally binding.

[18] The United Kingdom Information Commissioner, who enforces the Data Protection Act 1998, may in future take a wider view of "public interest" in light of the definition that will be adopted under the Freedom of Information Act 2002 – however, this is only an informed view.

The data protection legislation in the United Kingdom, Germany, Israel and the draft data protection bill in Japan provide for disclosure of personal data where it is necessary for compliance with any legal obligation to which a Firm is subject.

However, this exception will not apply to foreign (in this case, United States) legal requirements. The Israeli Interpretation Law 1981 provides that this exception can only be defined as applying to an Israeli legal obligation and, similarly, under the Draft Data Protection Legislation in Japan, a legal obligation will not include that of a foreign jurisdiction. Likewise, United Kingdom and German Data Protection Legislation makes it clear that this exception will only apply to local legal obligations.

3.3.4 Whilst it may be felt that a court or regulator in the relevant jurisdiction would strive to reconcile a potential conflict between United States and local laws and recognise United States legal requirements, it must be recognised that a court or regulator may find it difficult to do so without opening the floodgates to laws of other jurisdictions

3.3.5 Legitimate Interests

In the United Kingdom and Germany, in accordance with the EU Data Protection Directive, disclosure is permitted if it is necessary for the legitimate interests pursued by a Firm or by the third party or parties to whom the data is disclosed, except where the processing is unwarranted in any particular case by reason of being overridden by the rights and freedoms or legitimate interests of the individual.

It may be deemed surprising, in the current circumstances, that certain disclosures will be overridden by the rights and freedoms or legitimate interests of the data subjects. However, the United Kingdom or German regulator or court may take a different view. For example, blanket disclosures of information relating to disciplinary actions (however small) pending against a Firm or associated person would undeniably be prejudicial to an individual who had committed a disciplinary or other offence.

Each individual case would need to be considered on its own facts to determine whether an overriding interest of the data subject exists, prohibiting that particular disclosure of personal data. With this in mind it is clear that this exception may well enable disclosure in certain circumstances but could not be used as blanket permission without risking a breach of the applicable data protection legislation in either jurisdiction.

3.3.6 Other

Under the Israeli Privacy Law, disclosure to the PCAOB would be allowed where it took place in the ordinary course of business of the Firm and there was going to be no publication of the data. However, it remains unclear to what extent the delivery by Firms of certain personal data to the PCAOB is in the ordinary course of their business. Furthermore, this exception would not apply where the PCAOB may make available information published which has not been granted confidential treatment.

3.4 Exceptions to the Restrictions on Transborder Data Flow

The following are the relevant exceptions which may apply to legitimise transfer of personal data to the PCAOB in the United States:

3.4.1 Consent

The data subjects give their consent. The EU Data Protection Directive provides that this consent must be unambiguous, which will normally need to be express and in writing. Note that this exception is distinct from the possibility of legitimising disclosure more generally by the use of consent, although the same caveats relating to consent as identified in paragraph 3.3.1 above apply.

3.4.2 Transfer necessary for reasons of public interest

This exception is set out in the EU Data Protection Directive and is therefore relevant for Member States of the EU, although the same caveats apply relating to what will be deemed by each jurisdiction as being in the public interest as identified in paragraph 3.3.2. Furthermore, it is worth noting that this exception is even more restrictive than the exception identified in paragraph 3.3.2 above.

3.4.3 EU Model Clauses

These clauses enable a Firm based in an EU Member State and registered with the PCAOB to agree to transfer the data on the basis of the EU model contractual clauses as approved by the European Commission which, if adhered to by the relevant foreign authority (i.e. the PCAOB), would justify the transfer of personal data to the PCAOB. These would be put in place between Firms and the PCAOB.

3.4.4 Bespoke Contract

The EU Data Protection Directive enables a Firm based in an EU Member State and registered with the PCAOB to agree to transfer the data on the basis of individually drafted contractual clauses which would need to be approved by data protection authorities. The aim of such contracts would be to ensure that the PCAOB has in place adequate data protection procedures to ensure the security of the data transferred. . In addition, if onward pubic disclosure of the personal data in the United States, which has not been granted confidential treatment, is not contractually restricted, the data protection authorities may not approve the contract.

Alternatively, this exception may be fulfilled by the Firms/the European Commission and the PCAOB entering into bilateral/multilateral arrangements. Indeed, the opinion of the Article 29 EU Data Protection Working Committee is for relevant regulators to enter into a dialogue to reach an acceptable compromise. However, a recent resolution of the European Parliament has created doubt as to the validity of this approach[19].

Swiss data protection legislation also provides that a transfer of personal data to the PCAOB may take place if the transferor (the Firm) and the recipient (the PCAOB) of the personal data enter into a contractual agreement whereby the recipient undertakes to follow the requirements of Swiss Data Protection Legislation. For example, such an agreement would have to provide for the duty to keep the personal data confidential. In addition, the Swiss Data Protection Legislation specifically provides that the data may not be disclosed to any other authorities. Furthermore, the data subjects must have knowledge of the data transfer; otherwise the transfer has to be notified to the "Eidgenössischer Datenschutzbeauftragter" ("Federal Data Protection Mandatee").

[19] In March 2003, the European Parliament rejected an agreement between the European Commission and United States immigration services in relation to the transfer of passenger records pursuant to the requirements of the United States Aviation and Transportation Security Act 2001. The European Parliament considered this agreement lacked legal basis.

3.4.5 European Commission finding of "adequacy"

Article 25 of the EU Data Protection Directive mandates the European Commission to determine if data to be transferred to third parties will be protected in an "adequate" fashion. This has not yet been done in respect of data transfers to the PCAOB and, if it were to be considered in the future, the European Parliament would have to decide whether the data protection arrangements in place are adequate. Again, the extent to which the information which has not been granted confidential treatment, can be ring fenced from onward public disclosure in the United States, is likely to be relevant to any assessment of adequacy. Further, this exception applies only to EU Member States and would not assist in the other jurisdictions.

4 Confidentiality

4.1 Client Confidentiality

In all the jurisdictions that we surveyed, the duty of confidentiality between a Firm and its client is very strict. As well as being set out in various laws and regulations in each jurisdiction the requirement of confidentiality may also be implied or expressly set out in the contract or engagement letter each Firm has with its client. These requirements lead to potential conflict with the requirements of the Act relating to the disclosure of client information, in particular pursuant to the PCAOB's ongoing oversight role (see further paragraph 3.1.1 above).

These requirements lead to a potential conflict with those Sections of the Act which: compel registrants to provide the names of certain issuers for which the Firm has prepared or issued audit reports and the annual fees received from such issuers by the Firm [20]; compel registrants to give their consent to co-operate in and comply with all requests for testimony or the production of documents made by the PCAOB [21]; allow the PCAOB (i) to conduct inspections at the registrants in relation to selected audit and review arrangements and (ii) to evaluate the audit, supervisory and quality control procedures of the registrant [22]; and allow the PCAOB to conduct an investigation of any act, practice, or omission to act by a registered Firm [23].

In France, Article L225-240 of the French Commercial Code provides that auditors and their assistants and expert advisers shall be bound by professional secrecy as regards all acts, events and information of which they may have become aware in the course of their duties.

Article 321 of the Swiss Penal Code provides a general secrecy duty on certain professionals including accountants. This will protect all information which the Firms' clients want to keep confidential where it has become known to the Firms in their professional capacity. This provision will be breached regardless of whether the information is revealed orally, for example by giving testimony, in writing or by furnishing the PCAOB with copies of the documents containing the information. Furthermore, the Swiss anti-espionage legislation, which is broadly applied, makes it an offence to make available business information to a foreign authority where it is deemed not to be in the interests of the Swiss Confederation (please see paragraph 8 below for further details).

[20] Section 102 (b) (2) (A), (B) of the Act

[21] Section 102 (b) (3) of the Act

[22] Section 104 (d) of the Act

[23] Section 105 (c) (1) of the Act

Likewise, Article 27 of the Japanese Law concerning Certified Public Accountants 1948 prohibits any accountants from disclosing their clients' secrets, which they gained during the course of business, to a third party or making use of them for the accountants or a third party's benefit without due reason. The Code of Ethics established by the Japanese Institute of Certified Accountants provides that accountants will have "due reason" where they have obtained the client's consent or are complying with a legal obligation in Japan.

In Germany, a similar requirement is set out in Section 9 of the Accountants' Professional Articles of Association. Also, Section 323 of the German Commercial Code and Section 43 of the Accountants Ordinance trigger the accountant's duty to keep information confidential. The accountant's duty of confidentiality is far reaching and includes all circumstances the accountant (i) was made aware of by the client and (ii) became aware of during the provision of professional services to a client. To this end, the name of and the amount of fees paid by a client are confidential information. In Germany, in addition to a duty to keep information confidential, an accountant has the right to refuse to testify in civil, criminal and administrative proceedings.

In Mexico, the Law of Professions 1945 provides a general obligation on any person holding a professional qualification, including accountants, to keep "in strict secrecy the matters conferred upon them by clients". In addition, a Code of Ethics of the Mexican Institute of Public Accountants ("**MIPA**") reinforces this requirement via Principle VI which sets out an obligation on accountants to keep confidential all data relating to their client practice.

In the United Kingdom the duty of confidence is reflected in the Institute of Chartered Accountants in England and Wales ("**ICAEW** ") Members Handbook. There is a general duty to keep all information confidential, not merely to take all reasonable steps to do so, subject to certain exceptions identified in paragraph 4.4 below. Moreover, it is not just a duty not to communicate the information to a third party, it is a duty not to misuse the information, not to make any use of it or to cause any use of it to be made by others otherwise than for the client's benefit without the consent of the client. This includes a duty not even to disclose the client's name and a duty not to provide an account of facts that could identify any particular client. Confidentiality also extends to third parties from or about whom information has been received in confidence.

4.2 Employee Confidentiality

It is apparent that in some jurisdictions confidentiality obligations will not only arise in relation to the relationship a Firm has with a client but also in an employee context. These requirements lead to a potential conflict with the Sections of the Act which: compel registrants to reveal information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against any associated person of the Firm in connection with any audit report[24]; and compel registrants to give their consent to co-operate in and comply with all requests for testimony or the production of documents made by the PCAOB[25].

In the United Kingdom, the employment relationship gives rise to an implied duty of confidence between the employer and the employee. Information held by an employer, such as details of disciplinary proceedings, may be regarded as confidential to the employee. The disclosure of

[24] Section 102 (b) (2) (F) of the Act.

[25] Section 102 (b) (3) (A) of the Act.

such confidential information would constitute a breach of confidence and a breach of the implied term of trust and confidence.

Likewise, in Germany as a result of the employer's duty of care, an employer is, as a matter of principle, obligated to keep personal data confidential in order to safeguard the personal rights of an employee. Therefore, the disclosure of personal data, such as the employee's salary or other relevant employee data required by the PCAOB, could violate the personal rights of an employee.

4.3 Sanctions

There are various sanctions that may be imposed where this duty of confidentiality is breached. It is clear that in many jurisdictions a natural person acting on behalf of a Firm is punishable personally. In Japan, for example, an individual accountant who is in breach of this obligation may be imprisoned or fined JPY 1 million. In Switzerland, breach of the requirements under Article 321 of the Penal Code is punishable by up to three years imprisonment or a fine and, in addition, the Firm may be liable for damages in certain circumstances. In Germany, any illegitimate disclosure by an accountant of a client's confidential information is a criminal offence pursuant to Section 203 of the German Penal Code (Strafgesetzbuch) and Section 333 of the German Commercial Code and is subject to fines and imprisonment of two years maximum. In addition, a breach of Principle VI of the Code of Ethics in Mexico could technically lead to the expulsion of that Firm from MIPA.

The breach of professional secrecy by a French auditor is a criminal offence sanctioned by imprisonment of up to one year and a fine of up to € 15,000[26]. In addition to criminal sanctions, the breach of professional secrecy by a French auditor would lead to disciplinary sanctions and possible civil liabilities. Most importantly, the prior consent of a client for the disclosure of information may prevent the auditor from potential civil liabilities vis-à-vis such client, but would not release the auditor from criminal and disciplinary sanctions, as professional secrecy is deemed a core and essential obligation of the profession and is required by law. In Germany, Section 203 of the Penal Code provides that a certified public accountant who discloses a client secret without authorisation may be imprisoned for up to one year or fined up to €1,800,000. Furthermore, in accordance with the German Accountants Ordinance they may be excluded from the profession.

Where there has been a breach of the obligations of confidentiality to an employee in the United Kingdom or Germany an employee could seek an injunction from the courts to prevent the disclosure of such confidential information. In the United Kingdom, the disclosure of information to the PCAOB in breach of an injunction would constitute contempt of court, the penalty for which is a fine and/or imprisonment.

4.4 Exceptions

4.4.1 Consent

In most of the jurisdictions surveyed, obtaining client consent to disclosure of confidential information would permit the disclosure of information to the PCAOB. However, the same caveats apply as set out above in paragraph 3.3 and the limitations on consent in France should be noted (see paragraph 4.3 above).

[26] Article L226-13 of the French Penal Code)

In Mexico, for example, there would be no breach of Mexican law where an authorised officer of the client provided the Firm with an acknowledgement that (i) it is an issuer reporting to the SEC; (ii) that it is subject to reporting obligations to the PCAOB pursuant to the Act; and (iii) that it will require its external auditors to register with, comply with the requirements of and report to the PCAOB in accordance with the Act.

It is worth noting that, in the United Kingdom at least, obtaining the consent of an employee to overcome the issues of confidentiality will not override the privilege against self- incrimination (see paragraph 5 below).

In Switzerland, prior consent of a client would not release a Firm from criminal liability where they are in breach of the anti-espionage legislation, which is broadly applied, making it an offence to make available business information to a foreign authority where it is deemed not to be in the interests of the Swiss Confederation (please see paragragh 8 below).

Finally, where banking secrecy obligations apply (please refer to paragraph 6 below) the consent of both the bank and third parties (i.e. the clients of the bank) whose information is also disclosed would be required. Obtaining such consents will be a huge logistical challenge and may, in some circumstances, be impossible.

4.4.2 Public Interest

In the United Kingdom, paragraph 13 of Statement 1.306 of the ICAEW Members Handbook states that a member is free to disclose information that would otherwise be confidential, where such disclosure is justified in the public interest, although the same caveats apply relating to what will be deemed as being in the public interest as identified in paragraph 3.3.2. The Members Handbook states that, whilst the concept of public interest is recognised by the courts, no definition has ever been given. However, the ICAEW expressly recognises that the public interest exception is narrow and the courts have tended to view the public interest defence very strictly, in that it applies where there is a real need for disclosure, such that the duty of confidentiality would be contrary to public policy.

A distinction may therefore need to be made between disclosures given in respect of *specific* requests by the PCAOB (e.g., in relation to suspected criminal activity) and disclosures given in respect of *general* ongoing requests by the PCAOB (e.g., in relation to annual notification of the names of all the issuers for which the Firm has prepared audit reports). In relation to the former, it is arguable that disclosure is in the public interest. In relation to the latter, we do not believe that disclosure will be in the public interest as only certain categories of data are likely to be relevant to any particular public interest.

4.4.3 Legal Obligation

In some jurisdictions, for example the United Kingdom and Japan, the obligation of confidentiality will not be breached where disclosure is carried out in compliance with a legal obligation.

In the United Kingdom, for example, paragraph 20-21 of Statement 1.306 of the ICAEW Members Handbook permits disclosure if authorised by statute. However, in respect of non-governmental bodies (which the PCAOB would likely be defined as),

paragraph 22 states that members should not comply with bodies' requests without client consent.

In addition, in respect of suspected breaches of foreign law, paragraph 78 of Statement 1.302 of the ICAEW Members Handbook states that if a member becomes aware of contraventions by his client of foreign law he is under no duty in English law to disclose the matter to the relevant foreign authority regardless of whether he may be under such a duty in foreign law. In the current context, we would agree.

A disclosure required by statute is therefore likely to be restricted to a local statute and, in the absence of an obligation to disclose information to a United States regulator, would not permit disclosure in this case.

5 Employment Law Liability

5.1 Compliance with requests for testimony

In certain jurisdictions, including the United Kingdom, Germany and Japan, the requirement under the Act for Firms to agree to secure consent from all associated persons regarding compliance with requests for testimony and the production of documents could give rise to employment law liabilities and in particular, liability for unfair dismissal.

In order to obtain such consent, Firms would in practice need to make offers of employment conditional upon this consent being obtained. In the event that a Firm makes it a ground for dismissal to refuse such consent, and an employee is dismissed or leaves his or her employment as a result, it is likely to face employment liability in the United Kingdom[27] and Germany.

However, in the United Kingdom, even if consent is obtained, employees may have the right to refuse to testify or disclose documents on the grounds of the privilege against self-incrimination. Under English law the principle of privilege against self-incrimination provides that a person shall not be coerced by the exercise of state power to convict himself/herself of a crime or expose himself/herself to any criminal penalty. If the PCAOB is an "emanation of the state", any associated person required to disclose information could refuse to disclose such information on the grounds of privilege against self-incrimination if the disclosure would incriminate the individual under English law.

Similarly, in Germany, even if the employees' consent can be obtained, the employer cannot fully rely on such consent. According to mandatory provisions of German law, an employee cannot be required to disclose criminal convictions to the employer, unless the conviction is registered in the Federal Central Register of previous convictions (which only applies for severe crimes) *and* the conviction is relevant for the specific occupation of the employee. Furthermore, in accordance with Section 383 of the German Civil Procedure Act and Section 53 of the Criminal Procedure Act accountants have the right to refuse to testify in administrative proceedings in civil, criminal, tax and administrative proceedings.

5.2 Suspension of Employees

In certain territories, the PCAOB's powers under the Act to suspend or bar an individual from being associated with a Firm gives rise to certain employment law issues.

[27] In the United Kingdom, for example, the Firm is likely to face employee claims of unfair dismissal.

In Germany any notice of termination of employment given by a Firm is void unless such notice is justified under the Protection from Dismissal Act.

Under English law any sanction imposed on an employee must be proportionate to the employee's act or omission. Therefore, if an accounting Firm dismissed an employee following an order from the PCAOB, an employment tribunal could rule that the dismissal was a disproportionate sanction and unfair. In addition, in the United Kingdom, if an employee is dismissed for refusing to disclose documents and is protected by the privilege against self-incrimination, the dismissal will be unreasonable and therefore unfair. The failure to carry out a fair disciplinary procedure can also give rise to a breach of the implied duty of trust and confidence under English law owed by an employer to an employee, leading to damages for breach of contract.

6 Banking Secrecy

6.1 Restrictions

Some of the jurisdictions we surveyed have banking secrecy legislation which requires banks and their officers and employees to keep secret the identity of their clients and the details of their relationship with them. This will be particularly relevant where a Firm has banking clients.

In Switzerland, for example, Article 47 of the Banking Act protects information about the clients of Swiss banks, including their names and the mere fact that a certain person is a client of a bank. This obligation is also set out in the Federal Act on Stock Exchanges and Securities Trading in relation to clients of securities dealers and participants of the stock exchange. Both pieces of legislation will specifically apply to a bank's auditors. Disclosure of information required by the Act would result in a breach of the banking secrecy legislation. There are also obligations in Mexico for auditors of a financial institution. In addition, although not part of the jurisdictions that we surveyed, we are aware that similar legislation exists in Luxembourg and Brazil. The Brazilian constitution establishes in Article No. 5, item XII the concept of banking secrecy, which is further regulated by Law no. 105[28] which applies to the secrecy of transactions carried out by financial institutions.

6.2 Sanctions

A breach of Swiss banking secrecy legislation is a criminal offence punishable by up to six months imprisonment or a fine. Infringement of banking secrecy legislation in Luxembourg is also subject to criminal sanctions and may lead to civil liability and regulatory sanctions. Furthermore, breach of banking secrecy obligations in Brazil may result in criminal liability of up to four years imprisonment.

6.3 Exceptions

In Switzerland and Brazil the consent of the banks and their clients will be required and in Mexico it will be necessary to obtain the consent of the National Banking and Securities Commission. Again, however, similar caveats exist with regard to such consent as set out in paragraph 3.3.1 above. The process of obtaining the consent of the bank's clients in both Switzerland and Brazil will be a huge logistical challenge and may, in some instances, be impossible.

[28] Enacted on 10 January 2001

7 Legal Enforcement Issues

All the jurisdictions surveyed raised issues in relation to the PCAOB conducting inspections of a Firm's operations and practice. These issues relate to restrictions on extraterritorial enforcement of legal obligations and, in some territories (for example, Switzerland), the issues cannot be overcome by consent of the Firm.

In Germany, for example, even if the PCAOB carries out an inspection on German territory with the agreement of the concerned Firm, issues of German sovereignty arise. In principle, foreign governmental authorities have no right to carry out acts of state, such as an inspection of the business of a Firm, on German territory without the permission of the government.

In the United Kingdom, Israel and Japan, if the PCAOB wanted to conduct an inspection of a Firm, it would in practice only be able to do so where the Firm is prepared to cooperate. One would expect such cooperation to be given. However, where the Firm is not prepared to cooperate, an order from a competent United States court to inspect a Firm will not in principle be endorsed by a competent United Kingdom, Japanese or Israeli court. The situation would be different where there existed parallel powers between regulators, but this is not the case here.

In Switzerland, Article 271 of the Penal Code forbids without the approval of the competent authorities, on the Swiss territory, the performance of all acts in favour of a foreign state (or a foreign organisation) that are normally performed by state authorities. In such circumstances, it is highly probable that the PCAOB qualifies as a foreign organisation and that, generally speaking, requests and subpoenas by the PCAOB to produce personnel for questioning or to give testimony, to produce and furnish copies of working papers and to submit other information, as well as inspections of a Firm's operations would constitute acts that are normally performed by state authorities. Indeed, the PCAOB could be viewed as part of the authorities protecting United States investors, a function which, from the Swiss perspective, is in principle a governmental one. Thus, such acts are forbidden under Article 271 of the Penal Code.

Since Article 271 protects Swiss sovereignty, the consent of a private person, including the audit client, cannot exempt those performing obligations on behalf of a foreign state from punishment. This approach is mandatory and cannot be bypassed to allow for direct requests or subpoenas from the PCAOB and the officers of the PCAOB and, possibly the employees of the Firm who respond to such requests, could be subject to imprisonment of between three days and twenty years. However, where a request has been made pursuant to the rules of international judicial assistance or with the authorisation of the competent Swiss authority, the respective Firm may, voluntarily, make the required disclosures to the PCAOB.

In Mexico, similar issues of sovereignty arise and, under the bill of rights section of the Constitution[29] a person cannot be mandated to follow a conduct other than by a "competent authority". For these purposes, a Mexican Court is unlikely to consider the PCAOB to be a competent authority.

8 Official Secrets

8.1 Restrictions

[29] Articles 14, 16 and 17

In the United Kingdom[30] and Germany rules exist to protect national security which prevent unauthorised disclosure of certain information to protect the state from espionage etc. Occasionally, a Firm will have sensitive documentation of relevance to national security in its possession and these restrictions will apply.

Similar restrictions apply in Israel where, under the General Security Service Law 2002, a government agency known as the General Security Service has been established for the purpose of protecting national security and is responsible for the protection of certain sensitive information, as determined by the Israeli Government. The holder of such information is required to handle it in accordance with regulations enacted by the Prime Minister. Again there will be circumstances where a Firm holds information that is subject to these restrictions, for example, where a Firm acts as auditor for defence contractors (and we note that a number of such companies are publicly traded in the United States securities markets), it may well be subject to these restrictions.

The anti-espionage legislation[31] in Switzerland is broadly applied making it an offence to make available business information to a foreign authority where it is deemed not to be in the interests of the Swiss Confederation. Given that these provisions are aimed at protecting the confidentiality of the Swiss Confederation rather than private individuals, prior consent of a client would not release a Firm from criminal liability where they are in breach.

8.2 Sanctions

In the United Kingdom, where a Firm is subject to the Official Secrets Act 1989, a person will be subject to criminal sanctions where he discloses any information, document or other article relating to security or intelligence which is or has been in his possession during the course of his work.

Breach of the Swiss anti-espionage legislation is a criminal offence punishable by three days to twenty years in prison.

[30] The Official Secrets Act 1989

[31] Article 273 of the Penal Code

Paris, March 31, 2003

Public Company Accounting Oversight Board
1666 K Street NW, 9th Floor
Washington , D.C. 20006
Attention: Ronald S. Boster, Secretary and Members of the Board

Re: Proposal of Registration System for Public Accounting Firms & Announcement of Roundtable on the Regulation of Registered Foreign Public Accounting Firms

Dear Sirs,

Mazars & Guérard, founding and leading firm of the Mazars organization is pleased to submit this letter in response to the request for comments from the Public Company Accounting Oversight Board (the "Board") on its proposed Registration System for Public Accounting Firms and its proposed Rules Relating to Registration (together the "PCAOB Registration System"), in accordance with Section 102 of the Sarbanes-Oxley Act of 2002 (the "Act"). We appreciate the opportunity to comment on this PCAOB Registration System.

Mazars & Guerard has offices throughout France and is the French member firm of the international organization established in 50 countries. Excluding North America, Mazars comprises 5,000 professionals, including 375 partners, has accounting and audit activities originating for the most part with European based enterprises.

Mazars is present not only in most countries of Europe, but also in North and South America, and a few countries in Asia and Africa. In North America, Mazars has a long standing presence via Mazars LLP (created in 1988/1989, SEC qualified) and has recently increased its capacity through series of joint ventures called “Mazars Team America”, which link up the long-established Mazars teams of Mazars LLP, and other US participating firms, in a common commitment to serve French and European clients with regards to the US requirements. This grouping represents some 4,500 professionals with complete geographic coverage.

We want to preface our specific comments with general consideration that we fully support implementation of rules strengthening the independence of auditors and quality control, and the contribution of these rules and system to restore public confidence in financial reporting and in the world's capital markets. Mazars & Guérard therefore is fully committed to support PCAOB initiative, as well as those of other key European or national regulators that have been already doing good work and are implementing stronger controls in these areas of common concern.

We understand that ongoing discussion with the European Commission will continue at the proposed by PCAOB roundtable, but we would mention that Mazars would be honored to participate either as a public accounting firm or one of the representatives of the French professional body, to other roundtables later.

Mazars is a priori directly concerned by the PCAOB Registration System mainly through its French and US members.

Therefore, although we do not see many practical difficulties in complying with the current PCAOB intended rules and procedures, on a legal point of view, and in addition to or to underline other comments that may have been submitted by European or French professional bodies, we would like to comment on some important issues concerning the specific French legal and professional context.

General - Should foreign public accounting firms be subject to oversight by PCAOB?

As a preamble, we would like to point out and prior to any specific comment, we would like to a certain number of specificities of the French auditing system which Mazars & Guérard believes should be taken into account when registration of French audit firms is to be considered :

- statutory audit for most incorporated businesses,
- joint audit for large companies,
- six year audit mandate,
- protection of independence via a restrictive legal approach of non audit services to audit clients,
- criminal obligations and liability for auditors,
- joint oversight of accounting firms…

In addition, we would like also to point out that a proposed Act (Loi sur la Sécurité Financière) prepared by the French Government is currently being discussed by the Parliament. This proposed Act introduces, among others, the following points : creation of an independent oversight body (Haut Conseil du Commissariat aux Comptes, HCCC), reinforcement of regulations concerning non audit services to audit clients, reinforcement of effectiveness of the joint audit, additional responsibilities of Board and auditors as regards internal control.

As a whole, we believe this legal system has proven to be reasonably robust in recent year and the proposed Act should improve its effectiveness further (see more comments below).

More globally, as you may know, the International Federation of Accountants (IFAC) at international level, and its affiliated French professional body, the Compagnie Nationale des Commissaires aux Comptes (CNCC), have long recognized the need for a harmonized framework to meet the increasing demands that are placed on the accounting profession.

Major components of this framework are International Standards on Auditing (ISAs) developed by the International Auditing and Assurance Standards Board (IAASB) and the IFAC Code of Ethics for Professional Accountants (the IFAC Code). The IFAC Code, developed by IFAC's Ethics Committee (Ethics Committee) serves as the foundation for all codes of ethics developed and enforced by IFAC member bodies, as in France the Code de Déontologie Professionnelle of the CNCC.

The IFAC Code establishes the international standard on which national standards should be based and no IFAC member body or firm is allowed to apply less stringent standards than those stated in the section unless prohibited by law or regulation. In some countries, and France is one of these, since the end of the 1960s, law and regulation are even more stringent on auditor independence rules, with associated criminal and disciplinary sanctions.

ISAs have been transposed in national standards on auditing issued by the national IFAC member professional body, in France in the Normes Professionnelles of the CNCC.

- Therefore comprehensive oversight of foreign public accounting firms should be exercised by a competent national regulatory authority otherwise there will be double oversight for all audit firms operating in major territories outside of the US. Dual oversight will be inefficient and costly, inconsistent with the principle of 'positive comity' which has previously been adopted, will potentially lead to conflicts and finally in some instances will be illegal where it breaches national sovereignties.

  In France, joint oversight of French public accounting firms by the marketplace regulator "SEC equivalent", the Commission des Opérations de Bourse (COB), and the CNCC has proven its reliability over many years, and will be soon compliant with the proposed Act organizing the new national public accounting firms independent oversight Board, (the Haut Conseil du Commissariat aux Comptes).

  As the European Community is in the process of recognition of the IFAC ISAs and Code, the PCAOB could recognize foreign accounting firms on the basis of compliance with the IFAC ISAs and Code. A suitable period of dialogue with national regulators could enable mutual recognition, and the minimization of conflicts. This process would work for a large majority of European countries, not just France.

- Double oversight may also lead to conflicts specifically where diverging decisions are reached by the differing oversight mechanisms on the same issue. This will inevitably be complicated by registered public accounting firms having to operate two sets of standards (be they auditing, quality control or ethics). Investor and stakeholders will get totally lost and confused, and this will lead to a lot of trials for conflicts of standards.

- French regulatory and legal systems forbid foreign inspectors from conducting inspections of local audit firms on their national territory. It is probable that the PCAOB's powers will be challenged in different jurisdictions and accountants will seek guidance from their domestic courts to clarify competing obligations under the Act and local law. As a matter of private international law, the PCAOB will not generally be able to enforce its powers within a country without the intervention of the courts in that country. Further it is questionable

whether local regulators would be prepared, in circumstances where their own system of regulation provides an equivalence of protection to investors, to accommodate the extra territorial reach of the PCAOB in this manner. It is likely that different approaches would emerge in different countries.

- The disciplinary system envisaged by the Act and PCAOB rules creates a double jeopardy for many auditors who will also be subject to national disciplinary systems. This would contravene the principles of natural justice enshrined in domestic laws as well as under the Universal Declaration of Human Rights (which the US is not party to). Whilst the US is party to the International Covenant on Civil and Political Rights which provides that no-one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedures of each country, this would not help accountants, who would possibly be subject to regulatory rather than criminal sanction.

- It may be inappropriate to ask for comment on registration before the PCAOB is properly constituted, and has finalized what auditing, quality control and ethics standard are to be set. In France, public accounting firms are bound by local law to follow CNCC standards in these areas. This will lead to further conflict. Mazars could be in a situation of having registered (with consequent expense of time and money), without being subject to, and therefore benefiting from oversight.

- Given all of these uncertainties, it is essential that the PCAOB allow more time for continuing dialogue between the PCAOB and European and French regulators working towards other means of achieving the SEC's objectives which do not conflict with European or French laws and CNCC professional standards or incur considerable additional time and expense. For France, a system of mutual recognition has to be explored.

Question 1 - 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?

- This would be the first time that much of this information has ever been requested from applicants by any national regulator (e.g. detailed revenue breakdowns and analyses of litigation over the past 10 years to name but two). Obtaining reliable and consistent information would involve development of new systems and processes. It is unlikely that this could be reliably achieved within 180 days.

- Given the obligations imposed on the signing partner by Item 9.1 of PCAOB Release 2003-1, it would be imperative that the information provided is as accurate and complete as possible. Detailed checking procedures would therefore be required which would further delay the availability of the information. For a membership organization like Mazars, there would be a desire for the membership to review the accuracy of the information to be

submitted by the member audit firms, so additional time would be needed to ensure that the information is as accurate as possible.

- Within the firms at both national firm and membership level, a proper process needs to be established to ensure that information is gathered having full regard for the requirements of local employment law. For example, personnel being asked to sign the consents required by Part VIII, Item 8.1(b), Appendix 2 of PCAOB Release 2003-1 may wish to seek their own independent legal advice before agreeing to sign. These rights have to be respected and the registration timetable needs to take this into account.

- The Act has also introduced a wide range of other new requirements and changes (e.g., Sections 208, 301, 302, 401, 404, 406 and 802). These will all require a significant amount of foreign issuers' management time and resource to execute properly.

- Based on the foregoing, a longer registration period is needed for non-US applicants should the PCAOB proceed with the current proposals. We suggest an extension of at least one year. Even within this extended timetable there is no guarantee that Mazars firms, where registration is required, will be able to register due to some of the legal impediments referred to below. During this extension the PCAOB should continue its dialogue with other country regulators to determine where mutual recognition status could be granted.

Question 2 - Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?

Appendix 2 of PCAOB Release 2003-1 sets out the requirements of Form 1.

- For Item 1.6 (Associated Entities of Applicants), we request clarification from the PCAOB that an applicant from a particular country need only file details of its associated entities in that same country. If not, the volume of information requested by the PCAOB could be excessive and unnecessarily extended.

- Item 1.7 request for "applicant's" license to operate in this business. Firms are granted business licenses in France and individual's have licenses to practice. Would this requirement imply the listing of both? In that case the information would duplicate to some extent the information requested in part VII. Please clarify what is meant by license or certification number.

- Item 1.8. Does this representation cover other applicants that are referred to in the audit opinion? Given the requirement for a joint audit in France, additional clarification that this representation does not apply to other audit firms is necessary. The same is necessary for audits where reference is made to another auditor.

- Items 2.1 and 2.2. The information requested in 2.1 and 2.2 is already public information since 2002 in France and should be available to the staff. This information is typically tracked in France by issuers and reviewed by the auditors for consistency prior to the filing but is not tracked by the public accounting firm in this way. There is no benefit to imposing an additional tracking system on public accounting firms.

  Furthermore, as items 2.1(d), (e), (f) and (g) request various disclosures concerning audit, accounting, tax and other fees, as information systems have been developed on an associated entity by associated entity basis rather than a total country basis, as the need to aggregate information across national borders would further complicate this process, this information, which has never previously been required to be disclosed with such an accuracy, will have to be collected on a client by client basis.

  The disclosure requirements of Item 2.1(d), (e), (f) and (g) create further complications because fee data for 2001 in line with these categories has not previously been requested. As a result, accounting firms are going to have to reconstruct much of this information.

  Accordingly, the PCAOB should consider waiving the requirements of Item 2.1(d), (e), (f) and (g) for non-US applicants.

- The information in 2.3 and 2.4 is not publicly available in France but can be provided. Item 2.4 addresses issuers for which an applicant plays, or expects to play, a "substantial" role. Whilst the information requested is relatively straightforward, it is the auditor of the issuer who is best placed to conclude as to who does and who does not play a substantial role in the issuer's audit. Some applicants may be unaware that they have been considered playing a "substantial role" in an issuer's audit.

This challenge is further exacerbated where the applicant may be secondary auditor not affiliated with the primary auditor and their work is not referenced in an SEC filing, or in the specific context of statutory joint-audit (co-commissariat aux comptes) in France, with a joint-opinion required by law with similar contribution to audit work, even if only one of the joint-auditors is signing the SEC filing. Accordingly, the PCAOB should relax this requirement for non-US applicants.

- Item 6. Foreign private issuers have never been required to present this information in their registration statements or annual reports on Form 20-F. The short answer to this requirement is that no filings have contained the information regarding disagreements requested in this section because it has never been required.

- Item 7.2 and 7.3. Publication of a social security number of an individual is against the French law for data privacy reasons. The scope of the names should be clarified. It would appear logical to restrict the names to those individuals associated with issuers (i.e. a covered persons approach) restricted to individuals at manager level and above.

  In general for all of the areas requiring statistical data, the date at which the data is to be prepared (e.g. latest financial year end of the applicant, date of application) needs to be clarified.

  Most professionals, at least in their first few years of practice, do not have a license or certificate and it is not required to assist in the audit.

  It would seem that a listing of the decision makers involved and their qualifications would be more appropriate and less cumbersome.

- Item 8. Consents: see comments below in response to question 4 related to laws on client confidentiality.

Question 3 - In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?

The PCAOB needs to have a detailed understanding, as do US investors, of the oversight and monitoring processes, together with investigation and disciplinary procedures, already in operation at a French level.

It would clearly be appropriate for the PCAOB to request this information directly from the French regulators and professional body, rather than from applicants, thereby avoiding unnecessary duplication of effort and expense.

No other information is necessary.

Question 4 - 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?

- The obligations that are associated with registration (e.g., consenting to give testimony or make documents available to the PCAOB) would conflict with the domestic existing legislation of France. Accordingly, whilst French applicants in these countries may want to register with the PCAOB, our French laws will make this a criminal offence, due to privacy protection laws. This is not something that can be quickly remedied.

- Much of the information required by the PCAOB would amount to "personal data" under EC directive 95\46\EC dealing with data protection. This Directive has been implemented into the national law of each of the 15 member states of the European Union and will be extended to the ten applicant countries over the next few years. Personal data includes the details of all accountants associated with the firm and information relating to criminal, civil or administrative actions or disciplinary proceedings pending against the firm (the latter being "sensitive personal data" subject to greater restrictions under the directive). Consent by the proposed "data subject" (i.e. the client, the firm's employees and associated persons) is one relevant condition for processing the data without breaching the requirements of the directive. The consent must be "freely given, specific and informed" (and in the case of sensitive personal information the consent must be express). Although issuers might accept that they need to provide consent in order to enable their auditor to register, the issue is less clear for employees and associated persons.

  Further, the directive prohibits transfers of personal data to countries outside the European Economic Area which do not provide adequate data protection. This principle would be relevant to the disclosure of any information required by the PCAOB. The European Commission has approved two sets of cross-border data flow contractual clauses to facilitate compliance with the directive, which, if adhered to by the relevant foreign authority, would also justify the transfer of the data to the PCAOB. One option would be for the PCAOB to consider whether it is prepared to agree to sign up to such model clauses. Alternatively, dialogue would need to be entered into between the EU and US regulators and possibly also national regulators to identify an acceptable compromise position which would provide an adequate level of protection as required by the directive.

- In France, inspection by a foreign regulator is not permitted under French law. Whilst audit work papers and other information must be supplied to both the local regulator and the domestic securities regulator in the event of legal or professional proceedings these rules do not apply to any foreign regulator. Client consent would not resolve the issue, as this is a matter of law. Several different texts of the law clearly prohibit (with criminal sanctions for violation of this principal) communication of knowledge gained by the statutory auditor in the course of his engagement to a third party. Client consent would allow the auditor to waive any civil liability but not the criminal liability associated with the transmission of this information. See further comments in response to question 7.

- Item 5. The information requested on any criminal, civil, government or administrative and disciplinary action or other proceedings brought against individuals within the last ten years is onerous and indeed is not relevant to the PCAOB if the individual concerned does not participate in or contribute to the preparation of an audit report of an issuer. The provision of such sensitive information (which may not previously have been on the public record especially where a case is pending) could be seriously prejudicial to both the accounting firm and the individual concerned.

  This item is a particular issue for France:

  - ✓ Criminal proceedings: there are currently a number of provisions in company law which result in a criminal sentence for violation of relatively formal aspects of the law. We believe that reporting of such instances is beyond the scope of what the PCAOB require for oversight purposes;
  - ✓ Certain criminal sentences can be the subject of an amnesty under certain circumstances. Reporting an individuals name for a sentence in the last ten years which has been the subject of an amnesty would potentially subject the applicant to legal and criminal consequences;
  - ✓ Such information is not necessarily public (although it would have been public at the time of the sentence);
  - ✓ Civil proceedings and disciplinary actions: this information may not be public or is published on an anonymous basis. As such collection and completion of the data could prove difficult. The publication of the data and transfer outside of the EU would be illegal in France because of data privacy protection laws. It would be impossible to obtain information for cases not concluded.

  We believe any information on the criminal, civil or disciplinary cases should be strictly limited to those cases, relative to an Issuer, which are in the public domain.

- In some jurisdictions frequently used for arbitration, the results of arbitration proceedings required to be disclosed under Item 5.3 (a) are "private" to the various parties to the arbitration. As such, disclosure to the PCAOB may require the prior consent of the other parties to the arbitration proceedings. There is no guarantee that these consents will be forthcoming.

Question 5 - In the case of non-U.S. firms that are required to register because they play a substantial role in the preparation and furnishing of an audit report on a U.S. issuer, is the Board's definition of "substantial role" appropriate?

Whilst the definition of "substantial role" is understood, the responsibility for determining whether a firm does or does not play a "substantial role" would need to be with the primary auditor, as would the reporting requirement. See comments above in response to question 2.

Question 6 - 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?

- Mazars considers that requirements to register should not 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. Despite the numerous requirements also to be met to become a member firm of Mazars, information required to be disclosed to the PCAOB should in principle be the same for everyone with the same country of origin applying for registration.

- We therefore believe the way forward would be at least partial mutual recognition of national oversight systems. Should this way forward prove to be impracticable non US Mazars firms would their like to see how their "association" with US accounting firms, in particular Mazars LLP, could contribute to their registration.

- Of course, for firms that belong to an international organization, the statements required by Item 4.1 of Part IV of Appendix 2 of PCAOB Release 2003-1 could be covered by one, global statement, including specific waivers for compliance with national law and regulation. This will avoid unnecessary repetition of data.

Question 7 - 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?

See also general consideration and answers to questions 1 and 4. Direct oversight of a foreign accounting firm should continue to be exercised by their competent national regulatory authority rather than by the PCAOB. This respects the national sovereignty of non-US countries but also addresses some of the practical problems that would arise with direct PCAOB oversight. The issue of Board inspection is a sensitive one, because the PCAOB requirements fail to respect adequately the national sovereignty of countries outside the USA. The PCAOB needs to be mindful of the different but equivalent ways in which accounting firms are nationally regulated. We encourage the PCAOB to continue its dialogue with other national regulators to work towards (where appropriate) a system of mutual recognition.

To enable the Board to correctly assess this issue, it is important to provide a brief overview of the organization and structure of the accounting profession in France:

- In France, the "Loi Securité Financière" is currently in the final stages of discussion and approval by the Parliament. This law, which addresses corporate governance and financial marketplace issues, also includes a significant chapter on the organization and governance of the accounting profession in France. It creates a Board ("Haut Conseil") comprised of independent persons who will be responsible for the control of the accounting profession under law. The enrolment as statutory auditor, determination of auditing standards,

independence rules, quality control and disciplinary procedures of the profession will fall under the responsibility of this Board, mandated by the Minister of Justice. Conceptually, many aspects of this law are very similar to the provisions of the Sarbanes-Oxley Act. The PCAOB should consider to what extent the provisions of this law might satisfy certain of their requirements.

- In addition, current company law provides criminal sanctions for pursuing an engagement as auditor if not independent and participation or association by an auditor with the publication of false or misleading financial information. Company law also renders the withholding of significant information from the auditors criminal. These aspects of current company law would are very much in line with certain chapters of the Sarbanes-Oxley Act.

- Under French law, any quoted company is required to have a joint-audit. As such two independent audit firms with joint and several liability report on the consolidated accounts of all quoted companies in the France. This is a very strong safeguard for the marketplace. This aspect needs to be considered by the PCAOB.

- Although the French profession is to some extent self regulating to date, the role of the auditor and his responsibilities are clearly set out in corporate law. The statutory auditor has a certain legal responsibility, as he is required to report to the equivalent of the district attorney if he discovers fraud or other specified violations of company law.

- Obtaining a license to practice as statutory auditor is a very difficult process in France. After obtaining a diploma which requires approximately four years of additional study and exams after a masters degree equivalent, an individual must be sworn in by the court, under the responsibility of the Minister of Justice, only after having obtained approval following the "enquête morale" which includes verification by the police of moral standing and absence of prior criminal records.

- The above factors represent significant safeguards for the profession in France and should clearly be taken into account by the PCAOB regarding oversight of firms in France.

As a conclusion, Mazars believes that oversight should be under the control of the "Haut Conseil", with an associated system of mutual recognition by PCAOB.

Question 8 - 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?

- The PCAOB should consider exempting French accounting firms from having to provide direct testimony to the PCAOB, or to provide access to their audit working papers for the legal reasons cited above and below. Again, it should be for the French regulator to exercise oversight in these areas. Where necessary, the PCAOB may wish to enter into a series of bilateral dialogues with foreign regulators to establish proper lines of communication. This remark is founded on the criminal sanctions for revealing information to a third party.

- Sections 102, 105, and 106 of the Act require audit firms to disclose information, documents or audit work papers to the SEC or to the Public Company Accounting Oversight Board (the "Board") when required by them to do so. These provisions are problematic under French law, as audit firms are subject to specific legal confidentiality (i.e. non-disclosure) requirements in France.

  Article L.225-240 of the Code de Commerce provides that auditors are subject to confidentiality obligations with respect to facts, documents or information they have learned or that were disclosed to them in the course of their work. Any breach of such obligation may entail a sentence of one-year's imprisonment or a fine of 15,000 euros (article 226-13 of the French Criminal Code). However, auditors may disclose confidential information when required or authorized by law (Article 226-14 of the French Criminal Code). This is likely to be interpreted by French courts as "French law". Since there is no express provision under French law authorizing the disclosure of confidential information by auditors to the SEC or to the Board, auditors could refuse to disclose information, documents or audit work papers lest they breach confidentiality obligations under French law. In addition, please note that Article 66 of the Decree dated 16 August 1969 lists entities (including courts) to which audit work papers may be disclosed. Neither the SEC nor the Board are included in such list. Whilst it is not entirely clear that this list is intended to be restrictive, the provision may also serve as a specific basis for auditors to refuse to disclose audit work papers.

  Currently , there are agreements between the COB and the SEC. The extension of such agreements needs to be considered by the PCAOB.

- As already emphasized in general consideration paragraph, the disciplinary system envisaged by the Act creates a double jeopardy for French auditors who will also be subject to national disciplinary systems.

- As stated above, the comprehensive oversight of a foreign public accounting firm should be exercised by a competent national regulatory authority. The PCAOB should enter into a dialogue with those regulatory authorities responsible to develop a clear understanding of the other national regulation systems. We would recommend an extension of at least one year before any foreign firms are required to register, and only for those countries where mutual regulator recognition is not possible.

Question 9 - 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?

See responses to previous questions concerning a one year extension from registration.

Question 10 - 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?

See the responses to question 6.

We hope the above comments will be helpful and remain at your disposal for further comments.

Yours sincerely.

Patrick de CAMBOURG
President of Mazars & Guérard

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Certified Public Accountants

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March 31, 2003

Public Company Accounting Oversight Board
1666 K Street NW
Washington, DC 20006-2803

Attention: Office of the Secretary

Re: Docket Number 001

Dear Board Members:

McGladrey & Pullen, LLP is please to provide input to the Public Company Accounting Oversight Board (PCAOB) as you consider the proposed registration system for public accounting firms. We are one of the largest audit firms in the United States, and we appreciate the opportunity to participate in this very important process. Following are our comments regarding certain aspect of the proposed rule.

Appendix 1, Proposed Rules Relating to Registration

Section 1, Rule 1001 (a) – Definition of Accountant

Included in the definition of accountant is a natural person who "holds an undergraduate or higher degree in a field, other than accounting, and participates in audits." Under this definition, clerical or administrative staff with a degree who work on an audit client performing clerical or administrative functions would appear to be considered an accountant. We recommend this definition be clarified to exclude individuals who perform services solely in an administrative or clerical capacity.

Section 1, Rule 1001 (m) – Definition of Person Associated With a Public Accounting Firm

The proposed definition of "person associated with a public accounting firm," includes "any independent contractor or entity that, in connection with the preparation or issuance of any audit report ... receives compensation in any form from, that firm." We believe that "specialists" (as defined in Statement on Auditing Standards No. 73, Using the Work of a Specialist) engaged by a public accounting firm should be specifically excluded from this definition. If specialists are not excluded from this definition, the actions of such individuals and firms would require disclosure in Items 5.1 – 5.4 of Proposed Form 1. We anticipate that public accounting firms would have difficulty in obtaining the information required by those items.

In addition, we believe specialists would be very reluctant to be engaged by a public accounting firm if they were required to give their consent to the firm as required under Item 8.1 of the proposed Form 1, Consents of Applicant.

We note that specialists engaged by the client would not be subject to these requirements.

Appendix 2, Proposed Form 1

Part II, Item 2.1, Issuers for Which Applicant Prepared Audit Reports During the Preceding Calendar Year and Item 2.2, Issuers for Which Applicant Prepared Audit Reports During the Current Calendar Year

The fee disclosure requirements under section 2.1 and 2.2 utilize a combination of fee disclosures required under the Commission's 2000 proxy disclosure rules pursuant to Item 9 of Schedule 14A and the Commission's recently revised fee disclosure rules that become effective for fiscal years ending after December 15, 2003. The gathering of the fee information for the initial registration in this format with respect to calendar years 2002 and 2003 will involve significant time and effort. In some cases, this level of historical detail may not be available.

We ask the Board to consider a transition period for the initial registration to require those fee disclosures that can be extracted by the public accounting firm from existing proxy filings. The required disclosures under sections 2.1 and 2.2 could be updated in future filings with the Board once the Commission's revised fee disclosure requirements become effective.

Part V, Listing of Certain Proceedings Involving the Applicant's Audit Practice

Part V of the proposed registration rules requires an "applicant" to disclose six specified categories of activity arising out of criminal, civil, administrative and disciplinary proceedings. In Sarbanes-Oxley, Section 102(b)(2)(F), Congress granted the PCAOB authority to require disclosure of pending, not past, litigation or disciplinary proceedings. Congress further limited this authority to proceedings in connection with an audit report prepared for purposes of "compliance by an issuer with the requirements of the securities laws".

The proposed litigation and disciplinary disclosures seek information that is unrelated to audit reports on SEC clients. The non-SEC audit practices of potential applicants are already subject to vigorous and extensive state regulation and enforcement, if necessary. We believe that the proposed registration disclosures should be limited to matters involving SEC audit clients.

The proposed litigation and disciplinary disclosures also demand information regarding past matters. This is a departure from the PCAOB's statutory authority, which is explicitly limited to "pending" matters. Any such departure should be reasonable in its scope, taking into consideration whether matters long since past or the actions of individual partners no longer associated with the applicant are at all relevant to a prospective applicant's "fitness for registration".

The ten-year look back period for adjudicated criminal actions and disciplinary findings under Item 5.4 is onerous and unfair. It subsumes the underlying events and occurrences that may antedate the ten-year look back period by many more years. The relevance of events ten years or older is questionable, even assuming the PCAOB has authority to look back at all. At most, the PCAOB should deploy a three-year look back on all criminal or disciplinary proceedings arising out of audit reports issued on SEC audit clients. At a minimum, the PCAOB should conform the look back period to be consistent with the record retention requirements imposed by Sarbanes-Oxley which acknowledge that after seven years it is unreasonable to expect any institution or individual to maintain records.

As to civil litigation by the government or private litigants, the PCAOB should limit the look back to litigation relating to SEC audit clients. We concur with the PCAOB's proposal that a twelve-month look back on civil litigation involving SEC audit clients is appropriate, provided it is limited to final judgments or an arbitrator's award, and does not include matters resolved by confidential

settlements. The proposed rules should clearly exclude any litigation matter resolved by settlement. In addition, we recommend that the Board establish a de minimus amount under which judgments or awards need not be disclosed.

The proposed disclosure regarding any past suspension from accounting practice under Item 5.5b is not limited by time. The proposed rule should be limited to a reasonable period of time. This proposal also does not balance the relevance of such information against the undue prejudice which will befall a person who has been reinstated and performed admirably for years thereafter.

Part VIII, Consent of Applicant

Although we acknowledge that Item 8.1 Consent to Cooperate with the Board is consistent with the Act, we believe that the proposed rule does not allow for any considerations of due process. It does not consider the constitutional rights of an "associated person". Item 8.1 demands that an employee or partner consent to unconditioned cooperation as a condition of continuing employment. This section ignores the employee or partner's individual rights, including constitutional rights that do not compel a witness to testify in certain circumstances.

The proposed rules should take into consideration the foregoing rights. It would be inappropriate to deny an applicant's registration because an employee or partner witness has chosen to exercise his or her constitutional rights.

Concluding Comments

Thank you for considering our comments. Questions regarding these or other matters should be directed to William Travis, Managing Partner, 952/921-7780.

McGladrey & Pullen, LLP

March 18, 2003

Public Company Accounting Oversight Board
Attention: Office of the Secretary
1666 K Street, NW
Washington, DC 20006-2803

Dear Secretary:

Mohler, Nixon & Williams is a local CPA firm located in Campbell, California. Our practice includes auditing a small number of 401(k) plans (approximately 15) that are sponsored by publicly traded companies and include the sponsor's common stock as one of the investment options. Accordingly, these plans are required to file a Form 11-K annually. We also audit a significant number of 401(k) plans where the sponsor is a public company, but where no Form 11-K filing is required. We do not perform any other audit services that involve filing documents with the Securities and Exchange Commission (SEC); therefore, our comments are specific to this narrow range of audit services. We would encourage the Public Company Accounting Oversight Board (PCAOB) to address, as part of their registration rules, more specific guidelines related to auditors of public company sponsored benefit plans who do not also audit the sponsoring public companies financial statements.

It is our understanding that under the Sarbanes-Oxley Act (the Act), benefit plans that are required to file a Form 11-K are considered "issuers" as that term is used in the Act. It is also our understanding that under the Securities and Exchange Commission letter ruling, *Certification of Disclosure in Companies' Quarterly and Annual Reports*, footnote #47, the management of the sponsor of these benefit plans is not required to provide any certification in the Form 11-K, nor is the auditor of the plan required to provide certification related to the internal controls of the plan. Therefore, we do not believe the audit work we perform for benefit plans of public companies was intended to be included under the Act. It is unclear to us how the Act would be applied to a firm such as ours with extremely limited SEC reporting activities relating only to Form 11-K filings with the SEC, considering the nature and use of these filing with the investing public. Therefore, at this time we are uncertain whether our firm will be required to register under the Act and recommend that the registration rules developed by the PCAOB, or the PCAOB itself, directly address this specific situation.

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Horwath

Please contact Gregory S. Finley, managing partner, at (408) 369-2400 if you have any questions or comments.

Sincerely,

MOHLER, NIXON & WILLIAMS
Accountancy Corporation

MOSS-ADAMS LLP

CERTIFIED PUBLIC ACCOUNTANTS

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March 31, 2003

Public Company Accounting Oversight Board
1666 K Street NW, 9th Floor
Washington D.C. 20006

Re: Proposed Rule: Proposal of Registration System For Public Accounting Firms (PCAOB Release No. 2003-1, March 7, 2003)

Ladies and Gentlemen:

We respectfully submit the following comments concerning the above proposal on behalf of this accounting firm:

Issue 1
Application procedures are incomplete without withdrawal and deregistration procedures.

Comment
Page 9, Note 20 of the Summary indicates that the PCAOB (the Board) will not have in place provisions for amendment or withdrawal of pending registration applications until sometime after the Board's application process has begun. We do not believe the procedures for application for registration should be adopted without procedures for withdrawal of pending applications and for deregistering once a firm becomes registered.

Issue 2
We believe the proposed rules for Board approval of a registration application are too subjective.

Comment
Rule 2105, Standard for Approval, should articulate in greater detail objective standards the Board will consider in reviewing applications for approval. We believe the current reference to "whether the application for registration is consistent with the Board's responsibilities under the Act" is too subjective.

MOSS-ADAMS LLP

***Issue 3**, Rule 2105*

The proposed rules are unclear as to how the Board will notify registrant applicants when, or whether their applications have been approved or disapproved.

Comment

It is unclear in Rule 2105, or elsewhere, how the Board will notify applicants for registration whether and when an application has been approved. We do not believe notification only in the event of disapproval or requests for additional information occurs is appropriate. Without notification a level of uncertainty regarding the closure of the application would linger. The rules should specify a notification procedure or procedures for approved applications. Also see Summary of proposed Release 2003-1, page 8, item 6.

***Issue 4**, Rule 2105(b) and (c)*

We believe the review periods specified in the proposed rules are too long, for both the initial 45-day waiting period and the provision to begin a new 45-day waiting period when additional information is submitted pursuant to a Board request.

***Comment** – Rule 2105(b)*

The 45-day review period referred to in Rule 2105(b) seems long and we believe should be shortened to a 30-day review period. We note that the Division of Corporation Finance is under a 30-day review objective for review of a 1933 Act registration statement. We believe a similar time frame would be reasonable for review of applications.

***Comment** – Rule 2105 (c)*

Rule 2105 (c) requires the start of a new 45-day period for the approval process when the Board request additional information. When additional information is provided for an application, the waiting period to become eligible to serve public clients could exceed 90 days. This extended time period may unfairly impact the accounting firm and the public company clients they serve because it would affect their ability to file timely reports with the SEC.

We believe consideration should be given to the amount of additional information requested. If the initial application was not grossly incomplete, we believe, rather than beginning a new 45-day waiting period after submission of additional information, the rules should provide for a more timely review of an amended application, such as 10 days.

MOSS-ADAMS LLP

Issue 5, *Rule 2105(c)*
The proposed rules are unclear as to the basis for sanctions, especially regarding incomplete and disapproved applications.

Comment
Rule 2105(c) discusses authority by the Board to sanction non-registered accounting firms for mere disapproval by the Board of a completed application. Such a sanction appears to be unsupported by the Sarbanes-Oxley Act of 2002 ("Act") inasmuch as the Act appears to limit the Board's authority[1] to sanction registered firms. Additionally, the parts quoted in Note 19 of the Summary to the proposed Rule 2003-1 appear to only refer to the ability of the Board to sanction a registered accounting firm, not merely an applicant. In our view, the Board's rules should clearly identify circumstances that may lead to Board sanctions for accounting firms with applications that have not been approved by the Board.

We believe the language in Rule 2105(c), "or may take such other action as the Board deems appropriate" is too broad and gives the Board too much room to sanction accounting firms for merely not providing an application that, in the Boards subjective view, is incomplete. Board rules should provide specific, unambiguous language describing the kinds of "other action" that may be deemed appropriate by the Board and in what circumstances other action could be taken.

Issue 6, *Rule 2300*
We believe confidential treatment should be afforded all applications, and amendments, for application until such time as the Board approves the application and the accounting firm becomes registered.

Comment
Rule 2300 Public Availability of Information Submitted to the Board; Confidential Treatment Request should be changed to specify that an application is considered confidential until such time as the application is approved, even though the Act suggests that

[1] For example, §3 of the Act, quoted (in part) following, only refers to Board authority to regulate registered "accounting firms." §3. COMMISSION RULES AND ENFORCEMENT. (a) REGULATORY ACTION, (b)(2) INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES. —Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended—(A) in subsection (a)(1), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm . . . "; (B) in subsection (d)(1), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm . . . " (C) in subsection (e), by inserting "the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm . . . "..

the applications be made publicly available[2]. We believe this change is needed because of: 1) the lack of guidance of the measures the Board will use to accept an application together with the potential adverse regulatory consequences of a disapproval, and b) the failure of the Board to propose for adoption rules for withdrawal of an application or to become deregistered with the Board.

***Issue 7**, Form 1, Part II, Part V, and Part VII*

By including information request for those who do not play a substantial role in the decision making aspect of the audit process, the Form 1 is unnecessarily burdensome and appears to be beyond the regulatory scope of the Act.

***Comment** – Form 1, Part II*

The information required by Form 1, Part II, Item 2.4, Issuers for Which Applicant Played, or Expects to Play, a Substantial Role in Audit, is burdensome to gather, especially in view of the fact that applicant is not the accountant that is principally responsible for the client. In any event, we do not believe the information is significant for regulatory purposes because the principal accounting firm has responsibility to establish controls to determine that other firms participating in the audit in a significant way are in compliance with the Act.

***Comment** – Form V*

The information required by Part V, Listing of Certain Proceedings Involving the Applicant's Audit Practice, Items 5. 1, 5.2, 5.3, 5.4, and 5.4 is for all accountants in the applicants firm. This seems beyond the need for public oversight of the audit firms, and also beyond the scope of the authority provided to the Board by the Act[3]. We believe the proposal for required information should be limited to those who have a substantial supervisory role of the audit process for the audit of an issuer, and thereby be less unnecessarily burdensome and be consistent with the objectives of the Act.

***Comment** – Part VII*

The information required by Part VII – Roster of Associated Accountants (Listing of Accountants), requires information for all accountants of an accounting firm whether or not the accountant participate in any significant way with the audit of public companies. We

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[2] See §102(e) PUBLIC AVAILABILITY. —Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

[3] Note that the term "audit reports" is defined by the Act as having to do with public companies. §102 (F) reads "information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any **audit report;**"

MOSS-ADAMS LLP mri

believe this information request is beyond the Act's authorization of the Board to gather information. The Act grants the Board specific authority to gather information only for those accountants who participate in the audit of public companies[4]. Further, this information requirement seems needlessly burdensome to carry out the regulatory objectives of the Board. We believe the proposal for required information should be limited to those who have a substantial supervisory role of the audit process for the audit of an issuer.

We appreciate the PCAOB's consideration of our comments in finalizing the rules for the Registration System For Public Accounting Firms.

Sincerely,

Neal West

Neal West
For Moss Adams LLP

ms:NW

cc: Jeff Brown
Alan Jorgensen
Ed Drosdick

[4] Note that the term "audit reports" is defined by the Act as having to do with public companies. §102 (E) of the Act provides that the Board shall gather "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, as well as the State license numbers of the firm itself"

NASBA
National Association of State Boards of Accountancy
150 Fourth Avenue North, Suite 700, Nashville, TN 37219-2417
Tel 615/880-4200 Fax 615/880-4290 Web www.nasba.org

March 27, 2003

Public Company Accounting Oversight Board
Attention: Office of the Secretary
1666 K Street, NW
Washington, DC 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 001

Dear Board Members:

We appreciate the opportunity to offer comment to the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") regarding its Proposal of Registration System for Public Accounting Firms and related proposed Rules and Proposed Form 1 (Rulemaking Docket Matter No. 001) that are being considered by the Board for adoption and submission to the Securities and Exchange Commission (the "Commission" or the "SEC").

As the national organization of all U.S. state accountancy regulators, the National Association of State Boards of Accountancy (NASBA) applauds the Board's efforts to implement promptly the requirements of the Sarbanes-Oxley Act of 2002 (the "Act") that are entrusted to the Board. NASBA's member boards (sometimes called the "State Boards") are composed of both licensees and public members. As rule makers themselves, NASBA's constituent boards appreciate the challenges of a politically-charged legislative mandate to shape a transparent, efficient and vigorous regulatory approach to enhancing investor confidence in financial reporting for SEC issuers. As enforcers who remain the only authorities empowered to grant or revoke licenses of CPAs (certified public accountants), NASBA's member boards understand the delicate balance between the need for swift discipline and the necessity of procedural fairness. Finally, as independent government agencies that must operate exclusively on licensing fees, NASBA's member boards are sensitive to budgetary realities that inevitably limit program prerogatives.

NASBA's ongoing primary focus is upon rules and policies relating to enforcement, with special attention to facilitating federal/state cooperation.

I. General Comments About PCAOB Rulemaking.

In general, NASBA urges that these and other new regulations promote vertical clarity so that state accountancy boards can easily translate PCAOB and SEC case results into swift, equitable and defensible disciplinary actions against audit firms and individual licensees implicated in violations. In so doing, the PCAOB and the SEC will be able to place greater practical reliance upon an effectively administered State Board licensing function that puts the offending licensees

at risk of losing not just their SEC clients but their certificates and their livelihoods as CPAs. We note that state accountancy regulation is not self-regulation by accountants, but licensing and discipline by government agencies based on state law. State Board enforcement can result in discipline in a number of forms, including censure, civil penalties, and revocation of the right to practice and call oneself a CPA. State Boards generally also have the statutory authority to initiate civil actions for injunctions as well as criminal prosecutions against individuals and firms engaged in the unlicensed practice of public accountancy.

We believe that close cooperation and working partnership of the PCAOB and the SEC with NASBA and the State Boards would result in more potent regulatory efforts

II. Comments on Selected Provisions of the Proposed Rules and Proposed Form 1.

General Note. To strengthen federal/state coordination of oversight of accountants that do audit work for SEC issuers, we offer a few general thoughts to clarify the role of the State Boards and to reduce the risk of confusion or misunderstanding by accountants or others who may seek to rely upon the PCAOB Rules. In the states (and other U.S. jurisdictions) generally an accountant must meet rigorous standards (including education, experience and examination) to be licensed and thus able lawfully to practice most forms of public accountancy, especially audits and reviews. Such licensed accountants (including certified public accountants or CPAs, as well as – in some States – Licensed Public Accountants) frequently are called "licensees." Other accountants, called "non-licensees" or "unlicensed accountants," are not authorized to conduct the practice of public accountancy for which license is required by the applicable state (or other U.S. jurisdiction).

We recognize that in connection with PCAOB oversight of public accounting firms that do audit work for SEC issuers, the PCAOB will seek information about accountants associated with those firms – whether CPAs licensed by State Boards or other accountants. Presumably the other (non-CPA) accountants would include "non-licensees" in U.S. jurisdictions, accountants licensed by other authorities in non-U.S. jurisdictions and, if applicable, unlicensed accountants in non-U.S. jurisdictions. We also recognize that in trying to elicit information about appropriate associated persons, the PCAOB may wish to define that class of persons broadly, as in the proposed definition of "accountant" in the proposed Rules. However, to strengthen NASBA/State Board coordination with PCAOB/SEC oversight, we believe it is very important that the PCAOB Rules recognize the distinct category of accountants licensed by the State Boards – the CPAs (and, also, in some States, Licensed Public Accountants). Presumably analogous considerations may be of interest to non-U.S. licensing authorities with respect to accountants licensed within their respective jurisdictions.

Proposed Rule 1000. Application of Rules. NASBA suggests that the wording of this Rule be modified to clarify its intent that the Rules of the Board apply to public accounting firms that are required to register with the Board or that otherwise apply for registration with the Board (for example, in contemplation of seeking audit work for SEC issuers) and not to other public accounting firms (e.g., firms that do no work for SEC issuers and do not apply for registration). As modified, Rule 1000 could read: "The provisions of the Rules apply, according to their

terms, to all public accounting firms that are required by the Rules to be registered with the Board or that otherwise apply for registration with the Board, to all persons associated with registered public accounting firms, and to all associated entities of registered public accounting firms" (proposed revision underlined).

Proposed Rule 1001. Definition of Terms Employed in Rules.

General Comment About Definitions. Regarding definitions generally, NASBA suggests: when terms are defined elsewhere for general use (more than for a particular purpose), whether by the Act, securities statutes or regulations, state law or state licensing authority or by customary use, that those *same* terms generally not be given a substantially *different meaning* from their common use. If the Rules do provide a diverse meaning, in an appropriate case it may be helpful to coin another term to avoid potential confusion. An example is the definition of "accountant" discussed below.

Definition of "Accountant". In some respects the proposed definition of "accountant" may be viewed as going beyond common usage and thus could lead to misunderstanding. Of concern, there could arise a misperception by the public that accountants do not need to be licensed to do audits or other public accounting since they have been included in an application for registration with the PCAOB. Additionally, without clarification, the official use of the term "accountant" in this context might have the unintended consequence of discouraging individual licensure, thus reducing State Board's ability to directly discipline wrongdoers. In light of the express requirement of Section 102(b)(2)(E) of the Act that an application for registration shall include "a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports," perhaps these potential problems may be attenuated by using a different term, such as "licensed or unlicensed accountant" or "firm accounting professional."

Add a definition of "appropriate State regulatory authority" based on the definition in the Act: "The term 'appropriate State regulatory authority' means the State agency or other State authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a public accounting firm or associated person thereof, with respect to the matter in question."

Add a definition of "State" based on the definition in the Act: "The term 'State' means any State of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States." (Assuming that this change is made, references to "state" would be changed to "State" as appropriate.)

Proposed Rule 2100. Registration Requirement for Public Accounting Firms. NASBA concurs that the registration requirement should apply to foreign public accounting firms. Uniformity of protection of investors in the U.S. securities markets requires that the Board have oversight of each public accounting firm that prepares or issues an audit report or plays a substantial role in the preparation or furnishing of an audit report with respect to an SEC issuer. It may be useful to add a sentence to the effect, "A public accounting firm that is not required to

be registered with the Board may register with the Board if it meets applicable requirements." This would expressly acknowledge that a public accounting firm that does not currently do audit work for an SEC issuer may register in contemplation of seeking that type of work.

Proposed Rule 2105(a). Action on Applications for Registration – Standard for Approval. NASBA urges that there be added to the standards for approval of an application for registration an express requirement regarding licensing of the public accounting firm. We suggest something to the effect:

"Absent an exception for a particular applicant in the discretion of the Board (based upon substantial evidence that the exception is justified and fully consistent with the other standards for approval of an application), the application for registration of a public accounting firm shall not be approved unless the firm demonstrates that:

(1) it is duly licensed, registered or permitted in good standing under the laws of each applicable State [defined as suggested above] and each other applicable jurisdiction where or with respect to which the activities of the accounting firm require the accounting firm to be licensed, registered or permitted under the laws of the State or other jurisdiction or the rules, regulations or policies of the appropriate State regulatory authority or other jurisdictional regulatory authority; and

(2) it meets any other requirements of the Commission for recognition of the accounting firm by the Commission, including those set forth in Regulation S-X of the Commission, as it may be amended from time to time."

Proposed Rule 2300. Public Availability of Information Submitted to the Board; Confidential Treatment Requests. In Section (h), we request that the second sentence be revised to provide, "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 to each appropriate State regulatory authority, or (2) to comply with any subpoena validly issued by a court or other body of competent jurisdiction" (proposed revision underlined). [The definition of "appropriate State regulatory authority" would be added as noted above, based on the definition in the Act.] In making this revision, the Board might want to preserve similar flexibility for its cooperation with foreign regulatory authorities, so that the added language might be, ". .. or to each appropriate State regulatory authority or other jurisdictional regulatory authority. . ." The State Boards would want to have available all of the PCAOB's registration information.

Proposed Form 1 – Part I – Identity of the Applicant. In Item 1.7, Applicant's Licenses, NASBA agrees with the proposed requirement to list "every license or certification number issued to the applicant authorizing it to engage in the business of auditing or accounting" and to "furnish the name of the issuing state, agency, board or other authority" for "each such license or certification number." NASBA suggests that the reference to issuers of licenses be revised to read, "furnish the name of the issuing State agency, board or other State or foreign licensing authority" (proposed revision underlined). NASBA suggests that there be added a requirement to provide such information for each *associated entity* of the applicant listed in Item 1.6 -- at

least with respect to that *associated entity* engaging in the practice of public accounting in the U.S. or preparing or issuing, or participating in or contributing to the preparation of, *audit reports* for *issuers*. Likewise, in Item 1.8, Required Licenses and Certifications, NASBA agrees with the proposed requirements and suggests that they be revised to read as follows: "Indicate whether the applicant, each *associated entity* required to be listed in Item 1.6 and all individual *accountants* associated with the applicant required to be listed in Part VII who participate in or contribute to the preparation of *audit reports* for *issuers* or comparable reports prepared for clients that are not *issuers* have in good standing all licenses and certifications and valid practice privileges required by governmental (federal, State and non-U.S.) and, if applicable, professional organizations, and identify by name any such *associated entity* and any such individual *accountant* that does not" (proposed revisions underlined). These provisions, especially as proposed to be revised, would help facilitate the coordination of federal and State regulatory efforts. Finally, NASBA suggests that unless there are any licenses, certifications or practice privileges required uniquely by any private professional organizations (i.e., that are not otherwise required in the first instance by governmental (federal, State and non-U.S.) organizations), it likely would be appropriate to delete the reference to professional organizations.

Proposed Form 1 – Part VII – Roster of Associated *Accountants.* In Item 7.1, Listing of *Accountants* Associated with Domestic Applicants, and Item 7.2, Listing of *Accountants* Associated with Non-U.S. Applicants, NASBA strongly agrees with the information listing requirements. Again, these provisions would help facilitate the coordination of federal and state regulatory efforts. Also, NASBA suggests that the last two sentences of Item 7.1 be revised to read: "For each such person, list every license or certification number (if any) and any valid practice privileges 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 State or foreign licensing authority" (proposed revision underlined). Finally, NASBA suggests that the last two sentences of Item 7.2 be revised to read: "For each such person, list every license or certification number (if any) and any valid practice privileges 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 State or foreign licensing authority" (proposed revision underlined).

In Item 7.3, Number of Firm Personnel, part (b) calls for the number of certified public accountants "or *accountants* with comparable licenses from non-U.S. jurisdictions" that are associated with the applicant. We wonder who determines what are "comparable licenses" and how that determination will be made. NASBA hopes to participate in discussions with PCAOB representatives regarding this point.

Proposed Form 1 – Part IX – Signature of Applicant. NASBA suggests adding a provision – whether in this part or elsewhere in the Form or the Rules – to the effect that the continuing effectiveness of a registration of a firm with the PCAOB is conditioned, in the discretion of the PCAOB, upon the application being complete in all material respects and not containing any untrue statement of a material fact or omitting to state a material fact necessary to make the

statements made, in light of the circumstances under which such statements were made, not misleading.

Drafting Comments.

The following comments are offered for consideration as drafting matters, to conform certain references, to clarify intended meaning or to amplify proposed provisions consistent with their apparent general intent.

Proposed Form 1 – Item 5.1(a) [criminal actions in connection with *audit reports*]. Consider revising the clause in the middle of the first sentence to read, ". . . is a defendant in any pending criminal proceeding (including a non-U.S. jurisdiction), or was a defendant in any such proceeding . . ." (proposed change underlined).

Proposed Form 1 – Item 5.1(b)(4) [criminal actions in connection with *audit reports*] and various other places. Consider revising this sentence to read, "The name of the *issuer* or other client that was the subject of the *audit report* or other comparable report" (proposed change underlined). This would conform with the reference in 5.1(a) and the definition of audit report. This change appears similarly appropriate in Items 5.2(b)(4), 5.3(b)(4), and 5.4(b)(4).

Proposed Form 1 – Item 5.3(a) [regarding private civil actions in connection with *audit reports*]. Consider adding reference to proceedings initiated by "other persons". Consider adding reference to alternative dispute resolution proceedings. Consider express reference to "(including a non-U.S. jurisdiction)".

Proposed Form 1 – Item 5.5(b) [regarding other proceedings]. Consider adding reference to a time period, such as "was, in the previous ___ years, censured or fined . . ." (proposed change underlined). This would be parallel to the approach in Item 5.5(a).

III. Prospective Future Rulemaking by the PCAOB or the Commission.

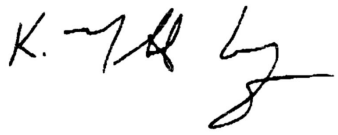
NASBA urges that care be taken by the PCAOB and the Commission in drafting these and other regulations so as not to dilute the existing requirement for Commission recognition that a certified public accountant be "duly registered and in good standing as such under the laws of the place of his residence or principal office" and that a public accountant be "in good standing and entitled to practice as such under the laws of the place of his residence or principal office." [Rule 2-01(a) of Regulation S-X; 17 CFR 210.2-01(a)] The current license status of all accountants should be regularly checked with State Boards.

NASBA urges that the PCAOB encourage the Commission to add to the requirements of Regulation S-X regarding "Qualifications of Accountants" a requirement for Commission recognition [and/or that the PCAOB itself require] that an accountant and an accounting firm be duly licensed, registered or permitted or otherwise hold valid practice privileges and be in good standing under the laws of each applicable State (to be defined as suggested above) and each other applicable jurisdiction where or with respect to which the activities of the accountant or the accounting firm require the accountant or the accounting firm to be licensed, registered or permitted or otherwise hold valid practice privileges under the laws of the State or other jurisdiction or the rules, regulations or policies of the appropriate State regulatory authority or other jurisdictional regulatory authority.

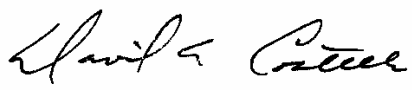
Footnote 11 in the PCAOB's Release No. 2003-1 states the acts that restrict US government agencies' disclosure of information do not apply to the PCAOB. However, it is anticipated that the states' privacy laws would be respected by the PCAOB.

Conclusion. NASBA appreciates the opportunity to provide these comments. Should you have questions concerning our thoughts on the proposed Rules or other matters, please contact us. We look forward to responding to other proposals as appropriate and to ongoing cooperation and communication with the PCAOB and the Commission.

Sincerely,



K. Michael Conaway, CPA
Chair, NASBA



David A. Costello, CPA
President & CEO, NASBA

Koninklijk Nederlands Instituut
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Public Company Accounting Oversight Board
Office of the Secretary
1666 K Street, NW
Washington, DC 20006-2803

Our ref : JZ/uh/PCAOB
Direct dial nr : +3120-3010301 / Faxnumber: +3120-3010302
Date : March 27, 2003
Re : PCAOB Rulemaking Docket Matter No. 001

Dear members of the Board,

NIVRA is one of the two statutory professional bodies of accountants in the Netherlands. One of NIVRA's statutory tasks is to promote the proper exercise of the accounting profession by register-accountants and defending their common interests. The proposal of the PCAOB concerning a registration system for public accounting firms (indirectly) affects registeraccountants. Regarding this proposal we would therefore like to bring the following to your attention.

We regret that due to the short time to comment on the proposal we were unable to comprehensively investigate the consequences the proposed rules may have for our members. An elaborated comment on the contents of the proposed rules will therefore not be possible for us. We regret this situation all the more because after a superficial consideration of the proposal we think the proposal may potentially be in conflict with our national rules.

We support the establishment of global rules for auditors but feel these rules have to be agreed upon in an international context. This will lead to rules which are uniform, not conflicting with national or supranational rules and are directly applicable to our members. We also welcome any (foreign) rulemaking proposals which will help governing bodies in other nations to reach their goals. We feel that such proposals should have sufficient provisions in case of conflicting rules. We trust this will be the case with the present proposal.

NIVRA, being a self-regulatory body, has recently issued an elaborated set of rules regarding the auditors independence and has also issued new rules regarding the quality review of accountantsfirms by NIVRA. Momentarily we are examining the options to put the quality review under supervision of an independent national governmental organization. In our newest rules regarding quality reviews we have made a provision for cooperation with other reviewing (foreign) bodies.

We hope the board will consider our concerns and views.

Yours sincerely,

G.A. Smit RA
Chief Executive

From: patrick.obrien@prudential.com
Sent: Thursday, March 13, 2003 4:07 PM
To: Comments
Subject: Docket No. 001

I have reviewed the document proposing the registration of Accounting Firms and Accountants. I do not believe the OCAOB has made a credible case for the need for such registrations or the benefits they will purport to provide. Registrations of public accounting firms will not afford the investing public any more assurance regarding the accuracy of financial statements or thorough nature of audit testing than exists under the current system of state licensing in use today. This proposal does little to address the core issues that have precipitated this latest debate around governance of public accounting firms and certified public accountants.

Patrick J. O'Brien, CPA
New Jersey License Number 20CC02722900

From: John.RIEGER@oecd.org
Sent: Tuesday, April 29, 2003 10:46 AM
To: Comments
Subject: Regarding Ruling to require Foreign Auditors to Register

This e-mail is approve of your decision to require foreign auditors to register, albeit with some time lag to adjust to the issue.

Rational:
While I hear a lot of disagreement here in Europe regarding the necessity to register under the new pcaob system, it is actually necessary that foreign auditors are subject to the United States rules and regulations. As an auditor oversight entity you have a duty to protect the investor public. As long as companies desire the financial benefits of being registered in the United States under US registration laws, the services that create that financial benefit must be protected. The reason the US market enjoys the greatest financial stability is due to the stability of the markets, if you compromise the rules and regulations that create that stability, you compromise the benefits.

Your duty is to protect the financial stability of the capital markets in the United States. If you allow exceptions to the attributes that create that stability you will dilute the financial strength of that market. Now, saying that it does not mean that you could not leverage the oversight tasks using some kind of European or Joint oversight vehicle that would extend to foreign auditors. However, you would have to make sure that you do not compromise the quality while doing that.

Regards,
John R. Rieger CPA
Anti-Corruption Division
OECD
2 rue Andre-Pascal
Paris, France
33 (0) 1 45-24-15-22
33 (0) 1 44-30-63-07 fax
john.rieger@oecd.org
http://www.oecd.org/EN/home/0,,EN-home-31-nodirectorate-no-no--31,00.html

From: JHaslbauer@pkfny.com
Sent: Monday, March 17, 2003 9:58 AM
To: Comments
Subject: Question / comment

Question

For accounting firms that currently do **not** audit public companies , but plan to do so in the future , should they or can they , register with the Board , once the registration process is formalized ?

John M. Haslbauer, CPA
Director
PKF
Certified Public Accountants
A Professional Corporation
29 Broadway
New York, NY 10006

Phone: (212) 867-8000 x 406
Fax: (212) 687-4346

PRICEWATERHOUSECOOPERS

PricewaterhouseCoopers
1177 Avenue of the Americas
New York, NY 10036
Telephone (646) 471-4000
Facsimile (646) 471-4100

March 31, 2003

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

PCAOB Release No. 2003-1

Dear Mr. Secretary,

PricewaterhouseCoopers appreciates the opportunity to comment on the Public Company Accounting Oversight Board's proposed rules, *Proposed Registration for Public Accounting Firms, PCAOB Rulemaking Docket Matter No. 001*. We support the efforts of the PCAOB to restore investor confidence. We have reviewed the proposed rules of the Board and have a number of observations and proposals that we feel will help support the overall objectives of the Board. In connection with the rulemaking process, it is important to understand the impact of registration not only on the US firm of PricewaterhouseCoopers, but on each of our foreign member firms as well.

PricewaterhouseCoopers is a multinational organization that serves as independent auditors for many of the largest companies listed and traded on the US securities markets. Our organization consists of a network of distinct individual member firms located in countries across the world. Because we are a global network with issuer clients located around the world, we believe there need to be regulations and standards relating to public accounting firms that create consistent levels of protection for investors.

Foreign Public Accounting Firms

Similar to the recent creation of the PCAOB, many other foreign territories have already, or are currently examining their own regulatory structures and assessing their current effectiveness. We believe that effective auditor regulation on a global basis will be achieved best when the regulators from different territories, including the PCAOB, start working together down the path toward a strong and consistent regulatory environment.

Further, as described in our comment letter, we propose that registration of foreign accounting firms be delayed until the Board has had an opportunity to explore the regulation of public accounting firms on a more consistent, global basis with foreign regulators. Many of the local regulatory environments and conflicting local laws (*e.g.*, data protection, secrecy) of the foreign territories create substantial difficulties in complying with the requirements of registration.

Operational Issues

In addition to the significant legal issues surrounding foreign public accounting firm registration addressed above, complying with the detailed information requirements of registration proposed by the Board will create significant operational issues for the foreign firms and the US firm. We support the Board's objectives in developing a compliance environment for public accounting firms that will ensure the protection of investors and we believe it is critical that we work together to create a registration process that is successful and will build trust and confidence with the investing public. In working together, however, we need to address these operational concerns and develop rules that are practical in approach and that still allow the Board to achieve its objectives.

For example, the Board has proposed certain rules that go beyond what the language of the Act requires and, we believe in some cases, what is necessary for the Board to execute its mandate (examples of where we believe this to be the case are set out in some detail in the body of our comment letter). We believe that in light of the time constraints and pressure on our internal systems from these requirements, the Board not go beyond what the Act requires, particularly in this inaugural year.

Further, the Board is asking firms to generate information from prior periods that is not easily obtainable (*e.g.*, compilation and disclosure of issuer fee information sorted into the newly created proxy categories). Where this type of prior period information is going to be extraordinarily costly to collect and disclose, we ask the Board to consider implementing the transition period and other proposed alternatives that we have suggested in our comment letter.

It is clear there are many issues from both a legal and operational perspective related to the proposed registration requirements. We hope that our commentary will assist the Board in striking the right balance of making sure that the Board receives the relevant information that it needs while allowing the firms to meet, successfully and without undue hardship, the requirements of registration.

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

Very truly yours,

PricewaterhouseCoopers

PricewaterhouseCoopers Comment Letter Dated March 31, 2003

PROPOSAL OF REGISTRATION SYSTEM FOR PUBLIC ACCOUNTING FIRMS, PCAOB Release No. 2003-1, March 7, 2003; PCAOB Rulemaking Docket No. 001

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PricewaterhouseCoopers Comment Letter Dated March 31, 2003

PROPOSAL OF REGISTRATION SYSTEM FOR PUBLIC ACCOUNTING FIRMS, PCAOB Release No. 2003-1, March 7, 2003; PCAOB Rulemaking Docket No. 001

PricewaterhouseCoopers appreciates the opportunity to comment on the Public Company Accounting Oversight Board's (the Board or PCAOB) rulemaking proposal relating to registration of public accounting firms under the Sarbanes-Oxley Act (the Act).[1] Our comment letter is divided into three sections:

(i) General Approach to Registration

We propose a general approach that we recommend the Board adopt as part of this rulemaking to guide accounting firms through the registration this first year and beyond. These principles will then be applied to the specific registration requirements in Part III of this letter.

(ii) Issues Relating to Foreign Firms

As a threshold matter, before applying these principles to the specific requirements of registration, we address generally the issues raised by foreign accounting firm registration and potential solutions for certain of those issues. In the timeframe available it has not been possible to conduct a survey of all potentially affected territories. We have, however, targeted a cross section of countries in which PricewaterhouseCoopers member firms' practice in order to provide the Board with an understanding of some of the real legal conflicts that will be faced by the foreign accounting firms in meeting the proposed registration requirements. The more detailed results of our research (which was commissioned by the Big 4 accounting firms) is being filed separately in a submission by the law firm of Linklaters & Alliance (Linklaters Submission). Also attached as an appendix are answers to certain of the questions posed by the Board relating to foreign firm registration

(iii) Requirements for Registration

Finally in the last section, we apply the general principles to the proposed rules, the instructions for registration, and the issues raised both legally and operationally by the proposed requirements of registration. We also have suggested a transitional approach to accommodate certain of the difficulties the accounting firms will face in complying with the proposed registration requirements.

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

I. GENERAL APPROACH TO REGISTRATION

We understand and support the Board's need to obtain information from the public accounting firms in connection with the SEC issuer clients that they audit. We view this process as part of a broader effort that will lead to the restoration of investor confidence in the markets and in the accounting profession and we intend to contribute to that restoration.

We also believe, however, that this first-year registration will be an enormous undertaking. Registration will require firms to compile information that generally has never been gathered or requested before, and sort it in ways that have never been done. We suspect that, in many cases, the existing information systems at most firms do not have the capability to generate the requested information (in the short-term). Therefore, firms will have to rely on manual processes to initially comply with the registration requirements. That raises cost-benefit issues that we believe need to be considered in finalizing the registration requirements.

Further, in light of the ongoing rulemaking process, both the Board and the firms must act under significant time constraints on compliance with the requirements of registration. Our recommendations, particularly as they relate to the first-year registration process, are aimed at providing the Board with the information it needs, while doing so in a manner that imposes realistic requirements on the firms.

A. The Board Should Approach This Rulemaking In A Manner Consistent With The Specific Requirements Of The Sarbanes-Oxley Act And Should Take Additional Time To Consider Any Registration Requirements That Go Beyond The Statutory Mandate.

Recognizing the time constraints that both the Board and we are under to complete the registration process by the statutorily mandated deadline, we believe it is important that the initial registration requirements reflect only that which is necessary to meet the requirements of the Act. We encourage the Board to approach the finalization of the registration rules in this fashion. The Board has continuing rulemaking authority to revise the requirements for applicants going forward. The Board can do so at any time and could presumably make the additional requirements applicable to firms that have already registered. In our view, this flexibility would enable the Board to focus its current efforts on establishing rules that fulfill the express goals of the statute and meet the immediate needs of the Board, leaving any requirements that go beyond those required by the Act for consideration at a later date, after the registration system is fully functioning.

Following are some of the proposed requirements implicated by our suggestions:

- Requiring firms that play a substantial role in an audit to register

- Requiring production of information relating to past legal proceedings with respect to former associated persons of the firm
- Requiring information on applicant firm total revenues in mandated categories
- Requiring disclosure of legal proceedings unrelated to audits

B. The Board Should Consider The Timing Issues And Possible Impact If The Stated Deadlines Prove To Be Unworkable Under The Current Proposal.

Under the proposal, it appears possible that a firm's registration status could remain undetermined during a potentially open-ended application review process if the Board requests additional information and the firm's application is withdrawn from the queue. If this is the case, we believe it will create a great deal of uncertainty for both the applicant firm and for its issuer audit clients that expect to have an audit opinion signed by their firm in the months immediately following the initial registration period.

We are concerned that, in light of the short time frames involved, the timing issues combined with the potentially open-ended review process could cause market uncertainty, impair the auditing process and, if an issuer is left without a registered accounting firm to sign its opinion when needed, could disrupt the issuer's business and access to capital markets. To avoid this, we propose that the Board consider providing that firms that file applications that are complete on their face will be provisionally registered until the Board either disapproves of the application or grants the firm permanent registration status. Further, audit opinions issued between the time of provisional registration and either disapproval or granting of registration should not be disqualified.

C. The Board Should Recognize A Transition Period.

The Board's proposal asks for a number of categories of information that neither our member firms, nor in some cases our clients, have the ability to generate quickly. We suspect that other firms and their clients will face the same issue. It will take a substantial manual effort to develop the information processes and the resulting information will be subject to an inherent margin of error. Although this information can be developed on a going-forward basis once appropriate systems are in place, it will be very difficult for firms to compile and disclose information into new formats this year. Accordingly, we recommend that the Board allow a period of transition before implementing certain requirements and accept from the applicant firms information in forms that currently exist.

The following information categories are a few examples of items that are implicated:

- Requiring issuer fee information for prior years based on the new proxy categories
- Requiring disclosure of total applicant firm revenues by the new proxy categories

D. Firms Can Only Comply To The Extent That Such Compliance Does Not Conflict With Any Existing Local Laws Or Regulations.

Where the requirements of registration would require the applicant to violate the law of another country, the Board should pay due regard to these impediments and engage in dialogue with foreign regulators to explore alternative ways to achieve the Act's objectives. In the event that no such solution can be achieved, the Board should permit registration in a manner that will avoid such violations being committed. Data protection, client confidentiality, privacy and other laws may prevent foreign firms from providing certain information to the Board and from securing blanket consents from its employees and associated persons to comply with requests for testimony and documents. Even where the registering firm is a domestic firm, laws outside of the United States present obstacles to the provision of certain information related to foreign firms and their personnel. Moreover, the provisions of the rulemaking may be inconsistent with the laws of certain states (*e.g.*, certain US state laws relating to background searches only allow a seven-year look-back period).

E. The Board Should Create Clear And Realistic Benchmarks For Compliance.

We have set out below a number of areas where firms would benefit from realistic benchmarks set at levels designed to facilitate compliance. This is particularly important this year. Much of the information that will be gathered for this inaugural registration will be gathered manually. Although we intend to quality test the information as best we can under the circumstances, the Board should recognize that this will not be a fail-safe information gathering process.

Beyond the breadth of the information requested, the application requires compliance by a large number of staff members of an applicant firm. In the case of PricewaterhouseCoopers, we will do our best to obtain the consents of all of those for whom consent will be required. However, we do not currently have a process in place to obtain such consents nor do we require them for initial employment. Moreover, depending on the final rulemaking, our compliance may be dependent on persons and entities that are not within the firm's control (*e.g.*, subcontractors, independent contractors, foreign firms both affiliated and not affiliated with the firm) and, in the case of foreign firms, the permissibility of requiring consents as a matter of local law. We ask that the Board be mindful of these inherent limitations when reviewing applications.

In addition, we recommend that the Board establish a date at which the information submitted by an applicant is deemed current. Much of the information (*e.g.*, the list of accountants, list of current year audits) will be for the current period and will be subject to change. Therefore, an appropriate cut-off date after which the information does not have to be updated would greatly ease the burden for firms making a good faith effort to comply with the registration requirements.

Other examples where the Board should create a pragmatic approach include:

- Updates to personnel licensing and qualification information
- List of SEC issuers for which the applicant expects to issue an opinion
- Disclosures related to legal proceedings
- Disclosure of client fee information

F. The Board Should Limit Duplicate Filing Of Information Across Associated Firms And Eliminate Unnecessary Volume From The Application.

There are a number of areas where the Board can clarify the rules to reduce the duplication of information provided. Many of the foreign firms required to register are associated entities of one of the other firms that are also required to register. Where appropriate, the Board could eliminate duplicative filing requirements or allow cross-referencing of information among the applications of associated firms. For example, the Board could eliminate duplicate listings of personnel (through associated persons), and listings of associated entities.

Second, there are a number of provisions that require the production of information that could potentially swell the size of an applicant's registration form without providing corresponding value. Particularly since the Board is planning on a web-enabled registration system, we encourage the Board to seek ways to reduce the size of an application. For example, to require collection and disclosure of extensive clerical information about issuer audit clients that is already publicly available (*e.g.*, business address of issuer, SIC code of issuer) creates unnecessary volume.

G. Implementation Of Web-Based Filing And Other Technical Requirements Should Be Delayed Until After The Board Has Had Suitable Time For System Testing.

We understand the Board's desire to have a web-based system for filing of registration applications. We are concerned, however, about using an untested system that will have to process large volumes of data in compressed time frames. In this first year, with so much uncertainty as to the system and to the size and format of applications, we believe it makes sense to allow firms the option of delivering their applications to the Board on CD-ROMs. We encourage the Board to consider this as an alternative to web-based registration in the first year. Once the web-based system has been found to be fully operational and secure (see our comments below), that system could then become the preferred way that firms register and update their registrations each period.

If the Board decides to move forward with a web-based registration this first year, then in light of the large amount of data that will be required to satisfy the registration application, we ask that the Board design a system that is capable of supporting

information transfer through the attachment of standardized files. We also believe that it is critical that the designers of the web-based system collaborate with the larger applicants to ensure an efficient and successful data transfer process. It is also important that the designers of the system make available the accepted format of the registration files in a timely manner to ensure adequate time to prepare the application.

In addition to concerns about the operability of the system, we have significant concerns about system security. For example, with the high incidence of identity theft, we are extremely concerned about sending the social security numbers of our personnel over the internet to a new system, the security of which may not have been fully tested.

II. ISSUES RELATING TO FOREIGN FIRMS

A. Registration Of Foreign Firms Should Be Delayed Until (1) The Scope Of The Board's Functions Are Fully Developed And (2) The Board And Foreign Regulators Have Had An Opportunity To Explore The Regulation Of Accounting Firms On A More Uniform, Global Basis.

The Board acknowledged in the rulemaking release that there are special considerations with respect to the registration of foreign firms. (Release at 13.) The Board further announced that it intends, over the next several months, to consider the appropriate scope of its authority with respect to accounting firms located outside of the United States. (*Id.*) We suggest that the Board delay the registration requirement for foreign firms until it has had time to fully address the scope of oversight that it will have over foreign firms.

Specifically, the Board should consider allowing more time for a dialogue between the Board and other regional and national regulators working towards other means of achieving the Act's objectives, but which do not conflict with local laws and professional regulations or incur considerable additional time and expense for both accounting firms and issuers. Avenues that could be explored include (where appropriate) systems of reciprocity or mutual recognition.

1. Compliance both with certain of the information requirements of registration and with the proposed oversight could place some major firms in conflict with local law.

The Linklaters Submission provides the Board with some detailed and specific examples of where this is the case. However, it is worth summarizing some of the key issues to come out of our independent legal review.

a. Data privacy laws in a number of territories are problematic.

First, it is apparent that the data privacy laws in a number of territories place potent restrictions on the right of foreign accounting firms to supply "personal data" (both with respect to employees of applicant firms as well as individuals working for the client) to the Board without the provision of informed and freely given consents and satisfactory proof that the receiving body has an equivalence of established data protection safeguards. By way of illustration, certain of the information required by the Board would amount to "personal data" under European Commission (EC) directive 95\46\EC (data protection) (Directive).

Such data includes the details of all accountants associated with an applicant firm together with their social security number, or equivalent identifier, and information relating to criminal, civil or administrative actions or disciplinary proceedings pending against individuals of that firm (the latter being "sensitive personal data" subject to greater restrictions under the Directive). The ability of foreign accounting firms to obtain the requisite consents of employees, associated persons and clients to provide this

information will vary from territory to territory (it being questionable in some territories whether employee consent can ever be freely obtained). No official determination has been made that the Board at present has the necessary data protection safeguards to satisfy the requirements of the Directive for transmission of the data to it. (*See* Linklaters Submission for further discussion of this issue.)

This is an issue for foreign accounting firms operating in the EC and is also likely to arise in other jurisdictions. We understand that, by way of example, similar principles apply to the transmission of data outside of Switzerland and Israel and that data privacy legislation is under consideration by the Japanese Diet. The consequences of non-compliance with these laws can be serious. Sanctions for breach of the EC legislation include exposure to regulatory fines and individual claims for damages and distress.

b. Professional confidentiality obligations may also impair compliance.

It is apparent that the auditor's foreign law obligations of confidentiality (whether expressed as a general principle of professional practice or specified in statutes related for example, to banking secrecy) may present real barriers to compliance with the registration regime. In each of the territories surveyed the requirement to maintain client confidentiality and/or business secrecy was a key area of concern. In some territories, such as France and Switzerland, the statutory prohibitions are such that the issue simply cannot be overcome by client consent. Even in territories where consent may, in principle, solve the problem (*e.g.*, Japan, Germany, Mexico, Israel and the UK) that consent must be express and informed. Although the consent of SEC issuers is likely to be forthcoming, the task of obtaining consents to disclosure of confidential information from other companies, from third parties whose information the auditor becomes privy to as part of the audit process (e.g. client customers), and from associated persons will present obvious and real practical difficulties. The sanctions imposed on foreign firms for breaches of confidentiality are severe (in Germany, France, Switzerland and Japan they may be criminal).

c. It may be difficult for firms, as a matter of law, to obtain consents from individuals.

We are similarly concerned about the ability of foreign firms in a number of jurisdictions to require employees and associated persons to provide their blanket consent to submitting to testimony and producing documents where required to do so. Foreign firms may be required to amend the contractual employment terms of their existing employees to give effect to this requirement and could violate local labor laws should they seek to penalize those who fail to comply. This has been identified as a problem in most of the territories we have researched, including Germany, the UK and Japan. There is also a clear tension here with recognized foreign law principles that entitle an accountant to refuse to testify to protect him or herself from self-incrimination.

d. Inspections in certain territories may trigger local legal concerns.

Finally, it is apparent that certain countries' regulatory and legal systems may not presently permit foreign entities to conduct inspections of local audit firms on their national territory (*e.g.*, France, Germany, Italy, Switzerland and Japan). Even where this is not the case, the very nature of the inspection and investigative processes will once again give rise to the data privacy, client confidentiality and consent issues already outlined.

Proposal:

- In light of the issues relating to foreign firm registration raised above, the Board should delay the requirement that foreign firms register to give the Board more time to work with other regulators to find ways to achieve the Act's objectives, without creating conflicts with local laws and professional standards.

B. The Board Should Only Require At the Outset Registration Of Firms That Issue Opinions On SEC Registrant Clients.

If the Board nevertheless decides to require foreign firms to register, we recommend that the Board initially limit the category of firms that will be required to register in the first year. In the few months that the Board and firms have this year to create, implement, and comply with a registration system, the inclusion of firms that do not issue opinions as the principal auditor on any SEC issuer's financial statements is an unnecessary burden on both the Board and those firms. We suggest that the Board allow the registration process to begin this year for firms that issue the opinion as principal auditor on an issuer's financial statements and evaluate during the next year whether registration of additional firms is necessary.

The Board may delay the registration of foreign firms because the language of the Act does not require firms that merely play a "substantial role" to register. Therefore, the Board does not need to expand the registration requirements to these firms in order to carry out its statutory mandate.

Requiring only the registration of signing firms is sufficient for investor protection in light of the fact that Section 106 of the Act already requires production of information from firms that play a material role in an audit. Section 106(b) contains separate provisions regarding production of audit workpapers by foreign firms that issue subsidiary opinions or otherwise perform "material services" upon which a registered firm relies in issuing all or part of an audit report. Such firms are deemed to consent to production of their workpapers. Domestic firms that rely on such opinions are further deemed to have consented to production of the foreign firm's workpapers and to have secured the agreement of the foreign firm to production of the workpapers.

Proposal:

- The Board should delay for now registration for firms that play a "substantial role" in the audits of SEC issuers but do not themselves issue principal audit

reports for SEC issuers. We recommend that the Board reconsider at a later time whether registration of these firms is necessary.

C. Providing "Material Services" Should Not Be Equated With A Firm Having A "Substantial Role" In Audits.

Even if the Board elects to require registration of firms that play a substantial role, it should require more than simply providing material services in connection with an audit. This is consistent with Section 106(a)(2) of the Act, which provides that the Board may, by rule, determine that a foreign firm must register if (i) it is "a public accounting firm (or a class of such firms)", and (ii) it plays a substantial role in the preparation and furnishing of audit reports "for particular issuers." This provision requires specific determinations as to what firms or class of firms should be covered, based on their roles in audits of specific issuers.

The Board appears to have adapted Section 106(b)(1) of the Act to form the basis of its definition of "substantial role." Section 106(b)(1) provides that a foreign firm is deemed to consent to production of workpapers if it provides an opinion or "performs material services" on which the registered firm relies. Since Section 106(b)(1) only requires a foreign firm that provides material services to consent to production of workpapers, Congress must have intended that a "substantial role" meant something more than providing material services.[2]

If the Board does want to adopt an objective percentage test to determine whether a firm plays a substantial role, the proposal as currently contemplated will lead to a great deal of uncertainty. The Board itself has stated that it would like to achieve an objective test in this area (*see* Release at A3-x), but the current formulation will not do that. The fees and hours test leads to uncertainty from year to year – depending on the nature of the audit, a firm could go above or below the 20% mark from one year to the next and often the firm will not know in advance of the audit work whether or not it met the test.

We believe that the standard adopted for "substantial role" should be a workable standard based upon a measure that already exists. The second prong in Rule 1001(n)(2) is a workable test. The standard test adopted for affiliates by the SEC in its independence rules dealing with partner rotation requirements, which looks to subsidiaries whose assets or revenues constitute 20% or more of the issuer's consolidated revenues or assets, makes sense as a clear and appropriate standard.

Proposal:

- The definition of "substantial role" should eliminate the test based on hours and fees and include the 20% measure of the issuer's consolidated revenues or assets.

[2] The Board also cites Section 102(a) of the Act to support requiring registration of firms that "play a substantial role." (Release at A3-xii to xiii.) Section 102(a) requires registration of public accounting firms that "participate in the preparation or issuance of" audit reports. Section 106, which permits registration of foreign firms that do not issue audit reports only if the Board finds that regulation is appropriate due to the "substantial role" played by the foreign firm or class of firms in the audits or particular issuers, overrides the looser standard in Section 102(a).

III. REQUIREMENTS FOR REGISTRATION

Below is commentary related to requirements for registration as proposed by the Board. Where we have not commented, we are supportive of the Board's proposal.

A. Definitions

1. The Definition Of "Associated Entities" Should Be Clarified To Include Only Those Entities That Carry Out Audits For Issuers.

Many firms have related entities pursuant to local regulatory requirements in the countries in which they practice. The majority of these entities do not perform audit services or other services for SEC issuers. To require disclosure of these entities on a global basis is not likely to provide information relevant to the Board's functions.

Proposal:

- In light of the large number of associated entities of these firms and the fact that many do not provide services to SEC issuers, only the associated entities that perform services for SEC issuers should be disclosed.

2. The Definition Of "Person Associated With A Public Accounting Firm" Will Be Unmanageable For The Board And The Firms.

Proposed Rule 1001(m) incorporates the Act's definition of "person associated with a public accounting firm" and "associated person of a public accounting firm," as set forth in Section 2(a)(9) of the Act, with one change. The principal impact of this definition for the registration rules is in the requirements for disclosure of information about legal proceedings involving past and present associated persons of the registering form (Form 1, Part V) and for obtaining consents from all present and future associated persons of the applicant (Form 1, Part VIII). However, the term also appears repeatedly in the Act in connection with the various compliance powers of the Board, and so the definition is likely to be relevant to determining which associated persons are subject to those rules. If interpreted broadly, it could have far-ranging impact on the disclosure obligations of firms.

a. Congress included "associated persons" in the Act principally because it concluded that firms should have to provide disclosures about, and be responsible for the actions of, their owners and employees.

The term "associated person" should be given a meaning that is consistent with that overall purpose of the Act and should not be applied to persons whose relationship with the registering firm is such that they neither play an instrumental role in the conduct of audits, participate in profits from the firm's audits, or have the authority to act on behalf of the firm.[3]

[3] In explaining Section 102, the Senate report stated that the section required "an agreement to obtain and if necessary to enforce similar consents from the firm's partners and employees who participate in public

b. We recommend that this term not be extended farther than reasonably necessary to enable the Board to carry out its responsibilities.

The Board should not feel a need to reach beyond a firm's accountants in order to exercise full oversight over an accounting firm. If it does so, it will require the registering firm to engage in an extended review of the many relationships they have with personnel outside of the registering firm (*e.g.*, staff of PricewaterhouseCoopers foreign firms who may already be listed in their own territory's registration, outside contractors, etc.) in order to determine whether they are "associated persons" within the meaning of the rule.

This creates not only an almost insurmountable task for the registering firm, it also creates both the risk of uncertainty as to who is covered and the duplication of effort among the different registering firms. The benefits of including such persons within the definition are marginal, because they are unlikely to be engaged in parts of an audit that are not being conducted or supervised by firm employees.

Proposal:

- ***Exclude from the definition (i) other public accounting firms that are themselves registering; and (ii) employees or contractors of other registered public accounting firms.***

  Because each registering firm will be providing disclosure and consents with respect to itself and its own associated persons, it is unnecessary for another firm that is associated with the registering firm to provide the same information.

- ***Amend the definition to read, "any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of the public accounting firm which is registering or making a report under these Rules, or any other independent contractor or entity that . . .."***

  The proposed rule deletes the word "other," which appeared in the definition in the Act before "professional employee" and "independent contractor." This deletion unnecessarily expands the scope of the term, to the extent it appears to be designed to capture persons who are neither employees nor contractors of the applicant.[4] (*See* Release at A3-viii).

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company audits." S. REP. NO. 205, 107TH CONG., 2D SESS., at 46. Although the bill used the term "associated persons," Congress' reference to partners and employees indicates that these persons were the primary focus of the registration provisions.

[4] Although we realize that Congress also included a limited class of contractors or other entities who shared in profits or received compensation from, or acted as agent or on behalf of the firm, we believe the term should be pragmatically applied to minimize the burden on registering firms, especially where a person's relationship with an applicant firm is attenuated.

- ***Require information about and consents from natural persons (as opposed to entities) only if they are owners or employees of the firm itself.***

  If an individual is only an "independent contractor," not an employee, then he or she should not be defined as an "associated person."

  As a transitional matter, if the Board determines that an applicant should include these types of individuals as associated persons, it should apply this only prospectively – it will be impossible to force those with whom the registering firm has no ongoing relationship to agree to consent to jurisdiction of the Board. Going forward, the registering firms can put systems in place to obtain such consent upon the initiation of the relationship and make it a condition of engagement.

- ***Clarify the term "participates as agent or otherwise on behalf of."***

  We suggest that the rule provide that a contractor is not deemed to be an associated person unless the contractor operates under an explicit authorization to act for or bind the registered firm. This clarification is consistent with the statute but means that a contractor is an associated person only where the registering firm has affirmatively delegated a matter to the contractor and therefore can fairly be held accountable for the contractor's conduct.

- ***Exclude persons who perform only clerical or ministerial tasks.***

  The exclusion of clerical and ministerial staff from the definition of associated person is expressly permitted by Section 2(a)(9)(B) of the Act. The identification of these individuals is not needed for the protection of investors because of the nature of the function they perform.

B. Instructions for Registration

1. The Board should not require manual signatures for the required consents. (Rule 2104)

It appears that the rules require manual signatures for all consents. The requirement that we obtain and maintain manual signatures will be extremely burdensome. For example, the US firm of PricewaterhouseCoopers alone will have approximately 25,000 professionals that may be required to consent to cooperation with the Board.

We question the necessity of these requirements in light of the Electronic Signatures Act of 2000, which makes clear that electronic signatures are valid. It provides in part: "Notwithstanding any statute, regulation, or other rule of law . . . with respect to any transaction in or affecting interstate or foreign commerce – (1) a signature, contract or other record relating to such transaction may not be denied legal effect, validity, or

enforceability solely because it is in electronic form, and (2) a contract relating to such transaction may not be denied legal effect, validity or enforceability solely because an electronic signature or electronic record was used in its formation." 15 U.S.C. § 7001. We believe that the use of electronic signatures is appropriate and would pass a cost benefit test.

Proposal:

- We recommend that the Board reconsider its proposal to require firms to obtain and maintain manual signatures.

2. Action on Applications for Registration (Rule 2105).

Proposed Rule 2105(a) provides that the Board will determine whether approval of the application 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 [SEC issuer] audit reports . . . ." We believe that this standard, while not set forth in the Act, is an appropriate one. However, it is unclear how the Board intends to determine whether approval would be consistent with its responsibilities under the Act.

In our view, given the specific information requirements for registration, and the prospective inspection and oversight functions of the Board, the Board should make the determination that initial registration of a firm is consistent with the Board's responsibilities in the first phase of its operations, without purporting to undertake a substantive review. [5]

If, however, the Board intends to do something more than examine whether the registering firm has complied with the information and consent requirements and has provided adequate information to provide a basis for Board oversight going forward, then we believe the standard raises substantive and due process concerns.

a. The rule does not articulate any factors or grounds on which the Board will decide to approve or disapprove the application for registration. Nor does it require the Board to articulate its reasons for denying an application.

The rule, by its lack of criteria by which the Board will evaluate an application, could potentially put the interests of a firm, its employees and its clients in jeopardy. It would be useful for the Board to explain the types of things it will consider when determining whether to approve an application for registration so that applicant firms have a better

[5] It is not entirely clear whether the Board intends to apply the standard in the foregoing manner. It appears from Item 5.6 of Form 1 that the Board believes that it has the power to disapprove a registration application based on legal proceedings disclosed in the application. This notion is inconsistent with Section 102(b)(F) of the Act. That section requires that the firm provide information only about *pending* proceedings. Pending proceedings are, by definition, unresolved and therefore it would be unfair to ban a firm based on them. Since Congress did not require disclosure of past proceedings, it could not have expected such proceedings to be the basis for denying registration.

understanding of the review process. If the Board believes it may make a substantive decision about the qualifications of a firm, we believe minimum standards of due process would require the Board to adopt procedures comparable to those of the National Association of Securities Dealers (NASD).[6]

However, the Board's processes differ markedly from the NASD's registration procedures. These procedures, which do entail a substantive determination about fitness of the applicant to be registered as a broker-dealer, require the NASD to make findings with respect to 14 enumerated factors. (NASD Rule 1014(a).) They require the NASD to provide a detailed explanation of the reasons for denying any application. (NASD Rule 1014(c)(2).) We believe that an assessment to this extent is not called for by the Act. Moreover, we would expect that in most cases the Board would not be in a position to make such an assessment based solely on the registration application.

b. The rule permits the Board to deny an application based on information that is not part of the application.

Proposed Rule 2105(a) states that the Board will make a determination after "reviewing the application for registration, any additional information provided by the applicant, and *any other information obtained by the Board*." (Emphasis supplied.) This provision, on its face, allows the Board to take action based on information that is not part of the "record" contained in the application, without any notice to the applicant or opportunity for the applicant to respond to or rebut such information. Again, in this regard it differs markedly from the protections provided to broker-dealer registrants by the NASD rules. (See NASD Rule 1013(b)(7).)

Proposal:

- In light of the foregoing, the Board should confirm that its determination under Rule 2105(a) will consist of a determination that initial registration of the firm and commencement of Board oversight is appropriate based on the information in the application.

3. If an application that is complete on its face is filed 45 days before the registration deadline, then an applicant firm should be free to continue its public company audit practice unless the Board has specifically disapproved the application under 2105(b)(2)(ii).

Proposed Rule 2105(b) provides that the Board will, not later than 45 days after the date of the Board's receipt of the application, either: (i) approve the application, (ii) request more information from the applicant, or (iii) disapprove the application by written notice

[6] We believe that the actions of the Board would be "state action" and therefore the Board is subject to constitutional limitations on its actions even though it is not a federal agency as such. *See Blum v. Yaretsky*, 457 U.S. 991, 1004-05 (1982). The Board is composed of members appointed by a federal agency, has been delegated power to implement regulatory laws by the federal government, and operates under the supervision of a federal agency. It differs in this regard from the NASD, which has been held to be a voluntary association whose actions are not compelled by the government. *Cf. Desiderio v. NASD*, 191 F.3d 198 (2d. Cir 1999).

to the applicant. Rule 2105(c), however, provides that if the Board requests more information from an applicant that "the Board will treat the new application, as supplemented by the additional requested information, as a new application requiring action *not later than 45 days after receipt of the revised application*." (Emphasis supplied.)

a. The rules as proposed would create significant difficulties for the firm's issuer clients.

We are concerned about the uncertainty created by this aspect of the proposal. To allow an additional 45 days for review, irrespective of the amount of information requested, seems burdensome to the firms and could put them in jeopardy of missing the October 24, 2003 deadline for registration. Fall reporting clients could end up not knowing whether their firm would be able to sign an opinion after the firm was well into the audit, even if the firm submitted its application during the summer.

b. The following example illustrates the issue.

For example, if a firm submits an application on July 31, the Board's response would theoretically be due on September 15. If the Board decided on September 10 for whatever reason that the applicant needed to provide additional information and the applicant did so on September 15, then the Board would have an additional 45 days to review an application, which would mean that applicant would have no assurance that the Board would decide that it was a registered firm before the October 24 deadline.

The Board has said that its web-based system will not be ready until late June or early July. If a firm registers on July 5, and receives a response from the Board on September 10, the same thing could occur. This may be exacerbated by a flood of applications at or around the same time.

Proposal:

- The Board should consider two potential solutions. First, the Board could create a materiality standard for the requirement of additional information – if the Board only asks a firm for a minimal amount, then the Board should set a shorter time limit to complete its review of the application.

- Second, unless a firm's application is facially deficient, a request by the Board for additional information should not delay registration beyond the 180-day deadline. Because the registration time frame is compressed, the Board should create a safe harbor for applicants – if an applicant has materially complied with the statute but the Board's request for additional information could cause the process to run over the October 24 deadline, the Board should provisionally register the firm so as to prevent interruption of the firm's business and it should not disqualify audit reports issued subsequent thereto if the Board later decides to disapprove an application.

4. Public Availability of Applications and Reports. (Rule 2300)

We have no objection to certain of our information being made public, including the identity of our SEC issuer clients and the fees we are paid by those clients. The various firm's applications, however, are likely to include certain types of information that do not currently belong in the public domain. Principally, we are concerned to protect information about our personnel.

a. We believe that there are other categories of information that should be accorded blanket confidential treatment. (Rule 2300(b))

We agree that social security numbers and taxpayer identification should be kept confidential. Because of the potential burdens associated with seeking confidential treatment, the Board should grant blanket exemptions where possible. This burden will be particularly high on the foreign firms, because of the widespread secrecy and privacy laws.

Proposal:

- ***The names of our personnel should not be made public.***

  First, we believe that the names of our accountants should be kept confidential. To the extent that such disclosure does not violate local laws, we have no objection to providing the names of our accountants (and for foreign firms, those accountants that participate in the audits of SEC issuers) to the Board for its own use in connection with carrying out its responsibilities.

  In publishing such names and information, however, the Board could cause risk to the identified individuals. There is a high risk of identity theft. Further, we are concerned that information about individuals may be misused.

  The Board need not disclose such information in order to carry out its responsibilities. If an investor has an issue with respect to the firm or an issuer, for example, they can lodge a complaint with the Board and the Board will have the necessary information related to the firm and personnel to investigate any such complaint.

- ***Proceedings against individuals and the firm should be kept confidential.***

  We also believe that proceedings against individuals should be granted confidential treatment. Instruction 5 to the application suggests that requests for confidential treatment concerning non-public disciplinary proceedings will normally be granted. We agree with the Board, and suggest that, in light of the burden to make such individual requests, the Board give blanket confidential treatment to this category of information.

Further, while we appreciate the desire of the Board to be appraised of pending actions against the firm, we consider that due regard should be paid to the inherent sensitivities of disclosing details of actions which have not yet been fully tested by the appropriate Courts or regulatory bodies and that information related to them (which is not otherwise in the public domain) should be confidential pending a final determination of the issues.

- ***Firm revenues should be kept confidential.***

  In a significant number of territories outside the US, firm revenues are not currently subject to public scrutiny. While we understand the motivation of the Board in seeking this information, we believe that to the extent foreign firm revenue information that is not already in the public domain is required, it should be granted blanket confidentiality. This approach will allow the Board's registration requirements to mirror local territory practice with respect to disclosure of this type of information.

5. Procedures for Seeking Confidential Treatment. (Rule 2300)

The Act provides that the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information. We believe this statutory mandate imposes an affirmative obligation on the Board to provide protection of such information. However, the Board's proposal suggests that it will exercise discretion and decide whether protection should be granted for any information submitted to the Board in connection with an application for registration. Based on our understanding of Section 102(e) of the Act, we believe the only decision the Board would need to make in connection with proprietary information is whether the firm's designation of information as proprietary is "reasonable." We recommend that the final rules reflect this important distinction.

a. The Board's proposed procedures in Rule 2300(d) do not appear to have been designed to implement the statutory mandate.

The procedures impose on the registrant the burden to demonstrate, "based on the facts and circumstances of the request," why the information should be kept confidential. Firms must provide a "detailed explanation" of their reasons for requesting confidential treatment. The Board would then decide each request "on a case-by-case basis." (*See* Release at 7.)

We believe that this procedure could be refined in several respects. First, the requirement that the applicant file a detailed explanation with every request for confidential treatment will be burdensome, time-consuming and expensive. As suggested above, more categories of information should be designated for blanket protection. In addition, the Board's proposal does not describe the standards by which it will make the determination of whether to grant confidential treatment, and the provision for "case-by-case" determination raises the possibility of inconsistent or arbitrary determinations.

Proposal:

- We recommend that the Board's procedures should be revised to limit the Board's review of confidentiality requests as provided in Section 102(e) – that is, the determination should be whether the information is protected by applicable law or whether the firm's identification of information as proprietary is "reasonable."

b. The Board should establish reasonable mechanisms to permit a firm or affected third party to obtain an independent review of the Board's decision to disclose protected information.

After a firm is notified, pursuant to Rule 2300(f), of a decision relating to the confidential treatment of information submitted to the Board, a firm or an affected third-party should be allowed to file a written request for review of decisions regarding confidentiality with an independent review body or other disinterested party. A request for review should state with specificity why the firm or third party believes that the Board's decision is inconsistent with the standards set forth in Rule 2300(c), or otherwise should be set aside. Furthermore, the information that is the subject of such request for review should be keep confidential during the review period.

A review process is important because (1) certain of the material that the accounting firms are being asked to provide will be sensitive and (2) the accounting firms are providing information about third parties (including employees, issuers and associates), and such parties should be allowed every opportunity to protect information about themselves. A review process would have the added advantage of standardizing what would be considered confidential and what would not. Furthermore, without a review process, a firm or affected third party's only possible remedy would be to rely on the court system, which would be unduly burdensome on all.

The Board should consider looking to the Commission procedures for creating such a system. Rules 406 and 24b-2 set forth the means for obtaining confidential treatment of information contained in a document filed under the Securities Act and under the Exchange Act, respectively, that would be exempt from disclosure under the Freedom of Information Act. The Board should also create an appeals process from the confidentiality determinations made pursuant to that system.[7]

Proposal:

- With these concerns in mind, we propose that the Board adopt procedures similar to those that the Commission has established for requests for confidential treatment. The Board could appoint an officer to make confidential treatment decisions in the first instance.

[7] Rule 406 and 24b-2 provide that a filer making a filing that contains information that it would like to be considered confidential omit from the material filed the portion thereof that it desires to keep undisclosed. Where the material is omitted, the filer indicates that the omitted material has been filed separately with the Commission. The filer then files the confidential information, and states why the information should be afforded confidential status. There are then procedures for review of a decision by the Commission. *See also* 15 U.S.C. § 77i; 15 U.S.C. § 78y.

- Further, the Board could set up a procedure in which an applicant can first appeal to the Board as a whole, and then follow the process as exists under the statutory procedure applicable to information submitted to the Commission. That is, the Board should establish a process for review by the Commission of its confidentiality determinations.

c. The Board should protect the confidentiality of information when it receives a subpoena.

Rule 2300(h) includes the provision that 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."

Although we do not object to the Board having the ability to grant access to the Commission, the second exception to confidential treatment – compliance with all validly issued subpoenas – is troubling because it is inconsistent with the legislative intent of the Act and, in our view, is unnecessary for the Board to carry out its mandate of protecting the public interest. It is in the best interest of the investing public for firms to be forthcoming with information to the Board. If firms and their personnel are concerned about the prospect of having their information produced in every civil litigation, that goal will be harder to achieve and the interests of the investing public will not be served

Further, because all the confidential information in the application or report was provided by the firm itself, any party seeking discovery of information should be, and is, required to seek that information directly from the firm. The Board's rule would allow third parties, especially private litigants, to circumvent the discovery process by subpoenaing information directly from the Board.

This could be very damaging to the firm and would serve no regulatory purpose. It would also be inconsistent with the protection afforded by the Act to foreign accounting firms (which has been acknowledged by the Board) that registration will not, of itself, be regarded as submission to the general jurisdiction of the US courts. If there is a valid basis for finding jurisdiction over a foreign accounting firm, then it will be bound to participate in cases brought against it in the US courts. Other requests by litigants for access to working papers should continue to be dealt with between the US and the local foreign courts and this due process should not be circumvented by the involvement of the Board.

Section 102(e) of the Act specifically states that the Board "shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information." If the Board merely complies with subpoenas, without objecting or providing the accounting firm the opportunity to object, then the Board would not be fulfilling its responsibility as set forth in the Act, particularly if public disclosure of the information would violate the privacy of an individual or violate a foreign law. Similarly, the Act specifies confidential treatment be accorded to inspections and

investigations.[8] Clearly, Congress intended that confidential and proprietary information of the firms be kept that way. By simply bypassing the confidential treatment requirement for a validly issued subpoena, the Board would be ignoring this intent.

Proposal:

- The Board should oppose subpoenas where confidential information is requested.

- If the Board determines that it will retain this proposed rule, then the rule needs to be supplemented by reasonable procedures to give notice to firms sufficient to allow them to appeal and, if they elect to do so, object to the subpoena or obtain appropriate protective orders, before the Board turns over any information.

C. REGISTRATION APPLICATION

1. Identity of the Applicant (Part 1)

a. The Board should recognize the issues associated with maintaining a current licensing system. (Item 1.8)

The US firm maintains a CPA license tracking system for Certified Public Accountants to help ensure that personnel hold the requisite licenses. We assume that the proposed requirement is not intended to include certifications and licenses that are not required for performing work as an accountant (*e.g.*, Certified Fraud Examiner). It would be useful if the final rules clarified this.

We also note that licensing in the United States is maintained by 54 different licensing jurisdictions (comprised principally of the individual states). There may be a time lag before temporary or reciprocal licenses can be issued, particularly for members of staff who may be transferring from one state to another. The licensing process in many states is manual and time consuming, taking in some cases six to eight weeks to process applications.

In addition, a firm's compliance in this area depends heavily on the cooperation of its thousands of professional staff, and the prompt action of state licensing boards. When combined with the lag time described above, it will be difficult to certify at any point in time that there are no *de minimus* violations of licensing rules.

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[8] (Section 104(g) ("no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.") and investigations (Section 105(b)(5)(A)) (other than allowing access by government agencies, "all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents . . . . shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency," and shall be exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552a).

Outside of the United States, the local licensing and qualification systems for accountants vary widely. The Board should recognize the disclosure by applicant firms will mirror their own local certification requirements.

Proposal:

- Accordingly, we recommend that the firms be held harmless when there is an inadvertent *de minimus* mistake or omission involving licensing matters.

2. Listing of Applicant's Public Company Audit Clients and Related Fees (Part II)

In connection with the Part II requirements related to issuer and fee disclosure, firms will face a number of hurdles, principally in transition, as will be discussed further below (*e.g.*, retrospective application of proxy disclosure categories). Other issues are not simply transitional in nature and we have suggested below certain clarifications and modifications that will make it easier for applicants, yet allow the Board to collect the information that it needs.

a. The Board should adopt the SECPS definition of issuer, if not permanently, then at least on a transition basis. (Items 2.1 – 2.4)

A clear and workable definition of "issuer" is critical to an applicant's ability to register successfully. It is equally important for the Board's purposes that the applicant firms interpret this definition in the same manner so that the firms provide information using a consistent methodology. The Board should clarify its definition for the benefit of both domestic and foreign firms.

For a number of years, public accounting firms in the United States have been required to submit information about themselves and their clients to the SEC Practice Section (SECPS) of the American Institute of Certified Public Accountants. This information includes, for example, statistics about the number of issuer clients and the percentage breakdown of total client fees by category.

The proposed definition of an "SEC issuer" for registration differs from the definition adopted by the SECPS. The SECPS definition is as follows:

1. An issuer making an initial filing, including amendments, under the Securities Act of 1933, or
2. Registrants that file periodic reports (*e.g.*, Forms N-1R, 10-K and 11-K) with the SEC under the Investment Company Act of 1940 or the Securities Exchange Act of 1934 (except brokers or dealers registered only because of section 15(a) of the 1934 Act).

Examples of entities that are not encompassed by the above definition include:

1. Banks and other lending institutions that file periodic reports with the Comptroller of the Currency, the Federal Reserve System, the FDIC, or the Federal Home Loan Bank Board, because the powers, functions, and duties of the SEC to enforce its periodic reporting provisions are vested, pursuant to section 12(i) of the 1934 Act, in those agencies.
2. Subsidiaries or investees of an entity encompassed by the definition of an SEC engagement, which subsidiaries or investees are not themselves entities encompassed by such definition, even though their financial statements may be presented separately in parent and/or investor companies' filings under the 1934 Act.
3. Companies whose financial statements appear in the annual reports and/or proxy statements of investment funds because they are sponsors or managers of such funds, provided they are not themselves registrants required to file periodic reports under the 1940 Act or Section 13 or 15(d) of the 1934 Act.

Note: Series of unit investment trusts and series of limited partnerships sponsored by the same entity shall be treated as one SEC client.

Under a recent revision to the SECPS definition of SEC issuer, a series of mutual funds, limited partnerships and trusts sponsored by the same legal entity are treated as one SEC issuer. It is unclear at this point how the Board has proposed that these series of mutual funds and trusts should be treated with respect to registration. The language in the proposed rules seems to suggest that each individual trust or fund should be treated as a separate issuer. This proposal will make it be extremely difficult for the firms to compile the required information. (*See* Form 1, Item 2.1, Note.)

For purposes of registration, the definition of an issuer should include, as a single issuer, all investment companies sponsored by the same entity as discussed above. The Board has already recognized that investment companies have different characteristics than operating companies.[9]

Further, the Commission's rules on partner rotation recognize all registered funds that are part of the same investment company complex to be a single client. 17 C.F.R. § 210.2-01(c)(6)(iii). For many groups of investment companies with the same sponsor, there is in fact a common board and audit committee governing the entire group. The Board should similarly recognize the special circumstances surrounding investment companies and tailor the disclosure requirements of investment companies accordingly.

[9] Indeed, in the Board's "Proposal for Establishment of Accounting Support Fee," footnote 7 to the proposing release quotes the legislative history of the Act, specifically Senator Enzi as stating, "Audits of investment companies are substantially less complex than audits of corporate entities."

Proposal:

- We suggest that the Board consider adopting the SECPS definition of an SEC issuer for investment companies and other issuers to create consistent public company reporting and lessen the operational burden of compiling additional information.[10]

b. The Board should aggregate the fee information required for investment companies.

A related issue to the definition of issuer for investment companies is the fee aggregation requirement. The proposed rule requires that for investment company issuers, the fees disclosed in (e)-(g) 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.

Requiring disaggregated information for purposes of the application will substantially increase the resources required to complete the process and will produce less useful information for the Board. As the proposed registration rules are written, the Board will receive voluminous information about individual funds that we believe has very limited value. This is largely due to the legal structure of investment companies and the manner in which they currently file information with the Commission.

For purposes of registration with the SEC, numerous individual funds (in some cases, over one hundred funds) are commonly combined into a single legal entity. The legal entity is the registrant, not the underlying mutual fund(s). The specific fact patterns among various mutual fund companies may differ. However, as discussed above, even when a single sponsor manages funds contained in several different legal entities, these entities are often managed and governed in a uniform manner. In some instances, the same legal entity will have more than one audit firm serving funds within that legal entity.

We note that the Board's proposed approach to registration would contain a unique requirement for investment companies: inclusion of fees billed to an advisor or affiliate of the fund if that advisor or affiliate also provides services to the fund. If fees are provided at the trust or individual fund level, we believe it will be more difficult and time consuming for the Board to ascertain the nature and size of the relationship between a public accounting firm and a mutual fund complex because the fees billed to an advisor or affiliate that provides services to an issuer will appear in multiple locations and effectively be "double counted."

[10] We understand that there is currently no list of issuers compiled by the Commission. To the extent that the Commission or the Board develops such a list, we would appreciate the opportunity to confirm that our disclosure related to issuers is complete.

Proposal:

- We recommend that the fee information for mutual funds be gathered at the sponsor level. This will provide the Board with information about the relative size of a public accounting firm's relationship with a fund complex, and the relationship of audit fees to non-audit fees within the complex. We believe that this information will provide the Board with more meaningful information than if the fees were disclosed at the trust or individual fund level.

- We also recommend that audit fees be disclosed for the fiscal year end of the fund included within the calendar year. Further, we suggest that non-audit fees for the fund and the adviser also be measured on a calendar year basis, so there would be a uniform data collection process for this information. This is analogous to the approach taken by investment companies in disclosing aggregate trustee fees paid by a group of related funds for purposes of 1933 Act registration statements.

- For the first year, we also propose that the Board accept information at the sponsor level aggregated in a manner consistent with the calendar basis previously used to report to audit committees. This would avoid short term parsing and reshuffling of fee information that typically does not vary very much from year to year.

- Because it is important to avoid the possibility of different interpretations and presentations of the information in the registration form by various accounting firms, we suggest that the legal entity be considered the "issuer" and that non-audit fees rendered to the adviser and certain affiliates of the adviser be included only once. The fee information relating to the legal entity with the largest overall fees would be a logical place to include those fees.

c. In addition to investment companies, fee information cast into the new proxy categories is not readily available for most SEC issuers. (Items 2.1-2.2)

We are not opposed to collecting and disclosing fee information in the categories created by the Commission for proxy and other filings. However, in the short-term, the disclosure of fees for prior and current periods using the new categories of information is going to be difficult for the firms and there are better ways for the Board to obtain the necessary information during this transitional period. We believe that most firms' systems currently cannot capture information in these newly adopted categories and that to require collection in this manner at this point is going to be a laborious, and likely manual, process for most firms. The Board's proposed registration requirement, as it is currently written, would have the effect of accelerating the transition by six months with little commensurate benefit.

In cases where an issuer has filed a proxy statement with the Commission for implicated prior periods, firms should be allowed to report such data in previously existing categories. To require firms to recast information into new categories would be difficult and would not yield significant insight to the Board that it would not otherwise have from

the prior proxy categories. In this transitional year, allowing reliance on such previous reporting, where possible, would provide better quality data.

In addition to the issuers that do file proxies, there are quite a few issuers that have not historically been required to disclose fees paid to auditors, either in proxies or in other types of disclosure, such as most investment companies (as described above), foreign private issuers and others. Therefore, fee information, especially in the new SEC proxy categories, has not been collected for these clients.

Proposal:

- We recommend that where possible, as a transition matter, firms should be allowed to use the fee data previously published by proxy filers.
- In cases where a client has not historically been required to collect or report fee information related to its auditor, we propose that in this transitional year that there should not be any required disclosure of fee information. Our suggestion would be to begin disclosing this fee information when these issuer clients are required to adopt the new proxy and other disclosure rules.

d. Further, going forward the Board should allow firms to report data provided under the new proxy and related disclosure rules recently adopted by the Commission.

In addition to issuers that file proxies, for the first time, mutual funds, foreign private issuers and other issuers will be required to report fee data in the same categories. Going forward, it will be far easier and more efficient for the firms to report data that has already been reported by the clients of the firm. This would benefit investors as well because if firms had to report such data separately, there would be a risk of confusion due to factors such as exchange rate polices risk inconsistent data.

Proposal:

- Going forward, firms should be allowed to disclose fee information that has been previously presented in issuer clients' proxy or similar disclosure.

e. The Board should make clear that going forward, it has adopted the SEC proxy and required disclosure categories. (Items 2.1 – 2.2)

Appendix 3 of the proposal suggests that it was the Board's intention to adopt fee categories that are consistent with the new SEC proxy and other fee disclosure rules (adopted in connection with the SEC's new auditor independence rules released in January 2003). Currently, the proposed rules contain some inconsistencies with the fee definitions contained in the new proxy disclosure rules.

The Board should make clear in the rule that the fee category definitions that are proposed for adoption are intended to be consistent with those called for by the 2003 SEC independence rules. For example, the Board refers to the SEC's 2000 independence rules for definition of "audit services." (Release at A3-iv-v.) That definition, however,

excludes certain types of services that are now included in the category of "audit fees" for proxy disclosure purposes under the new Commission rule. Further, the proposal does not make clear for what period the fees associated with audit services should be disclosed. The current language implies that the disclosure of audit fees relate to the actual fiscal year of the issuer rather than the fees related to the audit report of the fiscal year financial statements.

The Board should recognize that issuers report fees on a global basis. That is, an issuer's report in its proxy statement reflects all fees paid to its principal accounting firm and that firm's associated entities. The language in the proposed rules is not clear as to definition of principal accountant.

Proposal:

- We propose that the Board adopt the actual language contained in the new 2003 SEC independence rules. This will eliminate confusion and make it easier for firms to compile and report information in a manner consistent with the requirements that apply to their clients.
- Further, the Board should clarify consistent with these proxy rules that client fee information may be reported on a global basis.

f. Issuers for Which Applicant Expects to Prepare Audit Reports During the Current Calendar Year. (Item 2.3)

This category includes issuers for whom the applicant has been engaged to prepare or issue an audit report. There is no systematic way to identify these issuer audit clients. The list of clients will need to be compiled manually through questionnaires to the individual engagement teams. It is not possible to continuously amend this information due to the fact that it will be collected manually through questionnaires to our partner group and could be changing at any point in time.

Proposal:

- We recommend that the Board establish a 30-60 day cut-off date prior to registration to alleviate last minute amendments to the registration form and allow adequate time for firms to manually compile this list.

g. Issuers for Which Applicant Played, or Expects to Play, a Substantial Role in Audit. (Item 2.4)

It is the auditor of the issuer who is usually best placed to conclude which firms do and do not play a substantial role in the issuer's audit. Applicants may be unaware that they have played or will play a "substantial role" in an issuer's audit.[11] This challenge is further exacerbated where the applicant may not be affiliated with the primary auditor and their work is not referenced in an SEC filing. It is clear that there are many possible

[11] We assume that the definition of "material services" set out in Rule 1001(n) is meant to include only audit hours performed or audit fees received in connection with an issuer client. It would not make sense to base this test on all fees received or total engagement hours performed for a client.

instances where the applicant would not know whether it had already, or might in the current year, play a "substantial role" in the audit of an SEC issuer.

Further, there are too many variables outside of a firm's control in order to determine whether a firm would play a substantial role in any future audit engagement for another signing territory. This regulatory exercise should be based on factual information and not intentions. For example, there would be many occasions when a foreign territory will not receive the global audit instructions or completed audit plan from the signing territory until shortly before the performance of the procedures. This would not allow that firm adequate time to identify and disclose the information related to this audit client for purposes of registration.

For these reasons, combined with the short timeframe that the Board and firms will have to register this year, we recommended earlier that the Board limit the categories of firms that will be required to register in the first year to firms that issue opinions on an issuer's financial statements. Thereafter, the Board can extend the registration requirement to other firms if it deems necessary.

As already noted in this response, foreign firms will be faced with the problem of ensuring that compliance with their information requirements will not conflict with local confidentiality laws. The practical problem is likely to be more pronounced in circumstances where the relationship is less direct (e.g. where consent may need to be obtained from a client for whom the accounting firm has played, or expects to play, a substantial role in the audit rather than from a direct client who is an SEC issuer).

Proposal:

- We recommend that the Board not require firms to provide a list of issuer clients for which they expect to play a substantial role due to the uncertainties in identifying these clients.
- If the Board decides to go ahead with this requirement, the Board should consider establishing a 30-60 day cut-off date in order to allow adequate time to manually identify these issuers and collect the associated information required for disclosure.
- Going forward, we recommend that if the Board requires firms that play a substantial role to register, the standard by which the significance of the role is determined should be based on whether the firm audited 20% or more of the issuer's consolidated revenues or assets.

3. Applicant Financial Information (Part III)

a. The Board should phase in the revenue requirements over a transition period because firms do not currently track this information.

We assume that the Board intended to adopt the new SEC proxy disclosure categories, as discussed above. In order to adopt these new categories, applicant firms will need to conduct a very detailed and labor-intensive service mapping exercise. Each service will

need to be categorized into one of the new fee buckets as described above. In addition, at PricewaterhouseCoopers each territory has its own unique set of codes to define its service offerings so this effort will be required for each of the territory firms as well.

With respect to the US firm, the SECPS annual report does require a very similar disclosure of firm client service revenue on a percentage basis. However, the fee categories required for the SECPS report are audit and assurance services, tax and other services. The compilation of this revenue information requires a substantial mapping effort and would need to be duplicated due to the category differences between the requirements for registration and the SECPS disclosure.

The principal difference between the required categories is the combination of audit and assurance services required by the SECPS. If the fee information is publicly available using different category definitions, there is a risk of confusion due to the potential for inconsistencies.

Proposal:

- We suggest, in this initial registration year, if the applicant firm currently reports such information to its local regulator, the firm should be allowed to report fee information to the Board in the same manner. In cases where there is not currently a reporting requirement for the local firms, we would suggest that these firms report total revenues (*e.g.*, a US firm could disclose revenue information using the fee category definitions consistent with the SECPS disclosure)

b. In the current year the Board should consider accepting domestic firm applicant revenue information for FY02, where available.

The proposed rules state that the applicant revenue information is required for the most recently completed fiscal year. This proposal could create substantial problems based on the timing of registration. For example, our fiscal years end on June 30. On average it would take approximately 90 days to compile the firm's revenue information required for disclosure. This is consistent with the 90-day filing requirement related to 10-K filings for SEC issuer clients.

Proposal:

- We suggest that for this first year, the Board permit domestic firms to disclose revenue information related to FY02 for purposes of meeting the revenue disclosure requirements, which will be more efficient for firms given the time they will have to prepare and submit an accurate registration application.

c. With respect to the foreign firms, the relevance of providing revenue information related to clients that are not SEC issuers is not clear.

We understand the Board's requirement to obtain information relating to the fees charged to SEC issuer clients. However, we are concerned about the Board's requirement for firms to disclose fee and revenue information for services provided to non SEC issuer

clients. This information will be difficult to compile for the foreign firms, particularly using the new proxy categories. If the purpose of registration is to establish a basis for inspection and potential investigation, the overall client service revenue of the foreign firms related to non-SEC issuing clients does not appear to be relevant.

Proposal:

- We suggest that the Board restrict its requests to fee and revenue disclosure to information that is in the public domain or relates specifically to services provided to SEC issuer clients.

4. Listing of Certain Proceedings Involving the Applicant's Audit Practice (Part V)

Part V of the application goes beyond what the Act requires in a number of ways. For example, the Board is seeking to obtain information from an applicant about *past* proceedings, related to *former* employees, and for matters that relate to *non-issuers.* The collection of such information will not only be burdensome, but likely will not yield much information relevant to the registration process.

Therefore, as expressed through the analysis below, we have suggested alternative approaches to address these registration requirements. We would recommend that the Board only require disclosure of proceedings pending against the firms and their current employees that relate to audits for SEC issuers, and if the Board insists on a look-back period, that such period be limited in time to five years (other than for Section 5.3, which should remain at 12 months). This period is consistent with the requirements for disclosure of past proceedings related to officers and directors contained in Item 401 of Regulation S-K. (17 C.F.R. § 229.401(f))

a. Requiring only information relating to recent and pending proceedings of a firm for matters related to SEC issuers would be sufficient for the Board to carry out its duties.

The Board can accomplish its objectives without creating such an extended look-back period for past proceedings against the firm and its personnel. Inclusion of current or recent proceedings gives the Board a baseline from which to start in this inaugural year of registration. The Board will then be on notice of pending proceedings, and if the Board so desires, can conduct follow-up activity with respect to a pending proceeding or action. Such an exercise would create an almost impossible burden by requiring the collection and production of a great deal of stale information.

b. The Board can conduct its responsibilities without information relating to proceedings against (i) former associated persons or (ii) information related to past proceedings for current firm personnel.

Collecting data related to former associated persons would be a tremendous burden and would not be possible in many cases. There are thousands of former associated persons

who would be likely swept in the Board's proposed rule. Because such personnel are no longer employed at an applicant firm, the firm would have no way to compel information from or about that person.

Within the United States, for example, firms will be constricted from carrying out certain searches to obtain the information. The individual states have laws relating to the depth and breadth of background checks that an employer or potential employer can conduct. Some are at variance with the proposed rules.[12]

Similarly, it is not relevant to the Board if the individual concerned does not participate in or contribute to the preparation of an audit report of an issuer. The provision of such sensitive information (which may not previously have been on the public record especially where the case is pending) could be seriously prejudicial to both the accounting firm and the individual concerned.

Particularly for firms outside of the United States this would be a burdensome requirement. Elsewhere in the application the Board has narrowed the definition for foreign firms to include only personnel who work on SEC issuer clients. We believe that this narrowing should be applied here as well. Information related to personnel should be limited to those who work on issuer clients.

Finally, the requirement for collection and disclosure of information related to past proceedings against former and current associated persons seems excessive. Because the firms are required to employ adequate training, supervision and quality control mechanisms with respect to all individuals, and because appropriate inquiry can be made in any instance where there is a question about an individual, the Board should balance the demand against the burden. Assembly of the data prospectively over the next five-year period would accomplish the same objective in a reasonable fashion.

c. Compliance with certain of the requirements of Part V will present difficulties for certain foreign firms.

As already noted, much of the information required in Part V would, in certain jurisdictions, be regarded as "sensitive personal data" the provision of which to the Board could violate both local data privacy laws and the employment law duties owed by audit firms to their employees.

To the extent the civil proceedings are not public (which will almost always be the case in arbitration proceedings), the issue of client consent also arises. Foreign firms should not be required to attempt to procure consent to disclose such information from their non-SEC issuer clients.

[12] The California Credit Reporting Act caps the relevant time period for background checks for criminal offenses, as well as for other information, to seven years. Cal. Civil Code §§ 1785.1-1785.36. Similarly, Massachusetts law prohibits an employer from inquiring into certain information that goes back more than five years. Mass. Gen. Laws ch. 151B, § 4.9(ii)–(iii).

d. The Item 5.5 requirement for additional information will prove difficult.

As stated above, the firm's ability to provide this information going back ten years for each of its current "associated persons" will be inconsistent with the laws of a number of states.

Further, the requirement that foreign firms must identify analogous criminal provisions and then report violations thereof creates a great deal of uncertainty. Applicants may not be able to identify properly and classify the particular proceedings that are intended to be covered.

Proposal:

- We propose that disclosure should relate to any pending criminal, civil, administrative, or governmental proceedings against the firm itself or its personnel in connection with audit reports for issuer clients. In addition, we propose eliminating the disclosure requirement for past proceedings against firm personnel and associated persons, as well as proceedings related to non-issuer clients.

- We believe that disclosures relating to proceedings against individuals and non-public pending proceedings against a firm should be kept confidential.

- The Board should consider either eliminating the requirement that foreign firms identify "substantially equivalent" violations under Item 5.5 or come up with a bright-line test so that foreign firms are not at risk of non-compliance.

- To the extent that the Board decides to retain look-back periods for any category of information we suggest that five years be the appropriate time period.

- If the Board decides to retain the request for past proceedings, it should recognize that pending or past proceedings relating to a firm or its past employees cannot be used as a basis to determine the fitness of the firm going forward.

5. Listing of Filings Disclosing Accounting Disagreements with Public Company Audit Clients (Part VI)

The issue with respect to the disclosure of accounting disagreements relates primarily to the foreign firms. The language of the proposed rules requires information about specific accounting disagreements filed with the SEC. There is no formal mechanism for reporting these disagreements in most territories. Further, there is no clear and consistent definition across territories of what constitutes a "disagreement."

Finally, Section 6.3 of the proposal requires that the firms attach copies of the documentation relating to actual accounting disagreement. As stated above, this filing is

going to be voluminous already, and these documents are publicly available from other sources.

Proposal:

- We propose to either include the link to the EDGAR filing or a CIK number to disagreements reported in 8-Ks. While firms can attach this information to the application, it is publicly available and including the filing seems to add unnecessary volume.

6. Roster of Associated Accountants (Part VII)

a. Certain of the information requested is sensitive individual data.

We are concerned about providing sensitive information about our personnel to third parties due to the high incidence of identity theft and other potential for misuse. Therefore we propose that the Board eliminate the requirement that applicants include the social security numbers of its personnel in its application.[13]

Proposal:

- We suggest that the Board require only disclosure of the names of the personnel of the applicant entity.

b. Foreign firms encounter additional issues with the definition of accountant.

To mirror the legal and professional responsibilities in many territories outside of the US, we believe that only the team of partners should be disclosed as an "accountant" for this purpose. In many cases, only a partner legally admitted to the partnership has the authority by virtue of the partnership agreement and by local law to commit the firm to any position or express any opinion in the name of that partnership.

The Board should require that only the names of the partners who work on SEC issuer clients to be listed on the firm's application. The majority of data related to personnel, including names and social security numbers, are clearly "personal data" which foreign firms may not, by virtue of the data privacy and employment laws existing in their territory, be at liberty to supply. In addition, the requirement to provide the Board with a non-US identifier is both excessive and unnecessary.

[13] A recent review of 15 federal agencies by the Inspector General of the Social Security Administration revealed that those agencies are unequipped, for the most part, to keep social security numbers from getting into wrong hands. The Inspector General's February 2003 report concluded that, "some federal entities are at-risk for improper access, disclosure and use of SSNs by external entities, despite safeguards to prevent such activity." *Report to the President's Council on Integrity and Efficiency: Federal Agencies' Controls over the Access, Disclosure and use of Social Security Numbers by External Entities*, Social Security Administration, Office of the Inspector General, February 2003 at 7.

Proposal:

- For foreign firms, only the names of engagement partners who work on SEC issuer clients should be disclosed.

7. Consents of Applicant (Part VIII)

The firms are likely to be willing to provide consent on their own behalf and obtain the consent of their partners and staff, except to the extent that signing or obtaining such consents violates local law. However, we believe that firms cannot be required to maintain consents from staff in other territories, particularly in light of the problems with local laws in many jurisdictions, as discussed above with respect to the definition of associated persons.

a. The requirement of a signed consent violates the laws of a number of territories.

Obtaining consent in the employment context may be difficult to establish. In a number of territories, as further described in the Linklaters Submission, it has been questioned whether consent given in an employment context constitutes "freely given consent" as employees do not have the option to refuse their consent without possible adverse consequences. Therefore, in certain territories, obtaining consent to cooperation with the Board will prove problematic.

b. It is important to preserve applicable privileges and rights.

Any such consent, on behalf of a firm or on behalf of an individual cannot and does not constitute a waiver of attorney-client privilege, the right against self-incrimination or any other privilege or right that exists under the law of the United States or of the home territory of the applicant. The Board further needs to make clear in its rulemaking that exercise of any such privilege during an investigation does not constitute an act of non-cooperation. Furthermore, if a current or former associated person of a firm refuses to waive their constitutional rights to privilege or to not incriminate themselves, the relevant firm should not be implicated, nor should such firm be required to force such individual to waive their rights.

Proposal:

- We recommend that the Board should not require firms to obtain consents to the extent that obtaining such consents would be unlawful. Further, if, despite a firm's best efforts, such firm is unable to enforce a consent, and if a former or current associated person refuses to comply with their consent, the firm should not be held liable.

APPENDIX

Following are responses to the Specific Questions posed by the Board in connection with foreign public accounting firms:

1. 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?

Because of the many problems with local laws, the foreign firms should be allowed additional time to register. Most firms will need additional time to assess the impact of the registration requirements on their local legal obligations, and make determinations as to the feasibility of registration. Dialogue will also be necessary between the foreign firms, their regulators and the Board and this process will inevitably prove time consuming.

Beyond that, once firms determine that they can complete all or part of the registration application, the firms may face additional hurdles before being able to provide information to the Board. For example, in certain cases, client consent and employee consent may be required before the production of certain information. That process will also add time to the registration process.

This issue is compounded by the Act's wide range of other new requirements and changes, and concurrent local regulatory initiatives that require attention. These other requirements also require a significant amount of management time and resources. Based on the foregoing, a longer registration period would be needed for non-US applicants should the Board proceed with the current proposals.

2. Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?

If an applicant is associated with a US accounting firm that has registered, or plans to register, the applicant should be allowed in Item #1.6 to refer to the US firm's listing of associated entities, to avoid duplication.

In general, the same transitional points and benchmarks that are discussed earlier should apply. It is, in addition, likely that the requirements of Form 1 will need to be tailored for applicants in specific territories depending on their ability or otherwise as a matter of local law to comply.

3. In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?

We are not aware of any additional information that the Board should seek from foreign firms at this time. The Board always has the ability to modify these requirements at a later date.

4. Do any of the Boards registration requirements conflict with the law of any jurisdiction in which foreign public accounting firms that will be required to register are located?

Please see the Linklaters Submission for the analysis.

5. 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?

Direct oversight of the foreign applicant should continue to be exercised by its competent national regulatory authority rather than by the Board. The Board needs to be mindful of the different but equivalent ways in which accounting firms are regulated around the world and engage in dialogue with local regulators with the aim, where appropriate, of relying on home country regulation in lieu of Board inspections.

6. 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?

As stated above, the comprehensive oversight of a foreign public accounting firm should be exercised by a competent national regulatory authority. The Board should enter into a dialogue with those regulatory authorities responsible for foreign applicants to develop a clear understanding of the different regulatory cultures that exist around the world. As this could cover in excess of 100 countries, the Board may like to embark on this initiative once the registration process for the US firms has been completed and the domestic US oversight mechanism has been given time to mature. Avenues that could be explored include (where appropriate) a system of reciprocity or recognition.

Also as stated above, foreign public accounting firms should be exempt from requirements that contravene local law or that will not be in the applicant firm's own discretion or control (*e.g.*, obtaining consents from associated persons over whom the firm has no authority).

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April 3, 2003

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

Re: Matter No. 001

Members and Staff of the PCAOB

We have read the AICPA SEC Practice Section response to your proposal, and, as a small accounting firm with a number of public companies, we concur with their comments.

We further have comments applicable to small firms on Item 1.8. We often have one client in a single state. Each state has its own registration requirements, including CPE which is different from the AICPA or the other states. At least one, Florida, requires additional periodic exams on local rules. Small firms frequently do not register with the states of the Registrant. Further, as drafted the request also would apply to services performed in states for non-public companies.

When we register with you we would, if the current draft is adopted the following options as we understand it:

1. Indicate that the response to Item 1.8 is "No.";
2. Drop the clients in states where we have only one client; or
3. Register in each of the states.

We believe it is impractical to do 3 as it would require an additional administration beyond the economic benefit.

Assuming we do not adopt approach 3, would you prefer approach 1 or 2 above.

We suggest that Item 1.8 be limited to the states where the auditing firm has an office.

Very truly yours,

Arthur J. Radin

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
U.S.A.

March 31, 2003

Re: Comments with Regard to Rulemaking Docket Matter No. 001

Dear Mr Secretary,

RSM International is pleased to have the opportunity to send you our comments with regard to the registration of non-U.S. auditors and the Board Oversight of Foreign Registered Public Accounting Firms as described in the Public Accounting Oversight Board's (hereafter "the Board") proposed rules, issued on March 7, 2003 in connection with Section 102 of the Sarbanes-Oxley Act 2002.

We understand and appreciate the objectives of the Sarbanes-Oxley Act. We fully support improvements in the quality of financial reporting, corporate governance, and in the definition of the role and responsibilities of auditing firms.

RSM International, the sixth largest network of accounting firms in the world, has been making significant investments in implementing an integrated audit quality assurance process for its member firms. These member firms operate in over 70 countries and are required to comply with the RSM International Quality Assurance Policies as a condition of remaining member in RSM International. Our integrated audit quality assurance process includes the following:

a. The RSM International Quality Assurance Document, based on the International Quality Assurance Standards: Member firms are required to meet or exceed the requirements of this document;

b. The RSM International Independence and Relationship Policies, based on the International Federation of Accountants Code of Ethics and the requirements of the SEC: Member firms are required to meet or exceed the requirements of these policies;

c. The RSM International Audit Manual, based on the International Standards on Auditing and the best global audit practices: Member firms are required to conduct audits and other assurance engagements in accordance with, at a minimum, the requirements of the manual;

d. The RSM International guidelines for continuing professional education, based on the best global practices: Member firms are required to implement these guidelines;

e. A global prohibited securities list, which is available on our world-wide proprietary Lotus Notes Network: The list is continuously updated and is accessed by our professionals to prevent inappropriate investments or relationships or the performance of prohibited services for audit clients;

f. An annual independence confirmation process involving all personnel in all member firms; and

g. A worldwide annual inspection process involving all of our member firms: The process has been designed based on standards applicable to internal inspection in the United States.

We believe that our international quality assurance process makes a significant contribution to improving the quality of audits by our member firms.

We, hereby, submit the following comments on certain questions raised by the Board with regard to the registration of foreign public accounting firms in its Release No. 2003-1.

Question 1 - Is it feasible for the 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?

We believe foreign public accounting firms should be afforded a longer period of time within which to register. Our member firms raised several concerns regarding the nature and scope of the information the Board is requesting. One category of concerns relates to the time and cost involved in compiling information that is not currently being routinely compiled. Another category of concerns relates to legal issues, in some jurisdictions, regarding the disclosure of certain items that are protected by privacy laws.

In view of these concerns, the Board should afford foreign public accounting firms a longer period of time within which to register. We believe that a reasonable period of time is 360 days provided, however, that the Board addresses the legal issues that may impact the ability of foreign public accounting firms to fully comply with the disclosure of the requested information.

Question 2 - Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?

Disclosure of a number of items as currently set out may be illegal in some jurisdictions. Consideration should be given by the Board to resolving the legal issues before Form 1 is finalized for foreign public accounting firms.

Question 3 – In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?

No.

Question 4 – 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?

Please see responses to questions 1 and 2.

Question 5 – In the case of non-U.S. firms that are required to register because they play a substantial role in the preparation and furnishing of an audit report on a U.S. issuer, is the Board's definition of "substantial role" appropriate?

Yes and we believe that the 20 percent threshold is appropriate.

Question 6 – 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?

We do not believe that association with a U.S. registered public accounting firm should be the differentiating factor. We believe that foreign public accounting firms that belong to an international network which has implemented an effective quality assurance process should be afforded the opportunity, if they wish, to register as one network. The Board should consider establishing criteria/requirements for this suggested approach to registering foreign public accounting firms. We believe that by establishing such criteria/requirements, international networks of public accounting firms would be encouraged to place additional focus on implementing effective quality assurance processes encompassing their member firms outside the United States.

Question 7 - 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 accounting firms? If so, under what circumstances could this occur?

We believe that the Board should rely on home-country regulation in lieu of inspection of foreign public accounting firms when home-country regulation meets or exceeds the Board's requirements. We also believe that the Board should, at least partially, rely on an international inspection process that is implemented by an international network of public accounting firms to the extent that the process meets or exceeds the Board's requirements.

We believe that the Board should encourage foreign regulators that are seeking to continuously improve the quality of audits in their countries, by giving adequate consideration to their efforts. Likewise, we believe that the Board should encourage international networks of public accounting firms that are investing in continuously improving the quality of audits by their member firms by giving adequate considerations to their investments. We do not believe that applying the same dose of medicine to every foreign public accounting firm, without adequate consideration to the regulatory scheme in its home country or the quality assurance process imposed by its international network, is productive.

Question 8 – Aside from Board inspection, are there other requirements of the Act from which foreign public accounting firm should be exempted? If so, under what circumstances?

We believe that foreign public accounting firms should be exempted from disclosing information that they are prohibited from disclosing by their home country laws.

Question 9 – 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?

No.

Question 10 – 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?

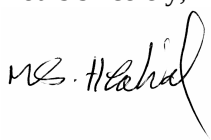
We do not believe that association with a U.S. registered public accounting firm should be the differentiating factor in the Board's Oversight of foreign registered public accounting firms. We believe that the differentiating factors should be as follows:

a. Whether the foreign public accounting firm operates in a country that has effective country regulation; and

b. Whether the foreign public accounting firm is a member of an international network that has an effective international quality assurance process.

We do not believe that a U.S. registered firm should be responsible for a foreign registered firm's compliance with the Board's rules and standards.

Yours sincerely,



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COMMENTS WITH REGARD TO RULEMAKING DOCKET MATTER N° 001
BY RSM SALUSTRO REYDEL, FRENCH MEMBER OF RSM INTERNATIONAL

Dear Mr. Secretary,

We, hereby, submit to the Public Company Accounting Oversight Board ("the Board") our comments with regard to questions raised by the Board in its Release N° 2003-1 and Rulemaking Docket Matter N°1 issued on March 7, 2003 in connection with the implementation of the Sarbanes Oxley Act.

Those comments are designed to emphasize certain specificities of the French oversight system of the accounting profession as well as certain matters specific to RSM Salustro Reydel, as an audit firm already accredited to work before the SEC and member of but not associated to an International network.

General Overview of the commentator

RSM Salustro Reydel ("the Company") has been formed in 1991 on the merger of two audits French firms that had been in public accounting respectively since 1952 and 1964. The Company is a core member of RSM International ("RSMi"), the 6th largest accounting network worldwide. Our Chairman and Managing Director chaired until very recently the RSMi Transnational Assurances Services Executive Committee, responsible for developing, harmonizing and monitoring implementations of quality assurance systems and procedures within RSMi and is currently the representative of RSMi to the Transnational Auditors Committee within the Forum of Firm organized by IFAC.

The Company has been qualified to appear and practice as an independent auditor before the Securities and Exchange Commission ("SEC") since January 2000. From that time on, the Company has been jointly signing the financial statements of three leading French companies listed on the New York Stock Exchange , France Télécom, Vivendi Environnement and Vivendi Universal.

In performing these engagements and prior to any filing with the SEC which contains the Company's audit report that filing has been reviewed in accordance with the requirements of the American Institute of Certified Accountants ("AICPA") SEC Practice Section ("SECPS") Appendix K to its satisfaction by McGladrey&Pullen, LLP, the American founding member of RSMi.

Question 1 - 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?

Notwithstanding legal issues (more specifically addressed in our comment to question #4), the Company would like to point out to the Board the following difficulties it might enter into to produce the required information to register with the Board and which, in its views, could require a longer period of time:

(i) With regard to breakdown of historical revenue information by type of engagements performed as set forth in Part III of Appendix 2 – Proposed Form 1 of Release N° 2003-1, the Board should be aware that:

a) The Company does not track its revenue for non-US listed clients according to the Form F1 required presentation. This information on a historical basis may be extremely difficult and time consuming to assemble as

- historically, the Company has never monitored as such its revenues,
- the information is disseminated around the world and has never been isolated before neither in our own accounting records nor in any of our subsidiaries' accounting records,

b) In any cases, in order to comply with the Board requirements, the Company will have to implement in its French offices, its French and foreign subsidiaries a new revenue tracking system for all clients,

Additionally, for the purpose of providing this information to the Board, the Company is seeking clarification from the Board as to whether or not that information has to be provided using French generally accepted accounting principles ("GAAP") which our current reporting GAAP or in US GAAP and in local currency or in US dollar.

(ii) With regard to any matters involving individuals employed by the Company within the general framework of the French social laws, the Company's may not be in a position to obtain consents to all requirements of the Board prior to employees seeking independent legal advice. Specifically requirements set forth in Part VIII item 8.1 b. of Appendix 2 – Proposed Form 1 of Release N° 2003-1 might require modification of all employees working contracts as well as individual consents to those changes.

(iii) In addition, the requirement set forth in Part IX of Appendix 2 – Proposed Form 1 of Release N° 2003-1, may require setting up new internal procedures which for entities certified ISO 9001 like the Company and it is not clear to the Company whether or not these new procedures will have to be compliant with the ISO standards therefore requiring to be reviewed and approved by ISO reviewer.

(iv) The Company believes that the information that would have to be disclosed and made public with regard to criminal, civil, governmental, administrative, disciplinary or other proceedings as set forth in Part V of Appendix 2 – Proposed Form 1 of Release N° 2003-1 within the last ten, five or one year depending on the nature of the action is a long and expensive process. With regard to disciplinary actions, professional sanctions and arbitration, as these procedures are not of public knowledge in France, disclosure to the Board may require formal approval from all parties involved, which in the views of the Company should slow down the process.

(v) The Board should be aware that criminal records are not of public knowledge in France. As a consequence, disclosure to the Board should only be possible once individuals consents have been collected.

Consequently, for all the above reasons and without taking into consideration all other changes required by the provisions of the Sarbanes Oxley Act (e.g., Sections 208, 301, 302, 401, 404, 406 and 802) which, by themselves will require dedication of significant Management's time and resources, the Company's considers that it is unlikely that this could be reliably achieved within a period of 180 days and that the Board should consider allowing significantly more time to foreign accounting firms.

Question 2 - Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?

The Company would like to let the Board know about some specificities that the Company may enter into in order to provide the information required by the Board for registration:

(i) The financial statements of the Company are prepared in accordance with French GAAP using the Euro as its reporting and functional currency. To convert any historical information to US GAAP (if required) and US dollar (as indicated in Appendix 2 – Proposed Form F1 General Instructions (6)) may not be relevant for the purpose of the Board. Consequently, the Board should consider allowing non affiliated foreign audit firms to report in local GAAP and local reporting currency for the purpose of fulfilling the requirements set forth in Form 1.

(ii) With regard to matters involving individuals employed by the Company, requirements set forth in Part VIII item 8.1 b. of Appendix 2 – Proposed Form 1 of Release N° 2003-1 may contravene French as well as local social laws (for subsidiaries located outside France).

(iii) In addition, the Company considers that matters addressed in comments to question # 4 (see below) related to confidentiality, testimony and personal data

are relevant information to be considered by the Board regarding comments to question # 2.

Question 3 - In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?

French oversight and monitoring processes, together with investigation and disciplinary procedures are in France monitored and performed by the Commission des Opérations de Bourse and the Compagnie Nationale des Commissaires aux Comptes. Consequently, the Company believes that those two bodies may be in a better position than the Company to comment on this question.

Question 4 - Do any of the Board registration requirements conflict with the law of any jurisdiction in which foreign public accounting firms that will be required to register are located?

The following French legal aspects should be of consideration to the Board to understand why some of the information or requirements requested for registration may not be provided by French accounting firms:

(i) Part VIII item 8.1 a. of Appendix 2 – Proposed Form 1 of Release N° 2003-1 conflicts with Article L.225-240 of the French Code that imposes confidentiality obligations with respect to facts, documents or information audit firms have learned or that were disclosed to them in the course of their work except when required or authorized by law but there is no provision under French law that requires or authorizes communication of such information to the SEC or the Board; In addition, article 66 of the August 16, 1969 Decree lists entities to which audit workpapers may be disclosed if requested but this text does not list the SEC or the Board;

(ii) Civil sanctions that could be imposed by the Board would not be recognized in France on the basis of the fact that no judgement would have been rendered by an US court;

(iii) Criminal sanctions may be impossible to implement in France against French individuals or the Company as there is little if any enforcement in France for criminal actions by a U.S. court whereas for individuals, the French – U.S. treaty on extradition provides for very restrictive conditions that may not be met with regard to matters detailed in the Sarbanes Oxley Act;

(iv) Some information required by the Board would be considered "personal data" for the purpose of the EC directive 95\46\EC and the "Loi Informatique et Liberté" dated January 6, 1978. It is the Company's understanding that personal data includes the details of all accountants associated with the firm and information relating to criminal, civil or administrative actions or disciplinary proceedings pending against the firm (the latter being "sensitive

personal data" subject to even greater restrictions under the directive). No such data can be communicated to third parties without individual consent without breaching the requirements of the directive. The consent must be "freely given, specific and informed" (and in the case of sensitive personal information the consent must be express). The fact that individual consents are obtained is not sufficient enough in order to allow transfer of personal data to the Board.

(v) French laws preclude foreign jurisdiction to perform their own inspection on national territory. Even though professional confidentiality related to audit firms' documentation do not apply to French regulators when legal or professional proceedings are engaged, current French laws would ban the Company from disclosing any of this information to the Board.

(vi) In France, arbitration procedures are not a matter of public knowledge. Consequently, requirements of Item 5.3 (a) of Part V of Appendix 2 – Proposed Form F1 of Release 2003-1 should require prior consent from all parties to the arbitration.

Question 5 - In the case of non-U.S. firms that are required to register because they play a substantial role in the preparation and furnishing of an audit report on a U.S. issuer, is the Board's definition of "substantial role" appropriate?

French law requires (a) joint audit, (b) audit of statutory financial statements of any "Société Anonyme" within a group and (c) audit firms to be nominated for a 6-year mandate. It is difficult for an audit firm as well as for the Issuer to determine which audit firms meet the definition set forth in of Section 2 Part 1. At any year-end close, for example, if for any reason there are changes in scope of consolidation of an Issuer, some audit firms that did not play a significant role in the audit of this Issuer may fall under this definition. There is therefore a need for the Board to consider granting responsibility to determine which entity plays a significant role in the audit of an Issuer to the auditors of the parent company. Consequently, the Company suggests the Board reconsider definition of Section 2 Part 1 item 2100 (n) (2) to insert the principal auditor concept.

Question 6 - 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?

The Company is a core member of RSMi. To become a member firm of RSMi, any candidate has to demonstrate its ability to conform to the high quality standards set forth by the Transnational Assurances Services Executive Committee and the Board of RSMi. This quality standards have been developed in close collaboration with the

US member of RSMi, McGladrey&Pullen, LLP and the Company fully complies with such standards.

The Company believes that statements required by Item 4.1 of Part IV of Appendix 2 of the Board Release 2003-1 might be addressed with a presentation of these membership requirements.

Question 7 - 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?

In addressing issues related to question # 7, the Board may want to take into consideration the following:

(i) It is important to stress that French legal systems preclude foreign jurisdiction from conducting inspections in France. Consequently, we suggest that the Board, prior to setting any definitive rules with regard to inspection requirements, visits with the French regulatory bodies and French Ministry of Justice with regard to these matters (see also comment to question # 4);

(ii) The Company is already submitted to inspection related to listed and unlisted engagements performed by the Compagnie Nationale des Commissaires aux Comptes;

(iii) As part of RSMi, it is already submitted to a second set inspection through the RSMi Inspection program ;

(iv) Being accredited to work before the SEC, all of the Company's engagements related to Issuer listed in the United States of America are submitted to specific review requirements as set forth in Appendix K of the SECPS of the AICPA;

(v) Most if not all of the Company's files are maintained in French language.

Question 8 - 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?

Because of the general legal environment as described in more detail in comments to questions # 2, 4 and 7, the Company recommends the Board to consider exempting foreign audit firms of the requirements regarding (i) access to documentation and testimony (ii) oversight control and (iii) some information requested for registration.

Similarly, coercive systems set forth by the Board could potentially lead to duplication of sanctions on the Company for acts that would also fall under sanctions of our national regulators. Consequently, sanctions from the Board may difficult to enforce.

It is the Company's belief that because of these uncertainties the Board allow more time for continuing dialogue with the French regulators, the French Ministry of Justice and audit firms to find ways to meet the requirements of the Board without breaching sovereignty of the French regulators and duplicating oversight.

Question 9 - 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?

Based on comment to question # 1, 3 and 4, the Board should consider granting a significant extended period of time to address specificities related to foreign audit firms and pursue alternative avenues with foreign regulatory bodies and audit firms in order to achieve the objectives set forth in the Sarbanes Oxley Act.

Question 10 - 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. register firm have any responsibility for the foreign registered firm's compliance with the Board's rules and standards?

As a general matter, the Company considers that with respect to foreign public firms not associated with US registered firms, the Board considers recommending the continuation of the existing SECPS Schedule K requirements, or being inspired by the existing practice.

From: Randi Kraus [rkraus@spencemarston.com]
Sent: Monday, March 31, 2003 2:43 PM
To: Comments
Subject: Docket No. 001
Categories: Docket 001

The purpose of this letter is to comment on the proposed registration rules for CPA firms. We are proposing that the definition of which CPA firms must register be expanded to clarify the registration requirement for auditors who are not the principal auditors of a publicly held company but provide services, including auditing entities in which the company has invested. We have three issues which are more fully described below:

1. If there are numerous other auditors involved in the audit, do the registration requirements only apply to those other auditors who individually provide more than the specified level of service? Or is any aggregation required if the other auditors in total provide more than 20% of the audits?

2. In the case of a partnership whose units were offered in series to investors (with each series having different investors), would the material participation rules apply to each of the series individually or to the partnership as a whole? Each series is presented individually in the financial statements and is referenced individually in the audit report.

3. If the other auditor is not a registered CPA firm, can a registered firm rely on any of the workpapers prepared by the other auditor when no reliance on the audit report is permitted?

We are the principal auditor of several partnerships (the upper tier) that invest in partnerships that own low income housing projects generating tax credits (the lower tier). The upper tier partnerships are considered to be publicly held due to the number of partners. However, the units in these partnerships are not actively traded on any exchange or market. The investors look solely to the tax credits that are passed through to them on their Schedule K-1.

Many of the lower tier partnerships are audited. As is common in this industry, we rely on the lower tier auditors and refer to them in our audit report. Generally, there is no one auditor that audits more than 20% of the lower tier partnerships in number or dollars. However, in aggregate, the lower tier auditors do audit more than 20% of the partnerships assets. Also, in one of the partnerships that was offered to the investors in series, there may be a series that has one lower tier auditor that audits more than 20% of the lower tier partnerships for that series but not for the partnership as a whole. Our audit report references each series individually.

Due to the nature and location of the low income housing projects in which the partnerships invest, many of the lower tier auditors are generally small, local firms in rural areas or small towns. These firms are not planning to register. As the principal auditor, we need to determine if we can rely on the audit reports from unregistered auditors and, if not, can we use any of the workpapers prepared by these firms.

Thank you for considering this matter.

Randi E. Kraus CPA
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State of Wisconsin Investment Board

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March 31, 2003

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

Re: **SEC/PCAOB Roundtable on Registering Foreign Accounting Firms**

Dear Madam Secretary:

The State of Wisconsin Investment Board (SWIB) manages the Wisconsin Retirement System (WRS), the tenth largest public pension fund in the U.S. and the 19th largest pension fund in the world. There are 500,000 participants in the WRS and 120,000 retirees currently receive annuity benefits. SWIB currently invests approximately $57 billion (which includes several smaller funds in addition to the WRS). Of this amount, $32 billion is invested in equities, $22 billion domestic and $10 billion international, including over $173 million in ADRs. International stocks represent approximately 19% of total WRS assets.

SWIB submits these comments in support of Public Company Accounting Oversight Board (PCAOB) registration of foreign accounting firms. The following are big picture considerations that underlie SWIB's comments:

- SWIB supports regulatory cooperation and the convergence of accounting and auditing standards in order to facilitate international investments. SWIB and other pension funds are investing more in international equities, including ADRs. We are encouraged by the agreement between FASB and IASB to work together toward the convergence of global accounting standards that investors can trust.

- SWIB hopes that PCAOB oversight of foreign firms will result in greater convergence and reduce regulatory burdens between nations.

- SWIB supports the efforts of the IASB and agrees with Sir David Tweedie, Chairman of IASB, who said in his February 2002 Senate testimony:

  > "Taken as a whole, U.S. generally accepted accounting principles (GAAP) are the most detailed and comprehensive in the world. However, that does not mean that every individual U.S. standard is the best, or that the U.S. approach to standards is the best. At the IASB, our goal is to identify the

> best in standards around the world and build a body of accounting standards that constitute the "highest common denominator" of financial reporting. We call this goal *convergence* to the highest level."

- As an investor, we support high-quality, uniform governance and financial reporting standards, and we are hopeful that Sarbanes-Oxley Act provisions will facilitate further movement in that direction (e.g., NYSE/Nasdaq uniform listing standards, accounting board with broad authority).

In that context, SWIB cites the following as among the primary reasons for support of the PCAOB initiative:

- The accuracy and consistency of financial statements are critical to SWIB in making investment decisions. When investing in the U.S. markets, investors expect the same protections regardless of where the accounting firm is located. An exemption for foreign firms would create uncertainty for investors, undermine Sarbanes-Oxley and weaken investor confidence in the reliability of financial statements.

- The PCAOB's oversight of foreign firms is required by law. Section 106(a) of Sarbanes-Oxley provides that non-US firms are subject to Sarbanes-Oxley and PCAOB "to the same extent as a public accounting firm that is organized and operates under the laws of the United States" if they audit companies subject to the U.S. securities laws.

- Auditing reform is the heart of Sarbanes-Oxley. SWIB has long advocated for many of the changes implemented by Sarbanes-Oxley, and opposes any efforts to create loopholes or otherwise water down this legislation. SWIB may support the granting of exemptions provided the exemption criteria are specified in advance and uniformly applied. Exceptions must not swallow up the rule. Section 106(c) provides for exemptions only if "necessary or appropriate in the public interest or for the protection of investors."

- Audit failures are not limited to U.S. companies. Foreign companies whose shares trade in U.S. markets have experienced accounting scandals similar to those that have plagued U.S. companies (e.g., announcement that Royal Ahold NV, world's third largest grocery chain, overstated earnings by $500 million caused US-traded shares to crash.)

- Senators Dodd and Corzine, in a recent letter to Chairman Donaldson commented on an exemption for foreign accounting firms as follows: "This exemption would be inconsistent with the language of the Sarbanes-Oxley Act of 2002 and would undermine the effectiveness of the act and of the board's oversight responsibilities. There is no reason why U.S. shareholders of a foreign company listed on a U.S. exchange should have less protection . . . than U.S. shareholders of a domestically-incorporated company listed on the same U.S. exchange."

- Companies that make use of the U.S. capital markets should be subject to the same rules as every other company trading in the U.S. markets. Just as the company is subject to the U.S. securities laws, its auditor should be subject to U.S. regulation. As noted in the PCAOB proposals, foreign public accounting firms (like U.S. public accounting firms) must register with the board as a condition to preparing, issuing, or playing a substantial role in the preparation or issuance of audit reports on U.S. public companies.

- Investors want accountability with respect to financial statements and recourse if accounting problems are uncovered. One major purpose of Sarbanes-Oxley was to replace industry self-regulation with an independent oversight body with inspection, investigative and disciplinary authority. The inspection and enforcement powers are an important investor protection.

- Exemptions for foreign audit firms may result in auditors relocating in foreign countries or U.S. companies transferring audit work overseas, which would circumvent the intent of Sarbanes-Oxley and may disadvantage U.S. audit firms.

- Sarbanes-Oxley provides the board with plenary authority to establish or adopt auditing, quality control, ethics and independence standards for public companies. SWIB believes that this may result in greater international convergence of auditing standards and regulation, which would in turn reduce the compliance burdens for foreign audit firms and ultimately facilitate international investment.

A number of arguments against registration of foreign accounting firms have been put forward. SWIB does not view those arguments as persuasive.

- *Argument*: PCAOB registration will subject foreign accounting firms to a double regulatory regime that would be excessive and inefficient.

  Response: Many companies are already subject to multiple regulatory schemes (e.g. companies that sell securities overseas). Supervision of accountants in other countries may not always meet U.S. standards. The regulatory burden could be minimized by greater convergence in accounting and auditing standards and cooperation between international accounting regulators (e.g., IASB/FASB convergence efforts and IASB's goal of creating global accounting standards).

- *Argument*: Foreign accountants should not be subject to the jurisdiction of U.S. regulators. In particular, PCAOB should not have the authority to conduct inspections overseas or demand documents and testimony from foreign firms.

  Response: As noted by the PCAOB, foreign accountants that participate in the audit of U.S. public companies already must comply with U.S. accounting rules and securities laws (e.g., financial statements must be audited in accordance with GAAS and prepared in accordance with GAAP or reconciled to U.S. GAAP; auditors must satisfy independence requirements and are subject to SEC enforcement action). The PCAOB's enforcement powers are an important investor protection. There should be PCAOB access, regardless of Big Four affiliation, although regulatory agency coordination in the country of domicile might be important (e.g., through the use of cooperative agreements).

- *Argument:* The U.S. is imposing its standards on other countries without regard for cultural differences and conflicts of laws.

  Response: SWIB respects the standards followed by other countries and recognizes that accommodations might be necessary with respect to conflicts between U.S. and foreign

requirements, similar to the Commission's approach to the international impact of the auditor independence rules. SWIB's support for international cooperation and convergence does not mean that U.S. standards should prevail in all cases. However, as a U.S. investor, we expect US-traded securities to meet U.S. standards.

- *Argument:* Foreign companies may choose not to trade their securities in the U.S.

  Response: SWIB is willing to accept this risk. Although it is more convenient for SWIB to buy stock from U.S. exchanges, we often invest in foreign companies through international markets.

- *Argument*: Registration will be very costly for foreign audit firms.

  Response: Until the registration fees are set, we do not know how expensive it will be. However, the registration fee is a cost of providing service to a company that trades in the U.S. capital markets. The foreign accounting firm also benefits by receiving a fee from the company it audits.

- *Argument*: If foreign firms are required to register with the PCAOB, foreign countries may retaliate by asserting jurisdiction over U.S. firms.

  Response: If a company that trades in a foreign country is audited by a U.S. audit firm, SWIB believes that it is appropriate for the U.S. audit firm to be subject to regulation by the foreign country, although regulatory cooperation/coordination should be encouraged.

I hope that these comments will be of assistance to the PCAOB and SEC in considering future regulatory activities in this area. While I will not be able to attend the SEC/PCAOB Roundtable, SWIB will be represented by Ellen Drought from the law firm of Godfrey & Kahn. Ellen serves as special counsel to SWIB on corporate governance matters. Feel free to contact either of us if you have any questions or require additional information.

Sincerely,

Keith Johnson
Chief Legal Counsel

Swiss Institute of Certified Accountants and Tax Consultants

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Location/Date: Zurich, 27th March 2003 (Oer)
Recipient: Office of the secretary, PCAOB
Sender: Andreas Müller, Chairman, Walter Hess, General Secretary

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Subject: **PCAOB Rulemaking Docket Matter No. 001**

Comments to proposed Rules 1000, 1001, 2100 through 2105, 2300, and Form 1

PCAOB
Office of the Secretary
Attn. Mr. Gordon Seymor, Acting General Counsel
Attn. Mr. Stanley Macel III, Senior Counsel Office of International Affairs
1666 K Street, N.W.
Washington, D.C. 20006-2803
U.S.A

We refer to the PCAOB Release No. 2003-1 dated March 7, 2003 that has been proposed by the Public Company Accounting Oversight Board ("PCAOB" the or your "Board") on March 4, 2003 with regard to its plan for a registration system for public accounting firms under the Sarbanes Oxley Act of 2002 (the "Act"). Therein you invite interested parties to submit comments in writing to the proposed PCAOB Rules 1000, 1001, 2100 through 2105 and 2300 (the "Rules") and the PCAOB Form 1 (the "Form"). In addition, you invite our comments to a series of questions relating to the registration of foreign public accounting firms (the "Questions").

We appreciate the opportunity to comment on the Rules and the Form and respond to the Questions on behalf of the Swiss Institute of Certified Accountants and Tax Consultants (the "Institute"), the organization, among others, of the Swiss accounting industry. The membership of the Institute comprises approx. 900 corporations and 4,500 individuals of various business sizes.

Of our members, the accounting firms referred to as the "Big Four" and a series of others will be affected by the Act. In their role as foreign public accounting firms issuing audit reports for issuers, or as accounting firms that play a substantial role in the preparation or furnishing of audit reports, they would be required to register under the Act, or as associated persons of a public accounting firm, they would have to give the required consents (all terms used in these comments and defined in the Act or the Rules are used with the meaning as so defined).

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I. Shared spirit and intentions

Our Institute fully supports the spirit and intentions that underlay the Act. In fact our Institute has been instrumental in implementing a system of auditor independence and quality control in Switzerland that is similar to the one to be instituted under the Act, and is presently actively engaged in consultations with the Swiss Federal Government regarding the current efforts to put in place a Swiss accounting oversight legislation. Our Institute is doing this with the goal to assure adherence by Swiss accounting firms to auditing standards regarding methodology, quality, ethical standards, personal and institutional independence, and compliance with all applicable laws in a way that is coherent with and equivalent to the standards and goals pursued by your Board and the Commission under the Act.

While we support in principle registration under and adherence to the Act by our members, we can only recommend that they do so if the Act is being implemented with regard to them in a way that allows them to continue to respect the laws of Switzerland. Otherwise , they would be exposed to conflicts and deadlocks that are not warranted by the spirit and intentions of the Act.

II. Conflicts between the obligations imposed bythe Act and Swiss law

Unless the necessary exemptions are granted, the obligations imposed by the Act, as implemented by the Rules and the Form on foreign public accounting firms will potentially cause serious, without such exemptions irresolvable conflicts with Swiss law, in particular and without limitation regarding the following provisions (unofficial English translations attached for your convenience):

(1) Violation of secrecy obligations

(a) Swiss Penal Code ("SPC") Article 321: Violation of Professional Secrecy

Article 321 SPC protects information that accountants have acquired when acting under the secrecy obligation of Article 730 Swiss Code of Obligations ("SCO"). The criminal and penal secrecy obligation covers any information gathered in an auditing and assurance function with regard to an audited client and any third parties. Thus to allow disclosure of audit work papers and other related information to the Board or the Commission or any other third party, the consent of the audited company, and also of any third parties affected would be required insofar as secrets of such third parties are concerned. In practice, it would appear highly unlikely that such third party consents could be obtained.

(b) SPC Article 162 Violation of Production and Business Secrets

Article 162 covers information gained by an accounting firm in the course of assignments other than and outside of its audit assignment. The same principles and concerns apply as regarding SPC Article 321 (*cf.* section II(1)(a) above).

(c) Banking Act ("BA") Article 47: Banking Secrecy, and Federal Act on Stock Exchanges and Securities Trading ("SESTA") Article 43: Professional Secrecy Obligations of Securities Traders

The Articles of the BA and the SESTA protect the relationship between a bank or securities trader and its clients. As such, the Articles of the BA and the SESTA protect the related confidentiality interests of the audited banks that are issuers, and of their clients.

Again, in order to permit access and disclosure of work papers and information to the Board and the Commission, consent of the audited issuer bank and of any third parties affected would be required.

(2) Violation of public interest laws

(a) SPC Article 273 Economic Espionage

Article 273 SPC renders it an offense to make a production or business secret accessible to a foreign organization. It protects all of the elements of Swiss economic life for which there is an interest of non-disclosure to foreign public officials or private organizations.

Para. 1 of Article 273 SPC would apply to and penalize any investigative activity conducted by agents of your Board, the Commission and any other foreign authority within Switzerland as well as to any person facilitating access to such secrets.

(b) SPC Article 271 Illegal Acts in Favor of a Foreign State

A Swiss accounting firm that permits an inspection or investigation of its files in Switzerland by representatives of the Board, the Commission, or any other foreign public authority, or collects information from third parties in Switzerland and sends this information to a non-Swiss auditing firm in order for this information to be made accessible to the Board, may be found guilty of violation of Article 271 SPC.

We have to assume that activities conducted by your Board and its agents, or by a Swiss public accounting firm in assisting such activities, would be considered to fall under this provision, because the qualification of the Board as a private entity pursuant to Sec. 102(b) of the Act would not change the inherent public nature of its activities.

(c) Data Protection Act ("DPA")

Personal data may not be transferred to the Board (without the explicit consent of the persons concerned) since it declares in advance that it will not treat the data confidentially (*cf.* Section 105(b)(5)(B) of the Act). For personal, highly sensitive data, as would be required in answering Part V of the Form (see section IV (5) To Part V below), consent of the persons concerned would be required in any circumstance. While we expect that consent of the audit client can be obtained, audit work papers may contain personal data of third parties whose consent may practically not be obtainable.

(3) Conclusion regarding conflicts with Swiss law

Although we are not in a position to give a final interpretation of Articles 271 and 273 SPC as they relate to disclosure of and granting access to work papers or other information in favor of the Board or rendering testimony before the Board, we could not recommend to our members to subject themselves unconditionally to the Act without these issues being clarified.

In addition, distinguishing between information and documents which would require third party consents for production to your Board and information and documents that would not, may be difficult, and it is unlikely that such third party consents could be obtained where necessary.

In our opinion, any Swiss public accounting firm that subjects itself to the inspection and investigation powers of the Board runs into a direct conflict with Swiss law and as a result exposes itself to criminal penalties and civil actions for damages that could put its very existence in peril.

This conflict is a matter of great concern to the entire accounting industry in Switzerland as well as to the Swiss Governmental Authorities. We trust that the Board and the Commission understands these concerns and will work with the Swiss Government and the Swiss accounting industry to find ways and means to implement the spirit and intentions of the Act while removing or minimizing the effects of any potential conflict with Swiss law.

III. Swiss legislation regarding accounting standards

(a) Present Swiss legislation

(i) Listing Rules of SWX Swiss Exchange

Issuers registered with SWX Swiss Exchange must appoint accounting firms registered with the SWX, whereby registration is granted upon request and is conditioned upon the respective accounting firm's agreement to become subject to the sanctioning rules and powers of the SWX. For violations of duties under the listing rules, sanctions can be imposed on the

auditors, *e.g.* reprimanding, replacement of the responsible accountant, imposing a fine, revocation of registration, publication of the violation and the sanctions imposed. Most Swiss issuers registered with the SEC have a primary listing with the SWX, and as such the oversight of the SWX applies to practically all of the Swiss accounting firms auditing issuers.

(ii) Swiss Statute on Banks and Savings Institutions

Audits of banks and savings institutions licensed to do business in Switzerland must be carried out by authorized bank auditors. The Swiss Federal Banking Commission ("SFBC") grants these authorizations and exercises an oversight over authorized bank auditors. Authorization to audit banks in Switzerland is granted by the SFBC if the auditors meet several conditions regarding, *e.g.*, adequate organization, reputation of management and auditors in charge, independence from the audited banks and the banking business in general. Most of the accounting firms auditing issuers registered with the SEC or Swiss subsidiaries of issuers in Switzerland are also registered bank auditors, so that this oversight by the SFBC over authorized bank auditors assures adherence to the respective standards over practic ally all of the Swiss public accounting firms affected by and subject to the registration and consent requirements of the Act.

(b) Envisaged Swiss legislation

Talks are under way between representatives of the private sector and the Swiss Government regarding a Swiss public accounting oversight system, involving legislation as basis for a Swiss accounting oversight board (the "Swiss PCAOB") and a mechanism that assures the application of a set of accounting standards regarding, *e.g.*, quality, ethical standards and independence. It is too early to set forth any details of the envisaged legislation and the position, duties and powers of the Swiss PCAOB within the envisaged accounting oversight system.

In these discussions, our Institute is guided by the following ideas:

(i) The Swiss public accounting oversight system will be aimed at assuring standards and principles for the Swiss accounting industry that are similar, in many ways identical, and in all instances at least equivalent to those of the Act;

(ii) the Swiss PCAOB will be independent of the accounting industry;

(iii) the Swiss PCAOB will have duties and powers necessary and appropriate to implement and enforce the standards and principles of the respective Swiss legislation; and

(iv) one of the tasks of the Swiss PCAOB will be to act as the counterpart of your Board and the Commission in an ongoing dialogue and interplay.

The details of all of this would need to be worked out.

Without giving due consideration to the equivalence of U.S. and Swiss legislations and to the necessity of a dialogue and interplay between oversight authorities, however, we believe that Swiss applicants would face a system of double oversight that would very likely result in conflicting requirements for and double jeopardy to them to the detriment of the Swiss accounting industry and the Swiss issuers, and without any benefit to the U.S. securities market.

IV. Response to Questions raised in Release No. 2003-1 Part B.2

Q1: *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?*

Compiling the information and documentation necessary for registration within the timeline set forth by your Board is not in itself impossible, with the exceptions and exemptions discussed below where compilation and delivery would be impossible, and our members are committed to devote the necessary attention and resources to this task. For the reasons set forth in section II above, however, it would be impossible for our members to subject themselves unconditionally to the inspection and investigation (testimony and document production) power of the Board over registered public accounting firms pursuant to Sec. 104 and 105 of the Act without certain exemptions being granted pursuant to Sec. 106(c) of the Act. Such exemptions may be granted on a temporary and conditional basis, as more fully set forth in our response to Q6 below.

Should foreign public accounting firms be afforded some longer period (e.g., an additional 90 days) within which to register?

For the above reasons, we ask that the timeline for the registration, and in particular for (a) submitting the information and documentation, (b) submitting the consents required pursuant to Part VIII of the Form, and (c) submitting to and application of the investigation, inspection and disciplinary powers of the Board by and to Swiss applicants be extended by at least one more year. This extension would allow for the time necessary to work out an understanding between the Board, the Commission and the Swiss Government and the Swiss accounting industry regarding the scope and nature of the proposed exemptions and the complementary measures to be put in place in Switzerland, and would give the necessary time to the Board and the Commission to grant and implement these exemptions and to the Swiss legislator to adopt the corresponding legislative measures.

The practical impact of such extension should not be too great, since no Swiss public accounting firm would audit more than 100 issuers, so that inspections can be expected to be conducted in a rhythm closer to three years than one year (*cf.* Section 104(b)(1)(B) of the Act).

The same extended timeline should apply for the consents by Swiss accounting firms that have to be provided by U.S. applicants as part of their own application for registration.

Q2: *Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants?*

We will here comment on the Form, following the order of items in the Form. Further comments to the Form and the Rules are contained in section V below.

(1) To General Instructions, Item 5:

We refer to our separate comments in section V(6) regarding confidential treatment.

(2) To Part I, Item 1.6 (*Associated Entities* of Applicant):

This requirement should relate to entities associated otherwise than through the network of which the respective Swiss accounting firm is a party (that means for practically all Swiss Applicants associated entities in Switzerland only), in order to avoid double notifications.

(3) To Part II, Item 2.4 (Issuers for which Applicant *Played, or Expects to* Play, a *Substantial Role in* Audit):

This requirement should relate to issuers for which the applicant knows or has reason to believe that he plays a substantial role. An accounting firm may not in all circumstances know the share of its work in comparison to the overall audit work. Accordingly, the accounting firm that has primary responsibility for the audit should be responsible for notification and compliance with the Act and the Board's requirements. Further, the information should be treated confidentially.

(4) To Part III (Applicant Financial Information):

The demarcation line between items (b) through (e) is difficult to draw when using historic data that had not been gathered in light of these criteria, so some of our members may have to take recourse to estimates when it comes to allocating revenues to the different items of clause 3.1.

This type of information has never been made public, as all of our member firms concerned are private entities that are not required to release financial information. The information should be treated as confidential.

(5) To Part V (Proceedings involving the Applicant's Audit Practice):

Compiling this information and disclosing it to the Board poses an extraordinary burden on our members and may in some instances even be impossible.

Information of the type sought has not been centrally collected and kept by our members and is considered confidential by all of the accounting firm, its associated person or persons and the third party or parties affected. Also the fluctuation of personnel typical for our industry would require a search through archives of third-party firms or firms now defunct, what would practically not be possible to execute. Obtaining consent form third parties affected, which would be necessary for confidentiality and data protection purposes, might be difficult if not impossible to obtain. We also would like to draw your attention to the fact that this type of information has never been made public, and public disclosure of information of this type would be a novelty for Swiss businesses.

Public disclosure of this type of information would *de-fact* lead to a discrimination of Swiss registered accounting firms against other accounting firms in Switzerland not subject to the Act, and might also expose them to the risk of law suits (of an imitative or consequential nature) that otherwise would not have been brought against the respective Swiss firm.

Given the practical difficulty if not impossibility of gathering the information sought, the conflict with Swiss criminal provisions against economic espionage and acting in favor of a foreign state, and the potentially serious practical consequences for a Swiss public accounting firm that may audit only one or two issuers with a secondary listing in the U.S., we propose that disclosure under items 5.1 through 5.4 be limited to (i) procedures pending (as stated in section 102 (b) (2) (F) of the Act), and (ii) being in connection with issuers or the U.S. securities market in general, and in relation to such procedures limited to (iii) information and documents at hand with the respective applicant and their associated entities or persons associated with such public accounting firm, and (iv) information and data whose release would not require consent from third parties other than the associated entities of or persons associated with such public accounting firm or conflict with the Swiss criminal provisions referred to above except where information and documents can be submitted on a no-name basis.

The Swiss public accounting firms also would have to receive in advance assurance of confidential treatment of the respective information (see section V(5) To Rule 2300 (c) below).

The information should at any rate be treated as confidential.

(6) To Part VII, Item 7.2 (Listing of *Accountants* Associated with Non-U.S. Applicants):

We consider it incommensurate and not warranted by the spirit and intentions of the Act to disclose information on all persons associated with the public accounting firm, whether or not active on the audit engagement for any issuer.

We propose to restrict the list to:

(a) all partners of the public accounting firm who provide audit, review or attest services for any issuer;

(b) all persons which are members of the audit engagement team and provide more than ten hours of audit, review or attest services for any issuer p.a. (*cf*. Release No. 33-8183, SEC Final Rule Strengthening the Commission's Requirements Regarding Auditor Independence, Part II.A);

(c) but (b) not extending to persons engaged only in clerical and ministerial tasks (*cf.* Sec. 2(a)(9)(B) of the Act).

(7) To Part VIII, Item 8.1 (Consents to Cooperate with the *Board*):

As indicated above, the required consents and statements can only be provided once a common understanding of the scope and nature of the exemptions and the complementary measures to be put in place in Switzerland has been reached and these exemptions have been granted.

Q3: *In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?*

The Board should seek detailed information of the laws of such jurisdiction that could potentially conflict with the Act and its implementation as envisaged, of the accounting oversight system in the home country of the foreign public accounting firms, and of ways and means to collaborate with national oversight authorities and Governments in view of implementing the spirit and intentions of the Act without conflicts and deadlocks.

Q4: *Do any of the Board's registration requirements conflict with the laws of any jurisdiction in which foreign public accounting firms that will be required to register are located?*

Regarding the general conflicts of legal systems caused by the requirements of the Act, we refer to section II above.

As noted above, the consents required in Part VIII of the Form can only be provided and the powers of inspection and investigation of the Board can only be implemented once a common understanding of the scope and nature of the exemptions and the complementary measures to be put in place in Switzerland has been reached and these exemptions have been granted.

> Q5: *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 our view it is 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 percent threshold more realistically capture firms that materially participate in the preparation or furnishing of an audit report?*

No change should be made. The 20 percent test is realistic. We refer to our response to Q2 (3), To Part II, Item 2.4 of the Form (primary responsibility for the lead accounting firm to determine substantial role).

> Q6: *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?*

There should not be any differentiation. See our response to Q2 (2) To Part I, Item 1.6.

> Q7: *Should registered foreign public accounting firms be subject to Board inspection?*

In our view, Swiss accounting firms, even if registered, should not be subject to the inspection and investigation powers of the Board, including the power to hear testimony, to request document production and to impose disciplinary sanctions. In particular the Board could not conduct any evaluation and testing or inspections in Switzerland through its agents and staff, and could not request any agent or other representative of a Swiss registered public accounting firm to appear before the Board to render testimony.

> *Could the Board, in some cases, rely on home-country regulation in lieu of inspection of foreign public accounting firms?*

The Board could and should rely on Swiss actual and prospective legislation in lieu of direct inspection, investigation and sanctioning.

If so, under what circumstances could this occur?

We refer to section III above. In the period until the new Swiss accounting oversight legislation is put in place, this could be done on the basis of a temporary exemption and in reliance on the present Swiss legislation. Our Institute and, we trust, the competent bodies of the administration of the Swiss Government would be willing to share with you information on the methodology applied to assure professional standards regarding quality ethical standards, independence etc. of the Swiss accounting industry. Information concerning individual cases of misconduct could be shared on the basis of existing mechanism of information exchange (between SEC and SFCB in the banking sector, through judicial assistance mechanisms, etc.).

After the Swiss accounting oversight legislation has been put in place, your Board could do this on the basis of a partial exemption and in reliance on the accounting oversight system put in place by Swiss legislation.

Q8: *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?*

In our opinion, the nature and scope of the exemptions that are necessary for Swiss registered public accounting firms can only be determined through a process of discussion between your Board, the Commission, the Swiss Governmental Authorities, and the Swiss accounting industry. At any rate the exemptions must be of a nature to take into consideration the legal conflicts and practical problems set forth in these comments.

Q9: *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?*

We refer to our response to Q6 and Q8. The Board should not apply any other requirements to Swiss registered public accounting firms.

Q10: *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?*

In principle we refer to our response to Q6 above, but note that a non-U.S. accounting firm not associated or affiliated with a U.S. accounting firm is not subject to the provisions of the SEC Practice Section of the American Institute of Certified Public Accountants relating to international firms and international associations of firms, in particular AICPA SEC Practice Section Manual § 1000.08(n) regarding inspection procedures to be carried through by an expert in U.S. accounting, auditing, and independence requirements. The fact that such review is being conducted should facilitate the granting of an exemption from the inspection and investigation powers of the Board to the respective Swiss firms.

Should the U.S. registered firm have any responsibility for the foreign registered firm's compliance with the Board's rules and standards?

No, we refer to our response to Q2, item 2.4, Q5 and Q6 above.

V. Comments to Rules not addressed in section IV above.

(1) To Rule 1001 Item (a)(Accountant) (2) and (3)

In a Swiss, and continental-European, context, a reference to an undergraduate degree is not meaningful. We propose to refer to "higher professional or university degrees".

(2) To Rule 1001 Item (c)(Associated Entity)

See our comments at IV(2) above.

(3) To Rule 1001 Item (q)(Rules or Rule of the Board)

As a very limited number of Rules of the Board have been published so far, our comments may need to be modified or elaborated upon after publication of further Rules of the Board.

(4) To Rule 2001 (Application for Registration)

The Board should confirm receipt of the application immediately.

(5) To Rule 2005 Item (c)(Requests for More Information)

This Rule should only apply if the Board requests additional information because the application is deemed incomplete. If the application is complete in regard of the Rules and Form, a request for further information should not cause the date of submission of the application to be postponed or the application to be deemed not received.

(6) To Rule 2300 Item (c)(Confidential Treatment Request) and (d) (Application Procedures)

Certain types of information provided by Swiss Applicants should be granted confidential treatment on a global basis, given that certain information has not been made publicly available before and publication may trigger negative and harmful consequences for the applicant (see sections II, IV(4) and IV(5) above). There should be a procedure by which the applicant can receive a binding response on whether information of a certain type will be treated confidential or not before the applicant has submitted such information.

(7) To Rule 2300 Item (h)

Also the Commission should treat information as confidential that has been granted confidential treatment by the Board.

VI. Conclusions.

(1) Timeline

The timeline should be extended by at least one more year for the registration by Swiss public accounting firms.

(2) Exemptions

The Board, the Commission and the Swiss Governmental Authorities and the Swiss accounting industry, considering the complementary legislative measures to be put in place in Switzerland, should seek an understanding on the scope and nature of the exemptions to be granted to Swiss applicants from the requirements

(a) to furnish certain types of information otherwise required for registration that cannot be collected and provided by Swiss accounting firms for legal reasons, third party consent requirements or practical difficulties (see section IV Q2(5) To Part V above)

(b) to furnish the consents required under part VIII (see section N Q2 (1) to Part VIII above) of the Form, and

(c) to subject to the investigation (testimony, work paper production), inspection and disciplinary powers of the Board.

(3) Dialogue and interplay

Your Board, the Commission and the Swiss Governmental Authorities should establish an appropriate mechanism of dialogue and interplay between your Board and the envisaged Swiss PCAOB.

We appreciate the opportunity you offer for a discussion regarding the ways and means how to implement the Act, and we hope to be able to continue this discussion until a solution is being found that takes into consideration its different, at times even conflicting, aspects.

Yours sincerely

Swiss Institute of Certified Accountants and Tax Consultants

Andreas Müller
Chairman

Walter Hess
General Secretary

Enclosures

- mentioned

Unofficial translation of the provisions of Swiss law

referred to in the Comments by the Swiss Institute of Chartered Accountants and Tax Advisers, dated March 26, 2003

Swiss Code of Obligations (SCO)

Article 321a Employee's Duty of Care and Loyalty

1 The employee must carefully perform the work assigned to him, and loyally safeguard the employer's legitimate interests.
2 …
3…
4 In the course of an employment relationship, the employee shall not make use of or inform others of any facts to be kept secret, such as, in particular, manufacturing or business secrets that come to his knowledge while in the employer's service. Also, after termination of the employment relationship, he shall continue to be bound to secrecy to the extend required to safeguard the employer's legitimate interests.

Article 730 Violation of Professional Secrecy of Auditors

1 When reporting and giving information, the auditors shall safeguard the business secrets of the Company.

2 Auditors are prohibited from communicating to individual shareholders or third parties any observations they have made while carrying out their duties. The duty to inform a special auditor remains reserved.

Swiss Federal Act on Data Protection (DPA)

Article 6 Transborder data flows

1 No personal data may be transferred abroad if the personal privacy of the persons affected could be seriously endangered, and in particular in cases where there is a failure to provide protection equivalent to that provided under Swiss law.

2 Whoever wishes to transmit data abroad must notify the Federal Data Protection Commissioner beforehand in cases where:
a) there is no legal obligation to disclose the data and
b) the persons affected have no knowledge of the transmission.

3 The Federal Council shall regulate the notification procedure in detail. It may provide for a

simplified notification procedure or exemptions from the duty to notify in the event that the processing does not endanger the privacy of the persons affected.

Article 35 Breach of Professional Secrecy

1 Whoever willfully and without authorization discloses confidential and sensitive personal data or personal profiles that have come to his knowledge in the course of professional activities that require that he has knowledge of such data, shall be punishable on application for prosecution by a term of detention or by fine.

2 Whoever willfully and without authorization discloses confidential and sensitive personal data or personal profiles that have come to his knowledge in the course of his activities for persons who are subject to a duty of professional secrecy or in the course of his vocational training with such persons, shall also be punishable on application for prosecution by a term of detention or a fine.

3 The illegal communication of confidential and sensitive data or personal profiles shall also be punishable after the relevant person has ceased to practise his profession or has completed his vocational training.

Federal Law on Banks and Savings Banks (Banking Act, BA)

Art. 47

1 Whoever divulges a secret entrusted to him or of which he has become aware in his capacity as officer, employee, mandatory, liquidator or commissioner of a bank, as representative of the Banking Commission, officer or employee of a recognized auditing company and whoever tries to induce others to violate professional secrecy, shall be punished by imprisonment for not more than six months or by a fine of not more than SFr. 50,000.
2 If the act has been committed by negligence, the penalty shall be a fine not exceeding SFr. 30,000.
3 The violation of professional secrecy remains punishable even after termination of the official or employment relationship or the exercise of the profession.
4 Federal and Cantonal regulations concerning the obligation to testify and to furnish information to a government authority shall apply.

Federal Act on Stock Exchanges and Securitie s Trading (Stock Exchange Act, SESTA)

Art. 43 Breach of professional secrecy

1 Whosoever:

a. discloses a secret which has been confided to him in his capacity as a member of a governing body, employee, mandatary or liquidator of a stock exchange or a securities dealer, as a member of one of the governing bodies or employee of recognized auditors, or of which he has become aware in any such capacity; or
b. attempts such breach of professional secrecy by inducement,

shall be punished by imprisonment or with a fine;
2 Whosoever breaches professional secrecy after termination of office or his employment shall nevertheless remain liable to punishment.
3 The federal and cantonal provisions relating to the duty to testify and the duty to provide information to the authorities remain reserved.

Swiss Criminal Code (Swiss Penal Code, SPC)

Article 162 Violation of manufacturing or business secrets

Whoever reveals a manufacturing or business secret which he is obliged to keep by legal or contractual obligations,
whoever uses such revelation for the benefit of himself or another person,
shall be, upon request for prosecution, sentenced to imprisonment or fined.

Article 271 Prohibited Activities for a Foreign State

1. Whoever conducts, without authorization, for a foreign State on Swiss territory acts that are within the competence of public authorities or public officials,
whoever conducts such acts for a foreign party or another foreign organization,
any person aiding in such acts,
shall be sentenced to imprisonment, in severe cases to penal servitude.
2. .....
3. .....

Article 273 Economic Intelligence Service

Whoever searches out manufacture or business secrets in order to make them accessible to a foreign official public body, foreign organization, to a foreign private company or their agents, shall be sentenced to imprisonment or, in severe cases, penal servitude. In addition, a fine may be imposed.

Article 321 Violation of Professional Secrets

1. Clergymen, barristers, defense counsels, notaries, examiners being sworn to secrecy, doctors, chemists, midwifes, and their assistants who reveal a secret which they were told or of which they took knowledge while exercising their profession, shall be, upon request for prosecution, sentenced to imprisonment or fined.
The same goes for students, revealing a secret of which they took knowledge during their studies.
Violations of professional secrets are punishable after the end of the studies or professional activities as well.

2. The offender remains exempt from punishment if the secret has been revealed because of the consent of the party entitled or following the written permission of the competent or supervising authority, issued on the offender's request.

#4

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

March 21, 2003

Charles M. Niemeier
Acting Chairman
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, D.C. 20006-2803

Dear Mr. Chairman:

I am writing in strong support of the proposal of the Public Company Accounting Oversight Board to require foreign accounting firms seeking to audit corporations trading on U.S. securities exchanges to register with the Board, comply with U.S. auditing standards, and cooperate with Board requests for auditor and client information.

Over the past five years, in my role as Chairman or Ranking Democrat on the U.S. Senate Permanent Subcommittee on Investigations, I have witnessed evidence in several of our investigations of ineffective, uncooperative, and disturbing practices by foreign auditors. In addition, recent events involving Royal Ahold have raised serious concerns about the adequacy of non-U.S. auditing standards and auditor oversight. These factors alone warrant inclusion of foreign firms auditing U.S. publicly traded corporations under the purview of the Board to protect U.S. shareholders and markets. Additional compelling reasons are that granting an exception for foreign auditors would be time-consuming and burdensome, and might encourage U.S. publicly traded corporations to purchase more audit services from abroad, driving audit services beyond the reach of U.S. oversight. The purpose of the Sarbanes-Oxley Act is to increase auditing oversight to restore investor confidence in U.S. securities markets, not push auditing services offshore to jurisdictions where Board oversight would be more difficult to accomplish.

An example of disturbing practices by foreign auditors can be found in the year-long investigation conducted by my Subcommittee staff into the role of correspondent banking in international money laundering. During the course of this investigation, the Subcommittee held hearings and released a five-volume report prepared by my staff. This report raised questions about the quality of auditing in foreign jurisdictions with strong corporate and bank secrecy laws and weak anti-money laundering controls. The report had this to say, for example, about several foreign accounting firms that had been asked questions about financial statements they reviewed or prepared for local banks:

"The investigation encountered a number of instances in which accountants in foreign countries refused to provide information about a bank's financial statements they had prepared in the role of a bank receiver or liquidator. Many foreign accountants contracted during the investigation were uncooperative or even hostile when asked for information.

" – The Dominican auditing firm of Moreau Winston & Company, for example, refused to provide any information about the 1998 financial statement of British Trade and Commerce Bank, even though the financial statement was a publicly available document published in the country's official gazette, the firm had certified the statement as accurate, and the statement contained unusual entries that could not be understood without further explanation.

" – A PriceWaterhouseCoopers auditor in Antigua serving as a government-appointed liquidator for Caribbean American Bank (CAB) refused to provide copies of its reports on CAB's liquidation proceedings, even though the reports were filed in court, they were supposed to be publicly available, and the Antiguan government had asked the auditor to provide the information to the investigation.

" – Another Antiguan accounting firm, Pannell Kerr Foster, issued an audited financial statement for Overseas Development Bank and Trust in which the auditor said certain items could not be confirmed because the appropriate information was not available from another bank, American International Bank. Yet Pannell Kerr Foster was also the auditor of American International Bank, with complete access to that bank's financial records.

"The investigation also came across disturbing evidence of possible conflicts of interest involving accountants and the banks they audited, and of incompetent or dishonest accounting practices. In one instance, an accounting firm verified a $300 million item in a balance sheet for British Trade and Commerce Bank that, when challenged by Dominican government officials, has yet to be substantiated. In another instance, an accounting firm approved an offshore bank's financial statements which appear to have concealed indications of insolvency, insider dealing and questionable transactions. In still another instance raising conflict of interest concerns, an accountant responsible for auditing three offshore banks involving the same official provided that bank official with a letter

of reference, which the official then used to help one of the banks open a U.S. correspondent account."[1]

While these matters involved foreign accounting firms reviewing the records of local banks and not U.S. publicly traded corporations, this record of poor performance and poor cooperation with U.S. inquiries does not inspire confidence. Moreover, as increasing numbers of companies such as Tyco International and Ingersoll Rand establish headquarters in the Caribbean or other offshore locations, it is possible that foreign auditors could begin providing substantial auditing services to companies with large numbers of American shareholders. These foreign auditors should be required to meet the same auditing standards and operate under the same oversight as auditors based in the United States.

While accounting firms in the Caribbean and other countries around the world have had a tradition of self-regulation, ongoing corporate accounting scandals indicate self-regulation will no longer suffice to ensure investor confidence in corporations trading on U.S. markets. Enactment of the Sarbanes-Oxley Act has begun a new chapter of independent auditor oversight in the United States, but equivalent reforms have not taken place in many other countries. For example, when the Dutch conglomerate Royal Ahold NV announced a $500 million earnings restatement in February 2003, it brought to light the lack of strict auditing standards and oversight in many European countries, even for companies audited by U.S.-based accounting firms such as Deloitte & Touche which audited Royal Ahold. The Netherlands, home of Royal Ahold, has no agency equivalent to the U.S. Securities Exchange Commission (SEC) or any auditor oversight body. According to the European Federation of Accountants, six nations in the European Union do not enforce accounting standards at all. The United Kingdom is apparently closest to the United States in exercising auditor oversight, but one media report noted that "whereas America's Securities and Exchange Commission . . . has made 1,200 companies correct their audited accounts in the past five years, Britain's equivalent, the Financial Reporting Review Panel, has demanded only 15 restatements in the past dozen. It has just one full-time accountant and investigates only if there is a complaint about a company's figures."[2]

Including foreign auditors under the purview of the new Public Company Accounting Oversight Board would, thus, add a much-needed element of auditor oversight for firms reviewing corporations trading in U.S. markets. At the same time, preliminary estimates indicate overseeing these firms would not overextend the Board. Right now, according to the SEC, of the approximately 1,000 accounting firms that sign financial reports submitted to the SEC, only about fifty to one hundred appear to be

[1] "Role of U.S. Correspondent Banking in International Money Laundering," S.Hrg. 107-84 (March 2001), Volume I, at 313-314.
[2] "Holier than thou," The Economist (2/8/03).

foreign firms. Because foreign auditors currently appear to make up less than 10 percent of the total number of auditing firms reviewing corporations traded in the United States, supervising them should not be beyond the resources of the Board. Making arrangements with foreign oversight bodies where feasible, and setting registration fees sufficient to support needed oversight efforts, would also help ensure this task is manageable.

In contrast, if foreign auditors were to be exempted from Board oversight, an immediate, time-consuming, and difficult task would arise requiring the Board to determine on a case-by-case basis which auditing firms would qualify as "foreign." KPMG, for example, states on its Internet website that KPMG International is a Swiss non-operating association, while other Internet sites locate KPMG headquarters in the Netherlands. Several major U.S. accounting firms operate an international network of affiliated but independent firms, raising a host of questions about which, if any, of these affiliates would qualify for a foreign exemption. Even in the case of foreign firms that share the name of one of the "Big 4" accounting firms in the United States, facts are likely to differ on the extent to which the U.S. firm is legally responsible for the foreign firm's conduct or requires it to adhere to U.S. auditing standards. For example, on the PricewaterhouseCoopers (PWC) website, below the address of each "worldwide location" listed as a PWC office is this disclaimer: "PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity." Each of these PWC offices could undertake to certify the financial statements of one or more corporations trading in the United States and ask the Board to evaluate whether it was sufficiently divorced from its U.S. affiliate to qualify for a foreign exemption. This complex determination would likely consume significant Board resources, without advancing the goals of strengthening auditor oversight or restoring investor confidence in U.S. securities markets.

Finally, exempting foreign auditors might have the unintended consequence of pushing key auditing services abroad beyond the Board's oversight. More than 1,300 foreign companies are now registered to trade shares in U.S. securities markets, and many use foreign accounting firms. Granting foreign auditors an exemption might encourage most or all of these foreign companies to use a local auditor beyond U.S. auditing oversight. This exemption might also encourage U.S. corporations to use foreign-based auditors in order to avoid Board scrutiny. In addition, exempting foreign auditors might encourage some U.S. auditing firms to relocate their operations or headquarters offshore in order to market themselves to companies as free from Board scrutiny. The decision of the consulting firm Accenture, formerly part of Andersen and now domiciled in Bermuda, provides precedent for a professional services firm moving offshore while continuing to market its services to U.S. publicly traded corporations. This exemption might even provide U.S. corporations with another reason to move offshore, since a company relocating its headquarters abroad could claim that this relocation justified its switching to a local, foreign auditor beyond U.S. auditing oversight. Tyco International, a longtime U.S. company that relocated its headquarters to

Bermuda a few years ago, has continued to trade in the United States and market its shares to U.S. shareholders, while undergoing increased scrutiny over possible accounting irregularities. Surely, if we are to achieve the goals of the Sarbanes-Oxley Act, a company like Tyco ought to be required to use an auditor that is fully subject to the auditing standards and oversight of the Public Company Accounting Oversight Board.

The Board's unanimous support for the proposal to require all foreign auditors seeking to audit corporations traded on U.S. securities exchanges to register with the Board and accept its oversight is a crucial step towards returning stability, reliability, and investor confidence to our capital markets. I support this proposal and urge the Board to continue to oppose any efforts to create an exemption for foreign auditors.

Sincerely,

Carl Levin

Carl Levin, Ranking Democrat
Permanent Subcommittee on Investigations

CL:ejb
cc: PCAOB Board Member Kayla J. Gillan
PCAOB Board Member Daniel L. Goelzer
PCAOB Board Member Willis D. Gradison, Jr.
SEC Chairman William H. Donaldson
SEC Commissioner Paul S. Atkins
SEC Commissioner Roel C. Campos
SEC Commissioner Cynthia A. Glassman
SEC Commissioner Harvey J. Goldschmid

WIRTSCHAFTSPRÜFERKAMMER
Körperschaft des öffentlichen Rechts

INSTITUT DER WIRTSCHAFTSPRÜFER
IDW

March, 31, 2003

Office of the Secretary
PCAOB
1666 K Street, N.W.
Washington, D.C. 20006-2803
USA

Dear Sir(s):

Re: PCAOB Rulemaking Docket Matter No. 001
Proposal: Registration System For Public Accounting Firms

We thank you for the opportunity to comment on the above-mentioned proposal.

The German Institut der Wirtschaftsprüfer (IDW), a private organization, and the Wirtschaftsprüferkammer (WPK), a professional self-regulatory body under public law, represent the German audit profession.

In particular, we would like to address the legal conflicts arising from the proposed registration requirements of the PCAOB and the legal and the professional regulations within Germany with regard to client confidentiality, data protection and labor protection. We believe that the PCAOB should consider carefully the matters described below in its deliberations on the adoption of final rules for the registration of foreign public accounting firms.

I. General Comments

The adoption of the Sarbanes-Oxley Act is a U.S. reaction to U.S. financial reporting scandals. The Act aims to restore investors' confidence in U.S. capital markets. We share these concerns and support the objectives of the Act. However, the Act is specifically designed for the U.S. legal environment and as such, primarily addresses

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Prof. Dr. Klaus-Peter Naumann,
WP StB, Sprecher des Vorstands
Dr. Gerhard Gross
Dipl.-Kfm. Peter Marks, WP StB

problems and legal issues in a U.S. context. Nevertheless, the provisions of the Sarbanes-Oxley Act are not limited to U.S. accounting firms: they are also applicable to foreign public accounting firms that provide services to SEC registrants or to material affiliates thereof. Consequently, the Sarbanes-Oxley Act of 2002 not only affects large international public accounting firms, but also affects many medium-sized and smaller public accounting firms in Germany and other countries.

Those German public accounting firms affected by the Sarbanes-Oxley Act are subject to professional oversight, including registration requirements, twice (both in Germany and in the U.S.), which may result in conflicts of laws and imposes additional administrative and financial burden on these accounting firms. Presently, Germany like any other EU member states has established effective systems for the approval, registration and the professional oversight of statutory auditors. Both U.S. authorities and the European Commission are in the process of implementing new arrangements in these areas and broadly share the same policy objectives. The new U.S. developments arising from the Sarbanes-Oxley Act are in many ways similar to the initiatives already under way or planned by the European Commission to complete the formation and regulation of the single capital market in Europe.

We believe that capital markets in the U. S. would benefit from the harmonization of standards on a global basis. There is a worldwide need for coordination and reciprocal recognition of the equivalence of quality control and public oversight systems and corporate governance, not on a basis of individual states, but on a mutual basis between the EU and the U.S. and elsewhere. For this reason, the EU and the U.S. should consider what mechanisms could be established to create consistent regulations for global capital markets.

In our opinion, the U.S. should consider recognizing European professional oversight systems as being equivalent to and as effective as that exercised by the PCAOB in the U.S. Equivalence of these systems does not require that the systems are identical. Due to historical and cultural differences and the different legal environment in the U.S. and the EU member states, an appropriate and effective professional oversight system can be organized in various ways.

To this end, the dialogue between U.S. authorities and the European Commission should be continued with a view towards developing principles and criteria upon which equivalence will be accepted by the U.S. The acceptance of the equivalence of the European system implies that the U.S. exempts European public accounting firms from being subject to the Sarbanes-Oxley Act and the oversight exercised by the PCAOB and the corresponding obligations, including registration with the PCAOB.

As long as the dialogue between U.S. authorities and the EU Commission continues with a view towards developing principles and criteria upon which equivalence will be accepted by the U.S., the application of the PCAOB registration requirements for European public accounting firms should be deferred. In any case, the registration deadline for foreign public accounting firms needs to be extended considerably. If the PCAOB nevertheless insists on the registration of foreign public accounting firms in the U.S., due to the legal conflicts described below (section III), European public accounting firms should be exempted from any requirement that may conflict with national law, since these would prevent those firms from an unlimited commitment to cooperate and comply, or secure and enforce compliance with PCAOB requirements.

II. Registration deadline

One of the questions raised in the "Proposal of Registration System for Public Accounting Firms" is whether it is feasible for foreign public accounting firms to register within 180 days of the date of the SEC's determination that the Board is capable of operating. In addition, the question is asked whether foreign public accounting firms be afforded some longer period (e.g., an additional 90 days) within which to register. In our opinion, the registration deadline proposed by the PCAOB is not feasible – even if the deadline period were to be extended to 270 days – because of the difficult legal issues arising from the registration requirements with regard to foreign public accounting firms. In particular, large quantities of information that cannot be gathered in a short time need to be obtained pursuant to Form 1. For example, Form 1 requires considerable information about certain proceedings involving the applicants' audit practice that covers not only the applicant, but also employees, owners, partners, principals, shareholders and officers of the applicant. The form requires the disclosure of information about certain proceedings under U.S. criminal or civil law etc. or equivalent proceedings in other jurisdictions. To meet these disclosure requirements, applicants must first determine which legal requirements (laws, regulations, etc.) in Germany are substantially equivalent to those listed in Form 1 Item 5.1 to 5.5. This will require external legal advice and impacts the conditions of fair competition between U.S. and non-U.S. applicants.

The considerable administrative and financial burden borne by foreign public accounting firms subject to the registration requirements of the PCAOB may cause many firms other than the so-called "big four" to consider whether they should withdraw from current engagements or not accept new engagements by which they are or would become subject to the provisions of the Sarbanes-Oxley Act. These circumstances will lead to an increased concentration of audits of publicly listed clients towards the so-called "big four" firms. This does not appear to be an outcome that gov-

ernment authorities in the U.S., including the SEC, desire: Section 701 of the Sarbanes-Oxley Act even contains a provision requiring a study of concentration within the audit market.

Furthermore, German public accounting firms considering an application to register with the PCAOB must determine whether they are permitted under German law to collect the information needed to be gathered to meet the requirements under items 5.1 to 5.5 and to disclose the collected information. Due to existing labor legislation in Germany and legal requirements under the German Constitution (Grundgesetz) with respect to “informationelle Selbstbestimmung” (the requirement that individuals must have the right to determine which information about them and to which purpose it may be used by third parties) and to “Datenschutz” (“privacy”: the right to the privacy of information) it is apparent that such disclosures for the previous ten years cannot be made. For further details, see our detailed comments to specific items in Form 1 (section III) below.

It would be necessary to amend German laws or regulations to enable German public accounting firms to register with the U.S. PCAOB, a requirement which cannot be expected to be favored by the German Federal Government. Besides, such amendments are impossible if they violate the constitutional principle of equality. Employees of an audit firm are protected by the same laws applicable to any other employee.

We would also like to point out that any legal prohibition on the collection and disclosure of information by a German public accounting firm also leads to the legal prohibition of the disclosure or examination of such information as part of an inspection program.

An additional matter is that, under German law, the election of the statutory auditor of the financial statements by the shareholders and the subsequent appointment and engagement of that auditor by the supervisory board are required to take place before the end of the financial year being audited. For example, for publicly listed companies (German stock corporations) the statutory auditor of the annual financial statements for the year ended December 31, 2003 is generally elected and appointed within the first six months of the year 2003 but it may not be clear at that time whether this auditor will meet the registration requirements of the PCAOB later in 2003. Until June 2003 the auditor can not yet be registered and does, therefore, not qualify for an audit of an issuer. The duly elected and appointed statutory auditor must perform the audit and may only be permitted to withdraw from the audit in exceptional circumstances that are stringently defined by law. A duly elected and appointed statutory auditor that ceases to meet U.S. PCAOB registration requirements would remain statutory auditor under German law.

The issues mentioned above are only examples to demonstrate the amount of time and care German public accounting firms will need to devote on the clarification of legal issues and the collection of information needed to meet registration requirements of the U.S. PCAOB. Consequently, we believe that the registration deadline for foreign public accounting firms needs to be extended considerably. We propose that the deadline be extended to at least one year from the date that the Commission determines the Board to be capable of operating. This would ensure that the prerequisities for registration are substantially established for audits of annual financial statements for the year ended December 31, 2004.

III. Detailed Comments to Specific Items in Form 1

As mentioned above, registration of German public accounting firms may conflict with national law. This might therefore prevent those firms from an unlimited commitment to cooperate and comply, or secure and enforce compliance with PCAOB requirements as claimed in Part VIII of Form 1.

At present it is not possible to describe in detail all legal implications for German public accounting firms resulting from registration with the PCAOB. Due to the complexity of these issues, which are affected by several areas of law, the legal implications of the PCAOB registration requirements need further research and consultation with German authorities, e.g. the Federal Ministries of Justice and Economic Affairs.

However, we would like to give some examples of possible implications resulting from national law to emphasize the complexity of these issues.

1. Part V of Form 1 calls for information about criminal, civil, administrative or disciplinary proceedings against the applicant or its associated persons. Associated persons include all individuals employed with the applicant that are involved in performing an audit engagement. Item 5.1 to 5.5 would require applicants to request such information from their employees.

   In Germany the rights of employees are protected extensively by Federal labor law and the judiciary. Unlike other branches of civil law, fundamental constitutional principles are applied directly, in particular, the right to privacy under Article 2, paragraph 1 in conjunction with Article 1, paragraph 1 of the German Constitution (*Grundgesetz*).

   This right to privacy limits the employers´ right to demand specific information from their employees. Judicial decisions in this respect declare that, in general, an employer is not entitled to request information from employees about previous criminal convictions.

The only exception is that the employer may request information from employees about criminal convictions that may effect an employee's personal suitability for a particular occupation. Nevertheless, the use of this information is restricted to the relationship between employer and employee and must not be disclosed to third parties as regulated in the Federal Data Protection Act (*Bundesdatenschutzgesetz*). The result is that information related to criminal convictions may only be disclosed to third parties with the employee's written permission. To obtain this permission the employer has to inform the employee personally about reasons for requesting, treatment and use of the data. The employee has the right to withdraw his or her permission at any time.

Even if the permission is given, pursuant to Article 4b of the Federal Data Protection Act, data shall not be transferred outside the European Union unless the foreign addressee guarantees confidential treatment and this is approved by German authorities in charge. This national regulation is based on European legislation on data protection (Directive 95/46/EC).

Consequently, even if an applicant to the PCAOB requests information related to items 5.1 to 5.5 of Form 1 from an employee, that applicant cannot disclose the information to the PCAOB without the permission of the employee and without clearing further administrative hurdles. The employer has no right to force the employees' permission. Furthermore, the employee's representatives may – on the basis of the Federal Works Constitution Act (*Betriebsverfassungsgesetz*) – prevent the employer from asking for general permission to disclose information related to items 5.1 to 5.5 of Form 1. Furthermore, any action taken by the applicant to obtain consent from the employees would lead to a mandatory involvement of the workers´ council. Such involvement follows detailed – and time-consuming – procedures. The employer is not entitled to give instructions to the workers´ council.

2. Another problem might result from the 10 year period concerning the information requested under Part V of Form 1.

   Criminal convictions are listed in a Federal Register (*Bundeszentralregister*) maintained by the Federal Public Prosecutor's Office. The register is not open to the public. Information can be requested only by public prosecutors, courts, authorities and the convicts themselves. Entries to the register are deleted after a certain period of time, depending on the sentence imposed and the criminal offence. In general, entries are deleted after 5 years, in minor cases after 3 years. If deleted the convict is considered as and can claim to be *not previously convicted*. Consequently, an applicant can only request information related to criminal convictions within the last 3 or 5 years.

3. Furthermore, the information required under items 5.1 to 5.5 is not limited to issuers, but may include information related to retired persons, other clients or third parties which are neither issuers nor clients of the applicant.

   This may contravene applicants' legal duty of confidentiality as prescribed by *inter alia*, Article 43, paragraph 1 of the German Public Accountants Act (*Wirtschaftsprüferordnung*) and Article 323, paragraph 1 of the German Commercial Code (*Handelsgesetzbuch*). Any breach of this legal confidentiality requirement may result in sanctions being imposed by professional disciplinary proceedings either by the WPK or a special disciplinary court established at the Berlin District Court, depending on the severity of the breach. In addition, any such breach may result in fines or imprisonment under Article 203 of the German Criminal Code (*Strafgesetzbuch*), unless the particular client has given permission to the accountant to disclose all, or specific information relating to client matters.

   In general, such permission would be received from issuers. However, before giving permission, even issuers need to consider privacy and data protection issues with respect to those individuals within the company that may be affected. The same applies to other clients that are not issuers. Considering these legal and administrative obstacles, in many cases particularly the clients that are not issuers would probably not give such permission since it might be too burdensome.

4. As mentioned under II.3, disclosure of non-issuer client or third party related information under Part V of Form 1 might conflict with an applicant's legal requirement to maintain strict confidentiality. Hence, German applicants giving a statement as requested under Part VIII of Form 1 cannot guarantee the enforcement of the requirements of the PCAOB in all respects (e.g., when an employee refuses his or her permission to disclose criminal records, see (1.)). There is no legal right by which the applicant may demand the consent to any disclosure. If an applicant were to fulfil such requirements without the permission of the employees, retired persons, clients or third parties, the applicant would face disciplinary or criminal proceedings for breaching his or her legal obligations.

5. All of these legal problems also apply to inspections and investigations pursuant to the Sarbanes-Oxley Act. For example, due to the German privacy and data protection regime, the PCAOB may not have access to certain data. Besides, it is uncertain whether German or European authorities will allow the PCAOB to act on German territory without their agreement.

These examples illustrate only a few of the legal and practical obstacles to the registration of German public accounting firms. Further clarification of these issues and other potential issues cannot be provided within the proposed deadline period.

Yours truly,

Dr. Veidt Prof. Dr. Naumann

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PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD
ROUNDTABLE ON REGISTRATION AND OVERSIGHT OF
NON-U.S. PUBLIC ACCOUNTING FIRMS

MONDAY, MARCH 31, 2003

Security & Exchange Commission
450 5th Street, N.W.
Room 1C30
Washington, D.C. 20549

Public Company Accounting Oversight Board
1666 K Street, N.W., Suite 900
Washington, D.C. 20006

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P R O C E E D I N G S

(2:05 p.m.)

MR. NIEMEIER: Good afternoon. Thanks for coming here today. This is a roundtable discussion of the Public Company Accounting Oversight Board regarding oversight of non-U.S. accounting firms. Last year, the U.S. Congress created the Public Company Accounting Oversight Board and gave it the responsibility of overseeing the auditors of public companies in the U.S. markets. We know all too well the financial reporting problems that led the U.S. Congress to create the accounting oversight board for that purpose. We want to thank those who have traveled from countries around the globe to help us fulfill our mandate.

We know that the financial reporting problems that have plagued the United States are not unique to the United States, and in that regard we are well aware that in each of your own countries, substantial reporting reform efforts are underway. We applaud you for your efforts, and it is on that common ground that we meet with you today to discuss issues related to the oversight of the auditing profession.

We see this roundtable as the first step in the development of a long and productive relationship as we work individually and collectively to improve financial

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reporting in the public markets. We believe that by working together to improve financial reporting on a worldwide basis we will be establishing a solid foundation on which a single global marketplace can some day be

built.

Earlier this month, the accounting oversight board proposed rules related to the registration of auditors that have a substantial role in the audits of public companies in the U.S. markets. We understand that these proposed rules have consequences for auditors outside the U.S. In that regard, we desire to gain a better understanding of what those consequences may be and to the extent that our proposed rules may create special problems, we want to work with you to find solutions.

Again, we thank all our participants for being here today. It is truly an indication of your interest and commitment to the importance of working together to address a common problem as a global community. Chairman Donaldson, members of the Commission, we want to thank you for your attendance today. I turn the floor over to you for any remarks you may have.

CHAIRMAN DONALDSON: Thank you very much, Charley.

Board members and distinguished guests, it is my pleasure to welcome you to the SEC for the PCAOB's

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roundtable meeting on registration and oversight of foreign public accounting firms. This obviously is a tremendously important issue, and we appreciate, as Charley said, that so many of you have traveled so far to be here with us today during these rather uncertain times.

The Board's proposal to register public accounting firms, foreign and domestic, is an important step toward full implementation of the Sarbanes-Oxley Act and its goal of protecting investors through independent auditor oversight. We recognize, however, that the consequences of registration may raise special issues for foreign auditors, and that the United States is not alone in its efforts to enhance auditor oversight. In fact, many of you here today are involved in reform initiatives in your own countries. We look forward to learning more about the ways in which your oversight structures address the same goals as the Act.

We also realize that the requirements of the Act may create conflicts with foreign laws. We are interested in hearing about specific conflicts and how the Board could address those conflicts in a manner consistent with its mandate. My fellow Commissioners and I welcome the opportunity to observe the proceedings today, and we look forward to a fruitful discussion. Your comments will provide valuable information for us to consider when the

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Board presents its final rules to the Commission for approval, so thank you very much for being with us.

Charley, I am going to turn the podium back to you.

MR. NIEMEIER: Thank you, Chairman Donaldson. I should mention that there are a couple of participants that are not at the table at the moment that may be joining us. In fact, one just appeared, I think. Commissioner Campos is here. Welcome. Additionally, Bill

Gradison of the accounting oversight board has been called away for a medical issue with a family member. Hopefully he will join us later.

Today we will be following the generally accepted international rules of roundtables. Most of you know them. If you would like to speak, please indicate your desire to do so by standing your name card on end. When you speak, please attempt to be efficient in making your point, as we have numerous issues to cover and we want everyone to have an opportunity to share their views.

We have divided our discussion today into two broad sessions. The first session focuses on the scope of the accounting oversight board's programs. It will run from now until approximately 3:50 p.m., at which time we will have a 10 to 15 minute break.

Immediately after the break, we will begin a

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second session which will focus on issues unique to registration and will run from immediately after the break until approximately 4:50 p.m., and then from 4:50 to 5:00 p.m. we will allow members of the audience to speak on issues of registration and related oversight to the accounting profession, if they have indicated their desire to do so by filling out one of the index cards that we provided. You should provide those cards to me during the break.

With that, let's get started. The first issue that we are going to focus on -- let me just say this issue here -- in your jurisdiction, is there an auditor oversight body independent of the accounting profession, you will see the first issue is registration. I know a number of you believe that auditors in your particular country should not be required to register at all. Although our second session is labeled registration, you should use this time to address your arguments. We believe that in viewing the scope of the Board's authority, it is important to understand how far we should go, including registration at all.

You should also understand, for the sake of full disclosure, that we have some difficulty in understanding why an auditor who plays a substantial role in the issuance of an opinion that is filed in the United States would not

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register with the Board. Saying that does not mean we cannot be convinced otherwise.

Who would like to start it off? Yes, Mr. Wright.

MR. WRIGHT: Mr. Chairman and Chairman of the SEC, SEC's Commissioners, distinguished guests, my name is David Wright. I am the Director of Financial Markets of the European Commission in Brussels, and I am speaking today on behalf of the European Union, 15 member states, 370 million people, soon to be 25 member states. We welcome very much this roundtable that is to discuss today the registration and oversight of non-U.S. public accounting firms. We welcome the due process. We trust that minds are still open to further discuss the

fundamental issues and assumptions underlying the PCAOB's Rulemaking Docket 001.

We share the Board's objectives of ensuring high quality audit and practice to protect investors and further the public interest. Those laudable goals are at the heart of our policy in Europe as well, but in the E.U. and in the European Union we feel there are better ways to achieve the goals that you have set, and I want to be very clear, and this is a position that is supported by all our member states, that we oppose the assumptions underlying this session.

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We oppose the registration of E.U. audit firms with the PCAOB and all the implications of that registration process, namely, oversight leading to U.S. inspections or investigations in the European Union, disciplinary sanctions of E.U. firms, or being forced to use U.S. auditing standards which, in effect, would mean double standards for our firms.

Mr. Chairman, these points are set out very clearly in our comment letter that was sent to you last Friday. I have to say in political terms, Mr. Chairman, we wonder how the United States Government, the SEC, the Board or, indeed, your U.S. audit firms would have reacted had the European Union made a similar proposal as that that is on the table right now.

Why do we have such strong concerns, and I shall be very brief. First of all, and this is in particular to the question that is on the Board, we have well-developed, mature, equivalent systems of registration underpinned in Europe by a 1984 E.U. directive and oversight mechanisms. It is true the oversight mechanisms take different forms. They are evolving. They are in transit, just like they are here in the United States, but we believe very strongly in home-country control. We also, Mr. Chairman, are very happy and willing to provide you with extensive documentation on exactly how things work in Europe.

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Secondly, Mr. Chairman, we have here major conflicts of law, major conflicts between what is proposed in your rulemaking docket and E.U. and national laws, and let me just list some of the areas, and we will come onto these, no doubt, in the discussion. We have conflicts of law on data protection and privacy, on professional secrecy and access to documents, PCAOB inspection. We have clashes with employment laws in Europe, self-incrimination provisions, sanctions, double jeopardy -- I could go on.

We have concerns, Mr. Chairman, about some of the disproportionate nature of these requirements, the costs of them, the double fees for our firms, the lack of cost benefit, and the fear that these requirements will disfavor the smaller firms, precisely the type of firms that we want to encourage in a concentrated global world market for audit services.

Mr. Chairman, we also feel strongly in the European Union that some of these rules would preempt our

own policymaking which, as I said, is evolving, and I can inform you today that in May it is our intention in the European Commission to bring forward a forward-looking new approach to the E.U. audit function in general.

I want to end on a positive note. How should we move forward? What do we think is the right approach?

First of all, we think there should be broad recognition of acceptance that we have equivalent approaches. We want to work very closely with the PCAOB to work together to converge the principles of oversight through the E.U.-U.S. regulatory dialogue and through other international mechanisms. We believe it is very important that there is full respect of national sovereignty and recognition that there are different ways of going about the same issues.

We should set for ourselves, we believe, some important deadlines to try and work out realistic and workable ways of dealing with international issues such as access to audit working papers in international cooperation of oversight bodies. We believe that in the current circumstances, given all these problems that we face in Europe with these rules, we should take a time out. We should take a one-year moratorium from October to think through all these issues very carefully, working together in a spirit of cooperation and partnership to try to resolve these important issues, and I repeat again, we share the objectives.

Thank you very much, Mr. Chairman.

MR. NIEMEIER: Thank you, Mr. Wright. I appreciate it. John Grewe. Mr. Grewe, I think you are next.

MR. GREWE: Thank you, Chairman. I will do my best not to repeat too many points that have been made before. Certainly we welcome the opportunity to come today, and we certainly agree with your opening comments on the need to work together on these issues, and we recognize the Board has its job to do to satisfy the Act, and we welcome the recognition which I think the Board has given that the application to overseas accounting firms raises particular difficulties and that there is a genuine wish on your part to find a sensible way through these difficulties.

The existing approach to regulation as between the U.S. and overseas countries such as the U.K. has been based very largely on an implied mutual recognition of each others' regulatory regimes and laws in this area, though we recognize, of course, that the SEC has, as a matter of practice, imposed some requirements on audit firms, on auditor independence, for example, on accounting standards and auditing standards, and from their perspective, but we would have hoped to be moving in the opposite direction, where there was a recognition that we needed to move to international standards in these areas.

The imposition of a general requirement of registration on overseas audit firms seems to be a backward step in a world which is increasingly

interrelated and in which the mutual acceptance of

equivalent arrangements, and I emphasize the word equivalent rather than identical, it becomes more rather than less desirable.

You said at the beginning I think that you do not see why there could be, and I paraphrase perhaps slightly wrong here, an objection to anybody registering who wishes to participate in the American markets. I think one answer to that is that you need to be very clear about what flows from that. One thing that it does, it paves the way for a double system of oversight which is potentially highly wasteful of resources and leads to conflicts when different regulatory systems reach different conclusions, and could create the possibility of double jeopardy for audit firms and individual auditors.

One particular concern we have is that in practice it is likely to deepen the hold of the Big Four accounting firms on the audit market just at the time when I hope we all would like to find ways, having lost one of the major firms, to encourage second tier firms to grow their audit business. That is particularly so in relation to the auditors of subsidiaries, which you bring within the ambit of these rules.

Of course, the cost and difficulties of registration are disproportionate for overseas audit firms, and even more so for those that are not in the Big

Four, and even more so, of course, for countries where there are not many registrants, and I exclude the U.K. from that. We have a very significant number.

As to the way forward, we would suggest that there is a need to identify principles against which to determine whether regulatory arrangements are equivalent. It might be sensible then to address this either at the level of a wide area where there are common features of regulatory arrangements such as at the E.U. level. It might be sensible to do it in respect to particular countries such as the U.K., or it might, indeed, be possible to look at it in respect of the audit firm, which would be exempt from registration on the basis of information about the firm and the regulatory arrangements to which it is subject in its own country.

Now, I do not want to go on at much longer length. Other people want to come in. I could echo some of the points about the legal difficulties. There are quite a lot of practical difficulties in the way, and I do think out of that there is a very strong case for taking a longer time for the Board to look at the application of this in relation to overseas firms. It is not identical to the position in the U.S.

To give one example, the information you asked for, that has been I suspect, developed essentially and

understandably with U.S. firms in mind, it may not work so well elsewhere. We slightly get the flavor of the information requirements, but there is a bit of a shopping

list of things that might be useful without a clear focus, but I think both in terms of principle and in terms of practicalities, there is a need for more time. We would suggest a year, an extension of a year.

Finally and very briefly, just in a sense to address the question on the board, I don't want to go on at great length about the arrangements in the U.K. in the sense there are many countries in the world that could do that and only a few of us have got the privilege to be represented around the table.

All I would say is that in the U.K. there is an existing very largely independent system of oversight which addresses most of the issues there. This is being developed further in the U.K. following our own review and so we have, for example, very firmly now the independent setting of auditing standards, developing quality assurance through monitoring, which it had for a long time through a new unit and tally outside the profession, and also independent disciplinary procedures, and I should perhaps incidentally say that very similar arrangements have been developed in the Republic of Ireland.

I will stop at that point, but thank you very much.

MR. NIEMEIER: Thank you, Mr. Grewe. I am just curious, Mr. Wright and the E.U. have talked about an additional year. I think probably the U.K. is in a slightly different place than the E.U. is. Both of you are asking for a year, for what I think is to develop the promise of something which would have more oversight, if I understand you, Mr. Wright, but what is it that the U.K. will develop in a year?

MR. GREWE: I will let David speak in a moment. I think it is not a question of developing our systems to meet the requirements. I think it is much more a question of sorting out whether there is a need for registration and, if so, on what terms. We think there is a long way to go.

Again, without going into the details of legal conflicts, we think it is just well nigh impossible on the current requirements simply for firms to be able to register, we suspect from the U.K, but certainly from many other jurisdictions, and so I think, as I was trying to explain, there is a question both of principle and practicalities, not really a question of us thinking through what sort of regulatory regime we would need in the U.K.

MR. NIEMEIER: Very good. Thank you.

MR. WRIGHT: I do not think our positions are any different. What I was suggesting is that we take appropriate time. I suggested one year from October, which I understand is the date for the Board's registration, final registration process, to take the time to work with the United States without prejudice to any solution to work out fully all the implications and difficulties both of registration and on the implications of registration

and I believe that, with goodwill on both sides and given that we share the same objectives, I think we could make very substantial progress.

I believe that is necessary because, as I said, we believe these proposals are deeply worrying for our audit firms. I mention the conflicts of law. We will just talk about those later, but what does this mean for an audit firm in the European Union? It means that to comply with your rules it would have to break its national rules. That is very serious, and that would be true, of course, if we had proposed a similar system that would have required your firms to break U.S. law in order to comply with European law, so we don't think that is the right way to go.

We think what is important here is to work together to define the right type of principles, and we are willing and able to do that. In the meanwhile, we are

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obviously seeking under 106(c) a full exemption for our firms until that is possible, until we have converged our thinking and found a practical way forward. Thank you.

MS. GILLAN: Mr. Chair, may I ask a question? I direct the question to Mr. Wright, but I notice through some of our comment letters that we have received, this is a theme, an issue that has been raised by many commenters, the issue of the confidentiality statutes in the home jurisdictions. I have two questions about that.

First is, to what extent are these laws -- do they provide for consent by the parties for whom the information is relevant to agree to the release, and second, from a higher level, what is the public policy that is behind these confidentiality statutes, and where do investor interests lie in the public policy? Specifically, is it in the company's owner's interests for the confidential information to be withheld from a body such as the PCAOB, or is it in some other person's interests?

MR. WRIGHT: Thank you for those questions. Let me say -- and some people around this table will know their own domestic laws better than I do, but let me just talk about three countries who have a system whereby auditors are bound by professional secrecy for the facts, activities, and information relative to their role. Non-

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respect of that is punishable by the penal code. This information cannot be revealed even if the audit client agrees, that is under their laws, and only the public prosecutors in those member states may be informed.

MS. GILLAN: And what countries are those?

MR. WRIGHT: As I understand, France, Belgium, and Luxembourg, for example, would be in that category. Perhaps my colleague, Karl-Ernst Knorr on my left, will tell you what the German situation is, coming from Germany, but I believe there are also very serious issues of confidentiality and secrecy which would be of difficulty in Germany as well, but perhaps you would like to ask him about that.

MS. GILLAN: When he speaks, if he could address it, but also the issue of the public policy behind these confidentiality statutes. I am concerned that the statutes, for example, perhaps were enacted to protect certain officials from liability within companies, or audit firms, and not particularly with the issue of shareholders in mind.

MR. WRIGHT: Well, I don't think necessarily that is the case. I think what is at stake here is relationships between auditors and clients that have gone back for centuries. There are different types of law, as you are fully well aware, and those have evolved in

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different ways.

Now, that doesn't mean that that is against the interest of shareholders. There are proper due process systems, legal systems in each of these member states where shareholders can pursue their interests. What we are saying here is that there are different legal structures and different legal rules, and in no sense could that be construed to be against the interests of shareholders. They just evolved in different ways, just as United States law has evolved in different ways as well, and I could use other examples here, but I think maybe I've spoken enough already.

MR. NIEMEIER: Thank you. I think Mr. Thiessen of Canada is next.

MR. THIESSEN: Thank you, Mr. Chairman.

Mr. Donaldson, Commissioners, PCAOB members, my name is Gordon Thiessen. I am the chair of the new Canadian Public Accountability Board that has been designed to oversee auditors in Canada. I would like to thank you for inviting us here to exchange our views.

The Canadian Public Accountability Board is part of a series of reforms that have been taking place in Canada to improve corporate governance and financial reporting. We have provided you with a summary of those reforms in our written response. I must say, given the

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close economic and financial ties between the U.S. and Canada, and the similarities in our financial system, these reforms really are designed to achieve the same objectives as you have undertaken here in the United States.

The Canadian Public Accountability Board, CPAB, if you can get used to yet another acronym, is an independent not-for-profit corporation whose mission is to increase public confidence in the integrity of financial reporting in Canada by ensuring high quality and independent auditing. We will be establishing a rigorous program of oversight of company auditors. The CPAB will be enforcing Canadian standards with respect to auditing, quality control, independence.

These standards are similar to U.S. standards, and we expect that the Canadian Audit Assurance Standards Board will continue to set standards which are very close or comparable at least to those in the United States, and

we in the Public Accountability Board will be working very closely with our Assurance Standards Board and its independent oversight council.

We will be conducting practice inspections to ensure that quality and independent standards are being met. We will have the ability to impose sanctions on and require remedial actions by public audit firms.

I should note that we already have in place a system of practice inspections in Canada that are carried out by provincial institutes of chartered accountants, and that gives us a good base to build from.

With respect to the board of the CPAB, the majority of directors are required to be independent of the accounting profession. The board is appointed by a Council of Governors which consists of the various Canadian securities and financial institution regulators plus the Institute of Chartered Accountants, and that council will oversee the work of the CPAB.

The process of establishing our new agency is still underway. It is, however, our objective to be operational before the end of this year.

Now, we believe that the audit oversight arrangements that we will put in place in Canada will be comparable to yours, will be as rigorous as you are planning here in the United States, and what we really would like to see are arrangements between the PCAOB and the CPAB, if you don't get lost in those acronyms, that would ensure that you can have confidence in the quality and independence of audits of Canadian public companies issuing in the United States. We think that such agreements would serve the public interest by strengthening the integrity of audited financial

statements in both our countries, but at the same time avoiding unnecessary duplication and reducing the overall costs of audit oversight without compromising quality.

So what we are really interested in seeing is some kind of memorandum of understanding between our institutions, and it really does seem to me that that kind of cooperative arrangement, with the benefits that it has for both of us, should be the outcome that both of us should be working toward.

Thank you.

MR. NIEMEIER: Mr. Matsuo.

MR. GOELZER: Before we go ahead, can I ask Mr. Thiessen a question? Do you envision it would be feasible for us to participate in your inspections of Canadian firms that might be registered in both Canada and the United States?

MR. THIESSEN: I would certainly be willing to talk about that. Whether there are restrictions, I don't know, but I certainly think that what we should be prepared to do is exchange information at the very least, and then if you were to have concerns about a specific issuer, for example, then I think we could work out what we did about that, whether that implied a second

inspection by us or some kind of joint arrangement that you could be involved in. I wouldn't rule it out. It

doesn't strike me as ideal in all cases.

MR. GOELZER: Will your inspections result in the issuance of reports routinely and if so would those be available to us?

MR. THIESSEN: Yes. Now, exactly the degree of detail is something we still have to work out, I must say, but I do not see a problem with sharing those.

MR. GOELZER: Thank you.

MS. GILLAN: Could I ask Mr. Thiessen a question also? I understand you're developing a registration system also as well. Have you addressed the issue of the registration of non-Canadian auditing firms that may be performing audit services for Canadian companies?

MR. THIESSEN: We have not, but we will have to, but you see, in our case the foreign issuers in Canada are a relatively small number and they don't constitute the largest firms, large firms, so while it is something we have to deal with, I must say that it is not at the top of our priority list.

MR. NIEMEIER: Very good. Mr. Matsuo.

MR. MATSUO: Thank you, Mr. Chairman. My name is Naohiko Matsuo from the Financial Services Agency, Japanese Government, and I very much appreciate that we are given this opportunity to attend the roundtable and express our views here.

Since last July, when the Sarbanes-Oxley Act was enacted, we have various issues for Japanese corporations and Japanese audit firms, especially that we have two serious issues, one is Section 301 on which the final rule will be issued tomorrow, I believe, and the other issue is the auditor oversight issues, and since the securities markets are very globalized, so that the issues in the securities markets are global, we think that the Sarbanes-Oxley Act is actually a great achievement, and considering this achievement we are also developing our reforms in the securities markets.

But on the other hand, when we deal with these global issues, the important thing is to establish principles and IOSCO, International Organization of Securities Commissions, is a very important pillar to achieve these kinds of principles for securities regulators in the world.

We actively participate in this IOSCO discussion, together with the SEC like Mr. Commissioner Campos, or chairperson from SEC, and from these experiences in this area I think that three principles are important. The first one is mutual respect, and with the recognition over sovereignty and auditor oversight system over each jurisdiction, and the second point is substantial equivalence, or equivalence of each

jurisdiction's auditor oversight system, and the third point is practical cooperation among auditor oversight

body in major markets.
And regarding the -- well, I circulated my comments so that I don't want to go into details here, but regarding the first principle, because of that mutual respect over sovereignty and the auditor oversight system, it is important to recognize each other's auditor oversight system and respect the home country's oversight over each audit firm.
The second point, that each major securities markets or jurisdictions establish their auditor, enhanced auditor oversight system, and IOSCO issued a principle last October, and in line with this principle we have submitted, the Japanese Government submitted just the 14th of this month a bill to comprehensively revise our CPA law, including the enhancement of the auditor oversight system, the auditor independent system, and increase in number and quality of the CPA, and we expect that this law will be passed by our legislature, the Diet, during this regular Diet session which will end this June.
Regarding the practical cooperation, the U.S. principle says that mutual cooperation to the extent possible is important, so in line with this principle we are prepared to cooperate with the PCAOB and SEC in this

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respect, and fortunately our Canadian colleague says that they have currently established a CPAB, but in Japan, FSA Japan is the oversight body but in addition we are planning to establish the new board called the CPAAOB -- it's a long name -- so our new CPAAOB and FSA is ready to cooperate with the PCAOB and SEC, and actually we would like to know how the PCAOB works in this respect. So in this world it is important, this kind of mutual cooperation is important, not mutual infringement on each other with the oversight system.
Thank you.
MR. NIEMEIER: Thank you, Mr. Matsuo. You are now the winner. I think you have the longest acronym.
Mr. Haas of Switzerland, please.
MR. HAAS: Thank you, Chairman Donaldson. Ladies and gentlemen, it is a pleasure for me to talk on behalf of the Government of Switzerland. My Government shares the concern expressed by all the previous speakers about the danger of conflicting legal requirements if the oversight requirements of the Sarbanes-Oxley Act were made fully and directly applicable to foreign auditors.
While we fully agree that concrete measures should be taken to prevent the recent excesses in public companies and thereby to restore investors' confidence, we feel strongly that public authorities on both sides of the

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Atlantic should do this in a way that internationally active firms can conduct their business without automatically violating the laws.
I would like to point out that not only Swiss companies listed in the United States, but also subsidiaries of U.S. companies and even subsidiaries of some new firms with a second listing in the United States

established in Switzerland could find themselves in a situation where they have conflicting legal requirements.

In order to avoid this predicament, and also to avoid unnecessary administrative work as a result of registration in several oversight bodies, foreign public accounting firms should be exempt from the oversight requirements of the Sarbanes-Oxley Act. In order to ensure that they nonetheless comply to high professional standards and are subject to a public oversight system, a solution based on equivalents should be worked out between the U.S. authorities and Switzerland. Such a solution should be greatly facilitated by the fact that Switzerland already has a highly-developed company law, as well as stringent corporate governance rules and quality standards. Even more importantly, work is underway to establish also a Swiss oversight board. We have no acronym yet.

(Laughter.)

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MR. HAAS: Thank you very much.

MR. NIEMEIER: Thank you, Mr. Haas.

Mr. Devlin.

MR. DEVLIN: Thank you, Mr. Chairman.

Mr. Donaldson, Commissioners, members of the Public Company Accounting Oversight Board, I would just like to say on behalf of FEE, which I will explain in a moment, we are very pleased to have this opportunity of providing some material for you by way of comment and by way of participation at this roundtable.

FEE is the European Federation of Accountants, and I am its president. It has 41 member bodies, that is to say, bodies of professional accountants from 29 countries with about, something over half a million qualified members in those bodies.

FEE represents the whole profession for Europe and not any particular type of firm, though I think, Mr. Chairman, you have asked me particularly to bear in mind how smaller firms, that is to say, other than the major accounting firms, might be affected by your proposals, and I have done my best to do that.

A second thing I should say about FEE is that it has consistently throughout its existence developed position papers and helped to drive forward policy designed to achieve high standards across the board in

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corporate governance, accounting, financial reporting, auditing, quality assurance, and most recently, oversight, and we are very committed to the highest possible standards.

I, personally, on taking office as president on the 19th of December, made a commitment to do my best for the next 2 years to restore confidence in the profession, as it is having an effect in the whole supply chain represented by financial reporting, on which the public half of the markets rely. Auditing obviously is only part of the picture, though the part that is chiefly in focus today.

A feature of Europe which I would like to refer to is that we are required in Europe to have bylaw audits of all but smaller companies. In other words, the remit of auditing by law is wider than just public listed companies, and that is a significant difference.

I would start in terms of the burden of my remarks by saying that FEE is very clear that it very strongly supports the proposals that have been made for a transatlantic regulatory dialogue between the Commission, the European Commission with the support of the member states and the U.S. authorities, chiefly, obviously, the SEC and yourselves in the PCAOB. We believe that this should focus on establishing principles, strict criteria

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with sufficient detail to be convincing for oversight and on such other related matters as inspection, investigation, discipline, and sanctions. That is to say, the enforcement part of it as well.

Why do we say that? Well, we have not been able to make a comprehensive legal study because obviously for a start that is chiefly likely to be made either by government or by firms which are contemplating registration, but we believe that any firm contemplating that move would be well advised to adopt a very thorough legal examination of the possible consequences of registration with the PCAOB and of any impediments which might exist in law, and I don't want to repeat those which have been aired, because it would only take time, but I think it is genuinely and for serious reasons clear that there are at least in some cases very serious obstacles of a legal nature which are not within the remit of the profession to address, and it is hard to see an easy path on legal grounds to registration.

The second thing, bearing in mind particularly smaller firms, is that the task of collecting the very extensive data you have suggested as being required in your proposals is a major issue, and I particularly emphasize that for smaller firms, as, indeed, would a legal study.

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The implication, it seems to me, at least for smaller auditing firms, is that the cost-benefit equation must bring into question in their minds whether they wish to take part in the market for audit services which are, in shorthand, SEC-related, and the more we considered this point, the more concerned we were, because we see on competition grounds the risk of further concentration of the market, which is surely undesirable, not just in the narrow sense for SEC work, but also more widely for European-listed companies which do not presently have a registration with the SEC, but many such companies might presumably choose to appoint an auditor in contemplation of a future potential fundraising in America, and that also applies, of course, to new high tech and other companies that might be in the status of prospective IPOs.

Another feature of some countries in Europe, for example, Denmark and France come to mind, is that they

have a system of joint audit of listed companies, and often the pattern found is one of the major firms alongside a smaller firm. If our concern is that a smaller firm might not find it particularly economic for a few clients to register, or if registration were refused after being applied for, we see that this would be a particularly serious difficulty.

It is not obvious what the consequence in those

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circumstances would be, that an appointed auditor in Europe did not apply for registration or that having applied it was refused, even though the firm might be in perfectly good standing in its own country. That seems to raise considerable difficulties for the registrant companies and for, of course, the position of the firm in question.

I think it is also worth bearing in mind your proposals in respect of significant subsidiaries. I come from a country, Ireland, in which we are fortunately the beneficiaries of very extensive foreign direct investment from the United States, but there are no statistics that I am aware of in Ireland or elsewhere where for how many of the significant subsidiaries might be audited by firms, other than maybe the parent auditor, by even smaller firms, if we want to call it that.

Certainly there appear to be some, and it seems to me that again its very extensive costs and efforts that would be involved in establishing and maintaining

registration so as to maintain good standing with you might be such as to give a disincentive, to put it no higher than that, to such firms acting for significant subsidiaries, leading to some of the market effects that I have spoken about before.

So where is this leading me and my colleagues in

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FEE, and the member bodies that I represent? Well, we have most recently this week put forward to the European authorities our firm belief that oversight and inspections are most effective at home country level. We believe that because we, within FEE, debated whether we should have a pan-European oversight board, and we very rapidly came to the conclusion that there are such serious legal and practical obstacles to it that we would prefer a coordination, and that the home country is where it works well.

We are also aware that many of these countries are reforming their arrangements. If you take -- again, I hesitate to mention Ireland too frequently, but it is the one, obviously, I know best. We have a new acronym, IAASA, the Irish Accounting and Auditing Supervisory Authority. It has been acting on an interim basis, and it will be established in law shortly but that's an example of something which predates Sarbanes-Oxley, predates the scandals in the United States, mainly because we had scandals of our own to address, but it is not uncommon in Europe to find that if, for example, you look at France or

Belgium, they all have reasons of their own for introducing new reforms, and we think the PCAOB should use this and other opportunities to become informed about the details.

For all of these reasons, and chiefly because of our concern for quality, we believe that a substantial extension of time is warranted, if that is open to you, at your discretion, before registration is required of foreign accounting firms. I mean, we do recognize that you have obligations under the Sarbanes-Oxley Act that you would want to take account of evidence today and from other sources. You would presumably want to bear in mind your own resources and the huge task ahead of you, and we would urge you also to consider the outcome of consultation with authorities elsewhere.

I have only a few more points to make, but I do just want to wrap up with some of them. Within FEE, in our council last week and our executive the day before, just 10 days ago, say, we saw a considerable risk of loss of public confidence in auditing in Europe through the unintended consequences of applying some of your proposals.

If registration is imposed on firms in countries where that is legally feasible and not in others where it may be legally infeasible, we see that as a direct difficulty for the uniform application of high standards across Europe, at least in the public perception. How is the public to interpret a requirement to register, as a criticism of a foreign country's arrangements, or on the

other hand, do you regard it as merely acceptance that the arrangements are of high quality? It could be read either way, so we are worried about that.

We are also very worried about the consequences for audit quality and the reputation of audit in Europe if an appointed auditor to a European company were refused registration. We believe the dialogue allows the Public Company Accounting Oversight Board to understand better two or three things, first of all, the impact of your proposals, secondly to determine whether they will help restore confidence in the audit profession in a global market, and thirdly, whether the details of the audit structure elsewhere are fully understood. I think the dialogue could help you well to understand that and to give you confidence in exercising your discretion, something which you clearly must have.

I think also that there is a further element to the potential dialogue which has been referred to earlier, which is that it gives the PCAOB a very fine opportunity to make known its views on the suitable criteria for oversight and enforcement and standards. It gives the PCAOB a word to say on this matter in a structured way which is politically highly acceptable and which will help the profession to continue building high standards, and we are very aware of the PCAOB's mandate for the

public interest in investor protection, and we want to work with you and FEE to do our bit to try and help you, and those are our comments to date on this matter.

MR. NIEMEIER: Thank you very much, Mr. Devlin. Dr. Knorr from Germany.

DR. KNORR: Thank you, Mr. Chairman, and ladies and gentlemen. I am here on behalf of the German Wirtschaftspruferkammer, which is a corporation under public law, and the oversight body of the profession in our country, and the Wirtschaftspruferkammer itself is under the supervision of the Ministry of Economics and Labor, and I speak also not on behalf but in coordination with the Ministry of Justice, our rulemaker.

We have underway a lot of enhancements of our systems which apply today and, as you know, Mr. Niemeier, we have a 10-point program of our Government which will lead to improvements which are very, very similar to the Sarbanes-Oxley Act goals, so they are very supportive of what you want, but being quoted as one of the more complicated countries, I will try to take the opportunity to explain why this is. It is not because we do not share the goals. It is because we have a different legal environment, and please allow me to say one personal sentiment before I give the examples.

Germany has, after the time between 1933 and

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1945, established a new constitution where the law of privacy, secrecy, and personal liberty have a very high level of value to prevent anything that goes back to the time before, and therefore those laws of privacy, et cetera, are very much protected, and it is very, very difficult to have them exempted for a body like you, because that is unsystematically in our country, and I would ask you to understand that, because that is a historical reason why our constitution is that way.

Now, back to the examples. In part 5, form 1, you call for information about criminal, civil, administrative or disciplinary proceedings against the applicant or its associated persons. In Germany, the rights of employees are protected extensively by federal labor law and the judiciary. In particular, this includes the right to privacy as protected by the German constitution, as I mentioned, and the right to privacy limits an employer's right to demand specific information from its employees.

Court decisions say that an employer may only request information from employees about criminal convictions that may affect an employee's personal suitability for a particular occupation. You might argue this is the case because we are doing SEC jobs, so that could be a reason. Nevertheless, this information can

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only be used with respect to the employer-employee relationship.

This information cannot be disclosed to third parties by the employer, and disclosure of such information is prohibited by, among other laws, the

Federal Data Protection Act, so information related to criminal convictions may only be disclosed to third parties with the permission of the employee concerned.

Consequently, even if an applicant to the PCAOB requests the information needed from an employee, and would succeed in obtaining it, maybe by a court decision, that applicant cannot disclose it to the PCAOB without the permission, and the employer has no right to force the employee's permission, and even in the employment contract, we are in doubt whether you could incorporate that in beforehand. We are not sure about that, because there is no prejudice to that case because there was no PCAOB before that, but we are in doubt whether you can do that.

Another problem might result from the 10-year period concerning the information requested. Criminal convictions are listed in the federal nonpublic register, and entries in the register are deleted after a certain period of time, in general after 5 years, in minor cases after 3 years. This is to protect the convicted and to

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help him to be resocialized, and I cannot think that if this is a deletion in a public register in Germany, that a continuation in a foreign public register -- it is a nonpublic register in Germany, would be tolerable to our legislation.

Furthermore, the information required under items 5-1 and 5-5 is not limited to issuers, but may include information related to retired persons, other clients, third parties, which are neither issuers nor clients of the applicant. This may contravene the applicant's legal duty of confidentiality as prescribed by the German Public Accountants Act, and the German Commercial Code.

Any breach of this -- this was mentioned before -- any breach of this legal confidentiality requirement may result in sanctions being imposed in professional disciplinary proceedings either by the Chamber of Public Accountants or special disciplinary court, depending upon the severity of the breach, which means the Wirtschaftspruferkammer only deals with the minor incidents, and all the major breaches of law, et cetera, by public accountants go over the State prosecution to a law court in our country, so they are outside an oversight, or whatever is the legal procedure.

In addition, any such breach may result in fines

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or imprisonment under article 203 of the German Penal Code, unless the particular client has given permission to the accountant to disclose all or specific pieces of information relating to the client matters, but this is only expected by clients who are issuers. Why should other clients sign a waiver, or why should third parties do that, and the client himself is not authorized to act on behalf of all these other third parties involved.

Which means, in general, such permission will be forthcoming from issuers but not necessarily from third

parties. When considering all these legal obstacles, we come to the conclusion the German applicants giving a statement as requested under part 8 of form 1 cannot guarantee the enforcement of the requirements of the PCAOB in all respects, maybe in the majority of cases, but there remain some which are not legally practical.

For example, when an employee refuses permission, or an ex-employee, there is no legal title on the basis of which the applicant may demand the consent to any disclosure, and if an applicant were to fulfill such requirements without the permission of the employee, retired person, client or third parties, the applicant would face disciplinary or criminal proceedings.

In addition, since the information concerned cannot be disclosed without permission, they cannot be

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subject to inspections by the PCAOB, because if the finding is by inspection rather than by disclosure, the same rules apply. These problems will not be evaded by a confidential treatment request, as under rule 2300 relating to registration, because if you don't publish it, you still, as the PCAOB, are a third party and excluded from disclosure.

These examples demonstrate that even if there are solutions to many problems, there remain a few legal and practical obstacles to the registration of German public accounting firms, and therefore it remains a complex legal problem, and we suggest, as others did before me, that we take time to work on that, work on both sides on that, and try to find a solution how we can fulfill what your goal is and what the goal of the German Government and German profession is as well.

Thank you.

MR. NIEMEIER: Thank you. Mr. Bailey.

MR. BAILEY: Thank you, Mr. Chairman. I am Nigel Bailey, Senior Treasury Representative at the Australian embassy here in Washington. Thank you for the opportunity today to contribute to the roundtable. Australia is currently reviewing its own auditor oversight arrangements, and a discussion paper was released by the Government back in September last year, and there is

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certainly some commonality of interest in the policy objectives of both what the discussion paper in Australia is trying to achieve and the issues that we are talking about today.

However, given the commonality of interest, there is also some differences in the institutional and policy approach within Australia compared to the United States, and certainly Australia would welcome the opportunity to talk further with the SEC about those differences and look forward to being able to acquire both the policy objectives in both regimes in a way which is both practical in achieving the objectives but also not imposing an onerous burden on either companies that have to apply, or regulators.

What I might do is just go briefly over what the

current arrangements are in Australia and what the proposals are that have been put forward by the Government to strengthen our current auditor oversight arrangements. Currently in Australia there are three legs to the approach of company auditing. There is a body which sets auditing standards, which is the Auditing and Assurance Standards Board. It sets auditing standards, but currently those standards are not enforceable by law and there is no direct oversight of the standards, or no body directly overseeing the standards.

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The Australian Securities Investment Commission, which is the main company regulator in Australia, has the ability to report malpractice by auditors to a review body, and action taken against any malpractice, and thirdly, standards of ethical and professional behavior are largely the responsibility of the accounting professions.

What is proposed in the discussion paper is a strengthening of the oversight arrangements. The accounting standards will become enforceable by law and will be overseen by the Financial Reporting Council, which is currently the body that oversees accounting standards in Australia, so it will address both the issue of making accounting standards enforceable and having direct oversight of the auditing standards the same as accounting standards, and the FRC will be the main body which oversees the standard-setting arrangements and monitors the application of auditing standards.

Separate to that, the Australian Securities Investment Commission will be the body that has the enforcement powers of those standards, so there will be a distinct separation between the body which sets the standards and oversees those standards and the regulatory or the enforcement body who has the power to enforce them.

The review paper at the moment is out for

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comment, and the Government is seeking comments back with a view to legislation being passed by the end of this year, so while the review is still underway, the proposals that are in the paper are still the Government's position.

Just on the differences between Australia and other regimes, Australia registers auditors individually rather than audit firms as such, and that has always been the practice, and that will continue. There will still be individual registration of auditors.

Australia is also a relatively small country in the sense of SEC registrants. There is a limited number of registrants, Australian registrants on the SEC, and that is certainly one issue that we would hope to discuss in the application of these rules to Australian firms, and certainly, given the strengthening that Australia is making to its own auditing oversight arrangements and the limited number of firms that are actually registered with the SEC, we would certainly welcome the opportunity to discuss issues around equivalent regime and recognition of the standards that Australia will be putting in place, and

also how the application of the registration arrangements of firms can recognize Australia's position on those two accounts.

Thank you.

MR. NIEMEIER: Very good. Thank you,

Mr. Bailey.

Ms. Drought of the Wisconsin Investment Board.

MS. DROUGHT: Thank you, Mr. Chairman. My name is Ellen Drought, and I'm here on behalf of the State of Wisconsin Investment Board, known by the acronym SWIB. SWIB is the 10th largest public pension fund in the United States, and the 19th largest pension fund in the world. I am here on behalf of Keith Johnson, who is SWIB's chief legal counsel. Keith wished he could be here personally, but he asked me to attend as SWIB's corporate governance counsel, which is probably a new position in the last couple of years, to present SWIB's views on this matter.

I just wanted to touch on a couple of themes. SWIB is presenting a formal comment letter which the Board will receive later so I don't need to go into every detail, but just a few items that have been addressed that I would like to comment on.

First, SWIB does support the Board's proposed registration of foreign audit firms who audit companies that trade in the U.S. markets for a number of reasons. First we just want to emphasize that that is the clear intent of the legislation in Sarbanes-Oxley. SWIB, like many other institutional investors, has advocated for the reforms that were brought about by Sarbanes-Oxley for many years, and we are concerned that wholesale exemption would severely undermine the point of this important legislation, which is to restore investor confidence in our markets.

Secondly, there has been a lot of talk about U.S. standards being imposed on foreign firms, and we just want to emphasize that SWIB is very supportive of the movement towards convergence, and hopefully the Board's oversight would actually perhaps facilitate cooperation and reduce barriers and ultimately facilitate international investment. Our intent is not to create unnecessary duplication, but I am very encouraged by the talk of the cooperative agreements that may be appropriate in bringing about the Board's oversight.

I think the main point we want to emphasize is the SWIB, like many other investors, relies heavily on financial statements in making investment decisions, on their uniformity and consistency, and when they make a purchase in the U.S. markets they expect to be buying the same protections regardless of where the audit firm is located, so we would maintain that the Board's oversight of those audit firms that audit and trade in the U.S. markets is appropriate.

And just to sum up, hopefully I will be able to

talk again when we get to the second part of the agenda, but we do respect the different ways of doing things in

different countries, but we just want to emphasize that as a U.S. investor we do expect that our expectations will be respected as well.

Thank you.

MR. NIEMEIER: Thanks, Ms. Drought.

Mr. Jennings of Ernst & Young, Brussels.

MR. JENNINGS: Thank you, Mr. Chairman. I think I am probably the first person to speak this afternoon wearing a Big Four flag. I am very grateful to you and the boards for giving me the opportunity to contribute to such an important debate, and on behalf of all my colleagues in the audit firms both large and not so large in Europe, I just want to reaffirm our support for the underlying goals set out in the Sarbanes-Oxley Act, including better financial reporting and enhanced audit quality.

To protect the investor is our raison d'etre, as we say in Belgium, our reason for being, and we wish you every success in your mission, but there are many aspects of the new rules that create problems that frustrate our ability to comply with your laws as quickly as we may all like. The Board will have to reconcile its own needs with the wholly legitimate needs of other regulators around the world as you all fulfill your respective duties to enforce the application of local laws.

We all urge the PCAOB and the other regulators around the table, notably the European Commission, together to find ways to overcome these problems. This will take time, but it will be time well-spent if it results in a truly global approach to the common goals which we all share of investor protection and restoring public trust in the audit process, and during the course of the discussions I think Belgium has been referred to twice, so I feel I should make some reference to Belgium itself.

It is a small country, with only three SEC registrants at the last count, but it is one of the 15 member states of the European Union and, as such, current regulatory developments in Belgium are indicative of the very dynamic environment that exists right the way across the European Union, as Mr. Wright has made reference earlier on.

In August of last year, Belgium enacted a new law on corporate governance. In part, this was responding to the needs to implement the E.U.'s recommendation for independence, but also it was a response to our own Enron, better known as Lernout & Hauspie. You may have heard of it. Incidentally, despite being just a recommendation, 13 of the member states have or are in the process of implementing it into their national law, and all 15 of the

member states will have implemented the quality assurance recommendation, which is somewhat more relevant to today's

discussions, by November of this year.

But coming back to Belgium, before the August law was enacted, oversight of the accounting profession was exercised by a high council. This is comprised exclusively of non-practitioners, so academics, judges, representatives of employer and employee organizations. It is worth just highlighting the involvement of representatives of employee organizations, because the European Union is well-known for its focus on employee rights and employee welfare.

Today, corporate social responsibility is very high on the E.U. political agenda, and in part this explains why some of the Board's registration requirements, particularly those rules dealing with employee disclosures and consent, create problems for the accounting firms in Europe. I am sure we will come back to that point later on, Mr. Chairman.

Following the law of August 2002, whilst the high council continues to exercise oversight of the profession, a new body has been created, the Comitē de Controle, which will have specific authority for auditor independence. This new committee has a number of responsibilities. One of these is to approve, but it may

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not necessarily do so, any nonaudit services which in total exceed the audit fee. You see, there is a basic one to one ratio here, and I believe that this is certainly stricter than the equivalent SEC rules at present.

Whilst both the high council and the Comitē de Controle exercise oversight over the profession, the day-to-day running is left to the Institut des Reviseurs d'Enterprises, the Institute of Company Auditors, but this is not a self-regulatory body. It's established by Belgian law, and it has a legal duty to exercise control of the profession. It does have the power to issue professional standards, but many of these, including independence and, indeed, ethics, are already enshrined in the law, so there is relatively little scope for radical change there.

The institute is the enforcer of the law, with oversight from the high council and the Comitē de Controle, and it is the institute that carries out quality control reviews of all audit firms that must, by law, be registered with it. These reviews ensure that each firm is reviewed at least once every 5 years and, in addition, the institute performs ad hoc investigations, usually in response to complaints.

When performing investigations, the institute only focuses, I have to say, on national GAAP and national

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GAAS. Whilst they do have full access to working papers, this right does not apply either to the high council or, indeed, to the Comitē de Controle. These two bodies are entitled to receive reports prepared by the institute once an investigation is complete, but these reports are sanitized, if I can use that word, to preserve confidentiality and professional secrecy.

You see, these two requirements are enshrined in Belgian criminal law, with penal consequences. The institute cannot divulge any nonpublic information to any third party, not even to the high council, because these professional secrecy laws apply equally to the institute, as they do to other auditors. There is no way at present that the institute could report directly to the SEC or PCAOB, at least not without a change in Belgian law, and I should also mention that at the moment these laws cannot be waived by client or audit firm consent.

In conclusion, Mr. Chairman, Belgium has a robust and effective system of oversight that reflects the E.U.'s minimum standards on quality assurance as expanded to satisfy the cultural and historical needs of the Belgian system. It is not the same as your proposed model, but I do believe it gives an equivalent level of protection to Belgian and to U.S. investors.

Thank you.

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MR. NIEMEIER: Very good. Thank you, Mr. Jennings. Mr. Lerner of KPMG-UK.

MR. LERNER: Good afternoon. I am the global head of KPMG's regulatory affairs. I am also chairman of the United Kingdom and, indeed, Irish Professional Ethics Committee and, as such, I wholeheartedly support your objective of improving financial reporting, governance, and audit quality and, of course, welcome this roundtable as the beginning of a dialogue with foreign regulators and foreign audit firms around the world.

Clearly, the PCAOB has an important role to play in the improvements in financial reporting that were brought on by Sarbanes-Oxley, and KPMG, and I know my colleagues around the table are fully committed to helping you meet those goals, and I would like to address my remarks primarily to oversight and inspection around the world, hopefully pulling together many of the remarks you have already heard, but not duplicating them.

Clearly, you as a regulator in the United States need effective means to oversee firms that submit audit opinions that are filed with the SEC and relied upon by the U.S. investors. However, we believe that the Board can only work effectively and efficiently if it recognizes the implications of both foreign law and the role that foreign regulators play.

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You have, I know, the detailed report on the legal analysis of the impact of your rules, and that will address many of the detailed questions you have on individual countries' jurisdictions outside the United States. However, it is not only the legal impediments that give rise to concern, but dual oversight we regard as undesirable, being inefficient and costly, where there is in place a demonstrably equivalent local regulator.

You have already heard about many of the existing and planned arrangements, and to bridge the

obligations that the Board has under Sarbanes-Oxley with the issues and impediments that we described, it is important that the Board continues the dialogue that has been started at this roundtable, and that dialogue should establish what oversight regimes are in place and ascertain then how much reliance the Board can legitimately place on the work of other national regulators.

In principle, the Board should be able to rely on national monitoring regimes that comply with recognized high minimum standards such as those set out in the IOSCO's statement of principles for auditor oversight. This would provide the Board, in our view, with a more sensible basis and continuous basis of comfort than you could ever achieve by visits to overseas firms, however

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regularly you might wish to do that, given the enormous resource complexities and complaints of going down that route, and it would also overcome the enormous logistics difficulties of language, local professional standards, et cetera.

Now, I believe that there are already many foreign regulators of equivalent standards to those which the Board intends to operate in, but, and I think this is an important point to stress, this is a fast-moving scene. Self-regulation, which was the norm here as in many other countries in the past, is fast giving way to public interest oversight for the very reasons that you have changed here. Many countries had already moved away from self-regulation before Sarbanes-Oxley was drafted, and I have no doubt that that trend around the world will continue.

In January of this year, the United Kingdom announced the results of its post-Enron review of the profession. It concluded that the body that carries out the inspections in the United Kingdom was highly regarded for its integrity and commitment to effective monitoring of the audit function, but the U.K. Government was determined not to allow us to become complacent in any way, and it went on to decide that those operations should be further strengthened by a new and better-resourced

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professional oversight board so that all public company entities and the auditors of them will be inspected on a regular basis by a strengthened team of independent inspectors.

And looking around the world, there are other regulators who either have or will follow down the same route. You have heard about Ireland, you have heard about Switzerland, and you have heard about Belgium, but don't, I think, come to the conclusion, because a country isn't represented around the table this afternoon that doesn't mean to say that they're not taking matters seriously.

What I was proposing to do was just to mention two countries more or less at random that haven't been mentioned today just to give you a flavor of what is going on around the world, and the two countries that I was going

to focus on were Hong Kong and India, probably small countries in their own way, with small numbers of registrants, but it is nevertheless symptomatic of what is happening around the world that the call to arms that resulted in Sarbanes-Oxley in this country has been heard elsewhere around the world.

Although the profession in Hong Kong is currently self-regulated, discussions are in place with the Hong Kong Government to allow more external involvement in the regulation of the profession. The Hong

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Kong Society of Accountants announced a revision to its Investigation and Discipline Committees so that there was proper public interest representation on those committees. They are harmonizing their accounting and auditing and ethical standards with those best practices in the world.

They asked the U.K.'s joint monitoring unit, the inspection unit we set up many years ago, to carry out a review of their procedures so that their own inspection regime can inform to best practice, and under the Hong Kong securities and futures ordinance which comes into effect tomorrow, the SSC is empowered to require production of records and documents to do with listed companies, and their powers will include powers of access to Hong Kong auditors and their work papers and they will be permitted to cooperate with outside regulators if that is deemed to be in the public interest.

A similar pattern is emerging in India, where we have self regulation, still, but an inspection regime is about to be introduced, towards the end of last year the Indian Government Commission of Review of the Regulation of the Accounting Profession setting up independent quality review boards to strengthen the existing peer review system and significantly enhancing discipline.

Now, all of those are not intended, clearly we don't have the time to have a comprehensive tour of

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regulation around the world. It is merely to make the point that this is a fast-moving scene, and that there are many different ways in which you will be able to interact with regulators around the world as they strive to improve their systems for regulating audit firms.

I believe today should be seen as the beginning of a dialogue with overseas regulators to ascertain how the Board can place reliance on the work of those regulators and it also should be seen as the beginning of the development of a global regulatory system to meet the needs of global capital markets, global investors, global business and, indeed, the global accounting firms themselves, and this will not only give benefits in terms of improved regulation, but also address the concerns that you've heard about on the costs and practicalities of double inspection, and also address the legal impediments that we've also heard about.

Thank you.

MR. NIEMEIER: Thank you, Mr. Lerner. Mr. Muter, PWC Canada.

MR. MUTER: Thank you, Chairman, Chairman Donaldson, ladies and gentlemen. I would like to thank you for this opportunity to speak here. As you say, I'm a partner with PriceWaterhouse Coopers in Canada, and this is a very important issue for us that we're facing here.

My firm alone has over 100 SEC registrants, so you can see the impact that this exercise has on us in Canada.

I would also like to say that we fully support the goals of the Act to enhance audit quality and investor protection and restore investor confidence. These are common goals that we have and we fully support them, but it has been discussed around the table here there are certain issues of foreign law and conflicts that will affect the ability of foreign firms to complete the proposed registration form and then work with respect to the inspection exercise and discipline thereafter, so we do recognize that those impediments exist.

Our intention is to provide some constructive comments to contribute to achieving the objectives of the new framework in an efficient and effective way, and I think that many of these issues, as has been mentioned before, can be addressed by the PCAOB working cooperatively with the foreign regulators, the home country regulators who have these similar objectives, so I think very briefly I would just ask that the Board take the opportunity to work with those home country regulators to meet those objectives, I think for several reasons.

The first one is that to the extent that the local laws or impediments can be resolved or addressed to achieve these objectives, I think it can most effectively

be done, most readily be done by the home country regulators. They will have access to the opportunity to make the changes, they will know what the issues are, and probably be in the best position to address these impediments, so that the local regulators could be in the best position to deal with those issues.

Secondly, as has been mentioned by others, the local regulators will have their own programs, inspection, registration discipline in place, the cooperative arrangements with them would enable the PCAOB to establish a reliable mechanism or mechanisms to utilize the work of those home country regulators, and we think that will be very important.

And thirdly, such an approach would overcome duplication. In other words, we all want to avoid duplication of oversight and the problems that could arise, and an effective, cooperative approach we think would overcome that difficulty.

So very simply, we think that cooperative arrangements with foreign regulators would ensure that the objectives of the PCAOB and the home country regulators can be jointly achieved.

Thank you very much.

MR. NIEMEIER: Thank you. Mr. Gilbert of the Pennsylvania Public Employees' Retirement System.

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MR. GILBERT: Yes, thank you for the opportunity to address this Board. My name is Peter Gilbert. I'm the chief investment officer of the Pennsylvania State Employees' Retirement System, and our acronym, if you can stand one more, is PPERS. We are one of the oldest and largest pension systems in the United States. We were founded in 1923. We were designed to accumulate and manage assets exclusively for the benefit of our members and beneficiaries, which number over 200,000 at the present time. Current assets are $21 billion. We are a well-diversified fund with about a quarter of those assets invested overseas.

I am neither an accountant nor an auditor nor a lawyer. I would like to take a different point of view, which is that of an institutional investor, and believe that the audit process is really integral to the confidence required of financial markets to operate effectively and in that regard in the last several years the crisis involving the number of companies both here and abroad have focused attention on the integrity of the audit process, particularly its oversight.

The public's trust that audited financial statements provide an accurate picture of companies' finances is essential to the confidence that the capital markets require. The auditing failures associated with

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the recent corporate scandals have been a major factor in the erosion of that trust, which has had a significant effect certainly on our retirement system, capital markets generally, and the beneficiaries of that system.

We believe that global capital markets could be made more efficient if accounting standards were harmonized on a worldwide basis. Finding that common ground to achieve higher quality standards so that the infrastructure of global economy can advance towards an integrated, international capital market is critical.

With that preface, I would like to say that it is in the public's interest, but more specifically the interest of investors in the foreign public accounting firms should, I believe, at a minimum be required to register with the PCAOB as they access U.S. public markets. Exemption from other areas such as inspection and enforcement may be desirable if equivalent standards, procedures and active enforcement are in place, verifiable and transparent.

If foreign companies seek access to U.S. capital through U.S. exchanges they should adhere to either the same or very similar U.S. accounting standards as U.S. companies. This is particularly important, I think, for many institutional investors that invest in passive indices, where the exposure is not based on in-depth

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analysis of individual and particular companies.

It is critical that the audit process be timely and transparent and there be active oversight, particularly from independent boards of directors,

independent audit committees, and independent regulatory entities such as the PCAOB.

Thank you.

MR. NIEMEIER: Thank you, Mr. Gilbert. Mr. Peña of Deloitte & Touche, Chile.

MR. PEÑA: Thank you, Mr. Chairman. Members of the Board and Commissioners and ladies and gentlemen, I am Jorge Peña. I am a partner with Deloitte Touche. I have spent most of my 40 years in the profession in Latin America, starting off with one of the smallest countries, which is Uruguay, and spending most of the last 20 years in Chile.

It is obvious that we all support, we definitely support and I very much support the objectives and the goals of the Sarbanes-Oxley legislation and the equivalent legislation and regulations that are being put in place around the world. They all have the same effort of restoring public confidence in the markets, and that is very definitely supported and approved by us.

For Latin America, and I want to speak a little bit about Latin America, we come to some different types

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of markets than what you have been talking about, certainly much smaller domestic financial markets, less sophisticated, perhaps, investors, or some of them are highly sophisticated, but most importantly, markets that require vast amounts of capital investment, growing companies, growing economies, and that is one of the reasons why Latin America is one of the regions that has most accessed the foreign markets because it doesn't have sufficient power in its domestic markets to raise the amounts of capital that are needed to develop the region.

This is probably going to be true more and more so in other developing areas of the world. The access to the international financial markets is critical, and therefore the work done by regulators like the PCAOB is fundamental, because if they do not have access to these markets those countries will not grow.

All over Latin America the recent developments have had effects. Regulation and regulators have been empowered or are being empowered to much more active and important participation in the supervision of standards and of accounting firms and of the markets in general, and through IOSCO and other organizations they are in the process of modifying, increasing, and also streamlining and uniforming their positions.

They tend to look to other regulators. They

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don't tend to invent, because they look to the more advanced regulators and especially they look to the U.S. because so much of our international capital flows through the U.S. markets, so therefore the success of the U.S. market is critical, and they tend -- and I am going to generalize, but of course one shouldn't, but they tend to highly respect the work done in the past by the SEC, and I suspect they will tend to look to the PCAOB as well for guidance, illustration, and help.

Therefore, we definitely urge you, all the regulators around this table and the ones that are not here represented, and certainly we want to work together. This would create -- 1) it would make life easier for all. It will help to ease our duplications, or just differences that can be overcome. Convergence is one of the buzz words of the time, and I think in this area it tends to work very well.

Also, it will help develop those regulators and the local markets, which can only be a good thing for the investors in general, and it is not only the investors who invest directly through the U.S. markets, but the counterparts of having active and well-regulated markets on the other side is what makes ADRs work. After all, companies have to be listed on both markets for arbitration and all the other things to work, and to make

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a listing in the U.S. make sense.

And thirdly, I think cooperation will help us get around a lot of the legal difficulties that have been identified. As in the U.S., in other countries the local regulator has been given by law certain powers that go beyond the strict limitation of the law. They tend to be authorized to overcome, legally authorized to overcome such questions as access to company information, confidentiality and so on, in the fulfillment of their duties.

Therefore, cooperation could well achieve the Board's objectives without having to get into the problem of having to change legislation, which is a much, much greater problem, because it is really outside the hands of anybody sitting around this table. I mean, it is in fact in the hands of our respective legislators, but we can use the powers that all the regulators have, and all regulators do have quite a bit of power in their respective countries, to overcome some of the problems that we have seen, so I believe and strongly urge that the cooperation that already has existed in the past with the SEC and the foreign regulators be extended to the PCAOB, and that way we can all work together to improve the markets, not only the U.S. market but all global markets, the developed markets in Europe, and the underdeveloped

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markets in Latin America or elsewhere, and the power of the regulators and the work they do to achieve investor confidence and higher quality.

Thank you.

MR. NIEMEIER: Thank you, Mr. Peña.

Mr. Jennings, and just one more thing we have to do. We have about 10 minutes left.

MR. JENNINGS: If you would rather I put my flag down, Mr. Chairman.

MR. NIEMEIER: Please feel free to go ahead and speak.

MR. JENNINGS: I did when we spoke last week raise one issue which has been mentioned a couple of times today, and in sort of theoretical terms, but I did give an

undertaking to the middle tier firms that I would raise this issue, and I feel that as a man of my word I should do so.

As part of my professional responsibilities I do come into contact with senior representatives of the middle tier accounting firms. This occurs both as chairman of the CCAB -- it is another one of those letters -- in Belgium, but also as a regular contributor to meetings of an informal grouping of European executives. This brings together the 12 largest European accounting networks outside the Big Four, including

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organizations such as Grant Thornton, BDO, RSM International, Baker Tilley International, Moore Stephens Europe, Moores Rowland International, to name but some.

The remarks that I want to raise do raise a number of public policy concerns that I think need to be considered by the Board. They have been raised already today, but I would just like to make some additional comments.

A number of these organizations represented in the middle tier group audit either SEC registrants or substantial subsidiaries, in some cases as the sole auditor, in some cases such as France or Denmark as joint auditors, and right now they are considering whether or not to register with the PCAOB. That decision not to register is being driven not by the desire to be difficult. It is being driven by commercial considerations.

If I may quote from an e-mail I received from one of these firms, they say, we have yet to decide whether the London firm will register with the PCAOB. The member firms of our international network are similarly considering whether to register. Our principal concerns include further exposure to risk, and the administrative burden of registration and ongoing compliance.

We know that the Big Four firms will at a

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minimum have to register their practices in nearly 40 countries, and if they wish not to be excluded from future audit proposals of SEC registrants they will, for competitive reasons, have to register potentially a further 20 or so national practices where there is currently no need so to do.

What the middle tier firms will do is anyone's guess, but if they are debating the registration decision in a market the size of the U.K., the next biggest market after Canada, the chances of resignation in smaller markets must be very high indeed. According to my statistics, middle tier audit firms perform the audits of about 160 foreign SEC registrants worldwide.

I think my basic remark here, Mr. Chairman, is that at a time when national regulators around the world are expressing concern about the further concentration of the Big Four firms following the demise of Arthur Andersen, it seems unfortunate that one of the consequences of the Sarbanes-Oxley Act could well be to

encourage yet further concentration, and this cannot be what Congress intended or, indeed, cannot be in the public interest.

Thank you for your indulgence.

MR. NIEMEIER: Thank you, Mr. Jennings.

We have about seven minutes left in this session, and we have had some very helpful comments. Thank you, all of you for your comments. A number of you have strongly suggested, if not said, that the Public Company Accounting Oversight Board can rely on home country inspections. Can the accounting oversight board rely on home country inspections to monitor compliance with U.S. GAAP and U.S. securities laws?

Yes, Mr. Wright.

MR. WRIGHT: Mr. Chairman, I had my flag up slightly before your question.

MR. NIEMEIER: I apologize. I didn't see you.

MR. WRIGHT: But I believe that it should be a fundamental understanding here that the European Union does not start from zero. The European Union starts from registration systems that date from nearly over 20 years, and oversight systems in every member state which, I said earlier, take different forms, and we can provide you with all the information about those different forms.

I want to, if I may, respond to one or two comments made from the investment community, my colleagues here on the right from Pennsylvania and Wisconsin. We fully share your views of restoring confidence in capital markets. Indeed, if you look at how the European capital markets have reacted post-Enron, post-WorldCom, you will see, in fact, that they have gone down and suffered in many degrees more than U.S. capital markets, so we fully understand what lack of confidence in capital markets is all about.

We totally share those goals, that we need to restore confidence in capital markets through working together and convergence. We need global solutions for global capital markets.

Now, if you want everybody to come to the U.S. market and reconcile with the U.S. GAAP, sooner or later in the European Union, as we have chosen international accounting standards, and we have the goal of an international capital market in Europe, and we are well on the way to getting there, to create the legal framework for doing that, we will have a situation where all U.S. firms seeking capital in the European market will have to reconcile to the IAS.

We don't like that solution. We believe the right solution is to converge globally, and that's why we welcome the Norwalk Agreement between the International Accounting Standards Board and the FASB to work precisely on that approach, and it is precisely that approach which we believe should be applicable in the case of oversight and enforcement, working together as two equal parties and, indeed, with other international colleagues, to work

out the way forward, not for one side to impose on the others their model.

So I do insist that it is very important that we use these ideas that have been expressed today from a number of us around the table to think very carefully about the implications. The conflicts of law are very real. We will come onto the data protection problems, perhaps, in the next section. These are very serious.

Finally, Chairman, I would like to say that, can we imagine a world -- can we imagine a world here where all U.S. audit firms would have to register in the future European Union with 25 different national oversight bodies in 19 different languages? That is not the world we want. That is not the world we want, but in order not to have that world, we believe that it is important to work together, respect equivalence, respect sovereignty, and move forward on that basis of finding global solutions to global problems. We do not want to have these conflicts. We want to find compatible, convergent solutions.

Thank you very much.

MR. NIEMEIER: Thank you, Mr. Wright.

Mr. Haas.

MR. HAAS: Thank you, Mr. Chairman. Only to give you in nontechnical terms an answer to your question I take the example of Switzerland. Others of my colleagues could take other national examples.

The Swiss law prohibits direct inspection action to be conducted in Switzerland by agents of an entity which exercises public functions like, for example, the PCAOB. No direct inspection action can be exercised in Switzerland. Swiss penal law prohibits release of economic secrets to a foreign entity, once again, like the PCAOB.

No waiver is possible, as it is penal law, and Swiss professional accounting secrecy data protection, banking secrecy laws protect the confidentiality interests not only of the audit client but also of the audited client's clients, partners, et cetera. Any release would require consent of these third parties, which for obvious reasons is at least difficult to obtain. Thus, any inspection could not relate to data information, work papers, et cetera, containing the full extent of third party information.

You have this all in detail in the submission we gave to you some days ago.

MR. NIEMEIER: Yes, thank you, Mr. Haas.

Mr. Muter.

MR. MUTER: Speaking with respect to Canada, I believe the opportunity does exist, the opportunity does exist to establish some sort of reliance by the PCAOB on the equivalence of the CPAB regime in Canada. The two programs are being developed at a similar time with an opportunity to recognize the needs of each other, and I am just speaking from listening and reading on this subject

myself, but I think some arrangement could be reached whereby the PCAOB could rely on the activity.

MR. NIEMEIER: Very good, thank you.

Mr. Grewe.

MR. GREWE: Thank you. Mr. Chairman, just briefly to comment on the particular point about whether in a country like the U.K., where we clearly have home country inspections, it could look at compliance with the U.S. GAAP, ethics, and independence standards.

I think, and I stand to be corrected by U.K. colleagues who happen to be here with various hats on around the table, I think it unlikely that our existing joint monitoring unit would put any particular focus on that. The framework in which it is set up, certainly under our law is to focus on the audit of the U.K. companies to U.K. requirements.

That said, I think this shows exactly the sort of area where there needs to be discussion and debate, because I think somewhere in there is the makings of a practical way forward. Yes, there are problems to be overcome, but there is not a sort of simple way of willing it to happen.

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There would need to be an understanding and arrangement, not the least on, presumably in order to provide the information to the Board on those particular topics to give you the sort of assurance to find ways and gateways in which the information can be transferred, and that takes in some of the other issues we have talked about, and they may vary between countries, but I think, I very much doubt at the moment that is something that is routinely looked at.

I think U.S. GAAP has actually come in, in any event, not all that long ago as a formal requirement from the SEC on overseas registrants. I think we would call it creeping into audit reports for the last, perhaps 3 or 4 years, as a formal requirement.

Thank you.

MR. NIEMEIER: Thank you. Mr. Matsuo.

MR. MATSUO: Well, thank you very much, and I basically support the idea that Mr. Wright of the European Commission states, although Japan is not a E.U. country, a member country, and in addition to that I would like to add that, well, from the U.S. investors' point of view that the high quality auditing is very important, but we have to note that for example the Japanese corporations which are listed on the New York Stock Exchange choose by themselves to be listed in the New York Stock Exchanges.

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But with regard to the audit firms which audit these corporations, the listed Japanese corporations in the United States, they have not actively chosen to audit the listed corporations in the United States, so it is okay for the listed Japanese corporation to be subject to the U.S. securities laws, but that does not necessarily mean that the Japanese auditing firms also treat it, or also are required to be registered with the PCAOB.

Thank you.
MR. NIEMEIER: Mr. Lerner.
MR. LERNER: I would like to just come back to the question I think you did pose, to what extent would the PCAOB be able to rely on foreign company inspections to give the comfort that they need on U.S. GAAS and independence?
John Grewe is absolutely right, it is not a current focus of the U.K. inspection regime, but in the same way as we are asking for something from you in this respect, you have a right, I think, to ask for something from us, and we have the obligation to come up with a constructive way in which those comforts can be given to you.
If that means some strengthening of the resources available to the independent monitoring unit, then that is something that needs to be looked at, because

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if the end game is worthwhile in terms of mutual recognition, then there is a price to pay in terms of putting more resources. Then I think that is a price we should look seriously at. That is in my view all part of the dialogue that is to come.
MR. NIEMEIER: Very good. Thank you, Mr. Lerner.
Mr. Devlin.
MR. DEVLIN: Just briefly, I think your question is a very fine one, and it enables me to point to a couple of issues that arise from it. The first is on the strictly narrow point, should you be able to rely on home country inspection and regulation. As I said previously, FEE is of the view that that is the most effective for legal and other reasons, providing, perhaps, of course that the particular national system meets some agreed principles and criteria that are established, and which, if a regulatory dialogue takes place, you can have a large say in determining.
As my colleague, Mr. Lerner said, I see no reason why, if you have a particular focus on U.S. GAAS and U.S. GAAP, any home inspection system could not be extended to encompass such things.
Thirdly, I would use this opportunity to pick up on the point very eloquently made by Mr. Gilbert about the

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importance of convergence. If we have convergent standards in financial reporting, if we have them in auditing, which we could do, and which your board could have a very important role in International Assurance Board standards, and which are to be adopted probably in Europe from 2005 on, and if we have some common understandings about the quality of regulation and supervision of the profession, then I would have thought that the position of investors is vastly improved, because we are getting closer to a common language.
It may be spoken in different accents, and it may be there are slight variations in how it is done, but I think that your question pushes us toward a renewed

commitment to supporting global standards for global markets and doing everything we can to get convergence so that the whole thing works better, and that I believe to be true of oversight as with other elements of the convergence equation.

As Mr. Lerner said, I am sure the profession can help you by supporting the sort of thought that might be at the back of your mind about the short term issue of U.S. GAAS independent standards and so on needing to be specifically included in quality review programs. I don't see that as a problem of principle.

MR. NIEMEIER: Thank you, Mr. Devlin.

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Well, we are on the verge of breaking, the unpardonable, getting into our break. We will break for 10 minutes and come back at, let's say, 4:05. We will shorten it just a tad, and we want to still discuss access to non-U.S. work papers as well as registration issues.

(Recess.)

MR. NIEMEIER: We will start with the second session. If anyone in the audience has a question and filled out an index card, if they would raise their hand, someone will come by and take it from you. We have had, obviously, a very healthy discussion so far. One of the issues related to the first session, which certainly is related to the second session also, is access to non-U.S. firm work papers.

We want to understand a little better what impediments there would be to actually obtaining, that is, the Public Company Accounting Oversight Board obtaining access to the work papers of non-U.S. firms. A number of you have already commented on it. We have an understanding that there may be some conflicting laws, but the idea, for example, Dr. Knorr, that you had mentioned that the third parties may be a problem, but it sounded like at least as far as the audit firms were concerned, the issuers may be willing to give a consent.

DR. KNORR: Well, from the German point of view

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I can only say that access to work papers causes exactly the same problems as disclosure of any other information, which means that if the work papers contain secrets which are not secrets of the firm but by third parties, which may be contracts which are confidential, et cetera, we have the same problems. The same legal impediments will apply to that question.

MR. NIEMEIER: But you seem, for example, in what you are talking about now, at least as far as the work papers are concerned, there is some portion of the work papers that may be actually obtainable.

DR. KNORR: Those that contain no secrets that are not at the disposal of the firm, so if the firm consents, the auditor is able to give access to the work papers, but the firm itself, the audited firm may not have the authority to dispose of all the work papers, and we have to take those up, maybe personal information which contradicts the data protection law, or maybe contracts

with third parties, et cetera, where there is a contract about confidentiality, for example, in a takeover case. Sometimes they agree confidentiality with a third party so they can't authorize somebody else to have access to the work papers. We would have to take those out.

MR. NIEMEIER: Thank you, Dr. Knorr.

Mr. Wright.

MR. WRIGHT: Thank you again, Chairman. I mentioned earlier problems, serious problems on these matters with three of our member states, France, Belgium, and Luxembourg. One of our member state's regulatory and legal system prohibits as a matter of sovereignty inspection of this type on their national territory.

I said earlier that their auditors are bound by professional secrecy to protect the facts and activities and information relative to their role. You have heard the explanation from our German colleague. In Sweden, auditors can only provide information to the Supervisory Board of Public Accountants. If the client could be harmed, such information is protected by law, same situation in Finland as well.

If we stray into the area of data protection we also enter into -- I mean, should the work papers contain sensitive personal information, we enter into a minefield of mind-boggling legal complexity which I think you maybe perhaps want to deal with later, but it would also run into very serious problems that this would be counter to European law, would require the data subject to an agreement, and even in some member states that may not be sufficient if it was self-incrimination.

So there are here a large number of significant legal difficulties, and we are prepared to put those on paper and explain them to you should that be of help to you.

Thank you.

MR. NIEMEIER: Thank you. Yes, Mr. Grewe.

MR. GREWE: Thank you. Just a brief comment. I think we shouldn't think that the starting point for discussion on audit working papers as if there has never been any cases in the past when there has been a question of whether or not U.S. regulatory authorities should have access to overseas audit working papers.

Indeed, there is, I suspect, quite a long history which I think, to be fair, has been quite a difficult one, even where there are agreements or memoranda between the U.S. and other countries which are meant to sort of regulate that flow of information, so I suspect that those sorts of arrangements need to be looked at.

I think the view is from the U.S. perspective that they have not always worked the way you would have liked them to have worked. I think it is just part of a starting point to look at those, but I agree also with what I think David Wright has said, in that many of the issues raised are, if you like, the same ones under a

slightly different guise of disclosure of any information under all those requirements.

I think without going on in any detail the U.K. requirements, which I am not incredibly familiar with, I think informed consent, to one of the points we discussed earlier, by those whose data it is, is obviously only a central requirement which doesn't, even in the U.K., sort out all of the problems for exactly the reasons given about third party information, or employee confidentiality.

Now, it depends what sort of information is in there which would be transferred, so I think overall that again is an area where there needs to be more discussion and thought, but we're not starting from a completely blank piece of paper. It may not be a very neat piece of paper at the moment, but there is some information by way of background.

Thank you.

MR. NIEMEIER: Thank you, Mr. Grewe. Mr. Matsuo.

MR. MATSUO: Thank you, Chairman. The issue of the audit papers, it is the duty of CPAs of keeping information confidential. Under the Japanese CPA law, section 27 stipulates that the CPA should not leak or use their confidential information obtained through their services without just reason, so this means if there is a justified reason they can use that information, but this

reason includes only, for example,the consent of the insured or the legal necessity of the Japanese auditor oversight body, and this does not, I think, include in the case of the request of the Japanese auditor, or auditing firm, to provide the information such as the audit papers. I don't think they discharge the CPA's legal duty of keeping the information confidential.

Thank you.

MR. NIEMEIER: Thank you, Mr. Matsuo. Mr. Devlin.

MR. DEVLIN: Thank you, Chairman. Just on this issue, I think it illustrates well one of the reasons why FEE thinks that regulation and inspection and so on works best at national level if set at a sufficiently high benchmark.

It is also because it overcomes immediate problems, legal problems of access and so on that might otherwise be present. I would reiterate that FEE made an informal survey and identified countries such as Belgium, France, Finland, Luxembourg, and Sweden where the law seems even more strict than the general sort of obligations of confidentiality, and we would emphasize that an audit firm, much as we might like to, an audit firm cannot commit itself to doing something which is in contradiction with domestic law and regulation which may

be subject to criminal sanctions.

So even where the issue of consent from a client

might appear to solve the problem, and there are several countries where that at first sight might seem to be the case, other complications of a genuine character do seem to come into it, such as sensitive personal data, and any obligations the client might have to respect confidentiality themselves, which might not be every case, but it seems to me that this all illustrates the complexity of the issue, and it seems to me also to illustrate why working through a dialogue with time is worthwhile in achieving your objectives. It should help to strengthen domestic regulation where that is necessary. It should put you in a position to be able to demonstrate that you are fulfilling your public interest function, and I think to get to that position we do need time.

People earlier have spoken to one year. I am not sure what the time is, but let us say a year. I think that sounds sensible, including so as to solve this issue of working papers, and to understand it better. The trouble is to find oneself in a position where you are faced with a commitment on the part of an accounting firm that you don't really understand the implications of, and I think that so far as the Board is concerned it is very important that you do put yourself in a position to have a

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full understanding of the consequences of your registration requirements, and I think that will take time, hence my emphasis on that.

MR. NIEMEIER: Thank you, Mr. Devlin. Chairman Thiessen.

MR. THIESSEN: Thank you, Chairman. I should preface my response to your question by saying that I'm neither a lawyer nor an accountant, so you have to take whatever I say with that in mind. It does seem to me that obviously you need the consent of the audited firm, and there may be some information that would run into legal restrictions.

I guess what I keep hoping is that it would be possible to organize some kind of memorandum of understanding when there is a problem that you are worried about, that we can make arrangements which would provide you with the information you want, including working papers, subject to whatever legal constraints there are on us in doing it in a certain privacy or third party information. I don't see why we can't work it out.

MR. NIEMEIER: Thank you, Mr. Thiessen. Mr. Haas.

MR. HAAS: Thank you, Chairman. To answer your question, you find a detailed legal explanation in the papers we submitted. I could sum up like this. If you

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would have the consent of everybody involved, you could get working papers of the auditing firm, but we have in the Swiss legal system, in the penal law a clause which forbids everybody to work with a foreign entity, with a foreign authority.

I can cite this nice little article that you see the legal problems involved, whoever searches out

manufacture or business secrets in order to make them accessible to a foreign official, public body, or organization to a foreign private company or their agent shall be sentenced to imprisonment, or in civil cases penal servitude. In addition, a fine may be imposed. You see, this will be in a quite different situation if they give working papers to you.

MR. NIEMEIER: Thank you. Ms. Drought.

MS. DROUGHT: Thank you. I wanted to speak a little more generally about the enforcement aspect of the Board's powers. From SWIB's perspective, the legislation was very important in that it gave the oversight board real enforcement and sanction powers, and therefore we do want to emphasize that we don't believe exemptions would be appropriate with respect to foreign firms. However, we do support cooperation with home country regulators.

Having said that -- and I just wanted to address we have heard a lot about the conflicts of law problems,

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and I just wanted to emphasize that SWIB has every confidence you can work it out, as you have in the past. This is not the first time that the Commission's rules have had foreign implications. I note with the auditor independence release there were similar concerns about conflicts with employment laws and so forth of foreign jurisdictions, and in some cases the Commission made accommodations and also noted that the dialogue will just have to continue and see how this goes in the future to see how it's monitored.

And finally, I did note with respect to the enforcement problems the reading I've done notes that with respect to foreign firms the SEC staff stated that they just haven't gotten cooperation, and the enforcement efforts have been largely hampered by resistance from foreign regulators in certain instances, and I am confident that we are reaching more convergence and cooperation, but I just would like to emphasize that keeping that in mind, exemption from the inspection and enforcement powers would not be in keeping with the legislation.

Thank you.

MR. NIEMEIER: Thanks, Ms. Drought. Mr. Wright.

MR. WRIGHT: Thank you, Chairman. I would like to support what Chairman Thiessen said from Canada. I

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think he's put his finger on the right way forward on this audit working paper issue. That is precisely the solution that we have put forward to both the SEC and the Board in our analysis, and detail of issues on the Sarbanes-Oxley Act. We think this could come under the scope of the one-year proposal, that moratorium and proposal to work out all these complex issues, and so we very much agree with our Canadian colleague.

Thank you.

MR. NIEMEIER: Thank you, Mr. Wright. Let's move on to a different issue. Assuming that the Public Company Accounting Oversight Board proceeded in required

registration, would it be feasible for the firms to actually register within the 180 days? Yes, Mr. Lerner.

MR. LERNER: While nothing is impossible in this world, I think in most of the firms in our network it would be virtually impossible, because of the volume of data that is requested in the registration process, the distance back that you need to go in order to identify that data, and the consents you need to obtain before sending it.

Just to give one specific example, the requirement to get details of all criminal and civil actions going back ten years would require examination for each of the forty or so firms that we need to register around

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the world outside the U.S., examination of literally hundreds of file matters to determine whether they came within the definitions that you indicate in the rules, after, of course, we translated the definitions in your rules into U.K. legislative parlance. That will require the retrieving of files from archives and the analysis of each of those many hundreds of files, and that is just one aspect of the registration.

The fee data that we are required to collect is not in the way in which we normally analyze our fee data, so we'll have to manually rework it, et cetera, et cetera, et cetera, so I think the short answer to the question is, virtually impossible.

MR. NIEMEIER: And additional time required?

MR. LERNER: I think that will vary from firm to firm, depending on the size of the firm and depending on its own systems. I would certainly believe that if we were talking about a moratorium of one year in order to deal with the other issues that we have outlined this afternoon, then within that period we would comfortably be able to assemble all the required data and do the required analyses.

MS. GILLAN: May I ask a question? To try to avoid being separated by common language, I was hoping we could get a mutual understanding of moratorium. Is it

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being contemplated that this Board would put on hold any decision about registration of foreign auditors of U.S. registrants for a year, or that there would be an agreement that registration would begin in one year hence?

MR. LERNER: I suspect that if you went around this room and asked everybody, whatever their mother tongue was, what they understood by the word moratorium, you would come to probably as many different answers as there are people around the world, somewhere between those two spectrums.

I think you're right that some of the contributors have had one of those in mind and some have been at the other end of the spectrum. It would be wrong for me I think to opine on which end of the spectrum I personally would be, because I would only upset 90 percent of the people around the table.

MS. GILLAN: I appreciate that. Thank you.

MR. NIEMEIER: Thank you. Mr. Muter.
MR. MUTER: I think some of these issues overlap with the issues we have spoken about before the break. I think there is an issue here that spans them, and that is the time frame needed to address those issues when it comes to registration, so there is that issue out there, but beyond that, some of the data is more difficult for foreign firms to generate.

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For example, with respect to fees for auditing, that is not something that would have been required going backwards for foreign registrants. It will be going forward, but they won't have that information going backward, so that sort of information will be more difficult, extremely difficult to compile on a historic basis.
There are also the questions of interpretation of some of the matters that might be more difficult in foreign jurisdictions than domestically with respect to, for example, issues around litigation and professional matters that need to be disclosed. The practices and so on in different countries might be different to make the accessibility to that information more difficult, so those things all suggest more time is needed.
MR. NIEMEIER: Very good. Thank you. Mr. Peña.
MR. PEÑA: Mr. Matsuo said much of what I would say, so this will be short, but obviously we can achieve registration within a reasonable period of time if we get around some of the legal impediments and the real difficulties by maybe making a more streamlined registration that is envisaged in the current rules.
I'm not saying that this information may not, once we work out how we get around the legal impediments, may not be required later, but obviously putting it in now

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makes it impossible for some firms to register at all, and we're saying it's a matter of law. It's not a matter of will. It's not a matter of pouring in more and more resources, putting in thousands of accountants to go back through our back files or whatever. It's just that we cannot do it if it's required.
If it's either a voluntary thing or something that could be added later, once we work out the issues, that will be fine, and I think we have come to this sort of arrangements in the past. It would be nice to have all the information up front, but it may not be possible, and it probably is better to have some of the information than none at all, and that's just something I think you will have to consider in your own deliberations and in your discussions with the other regulators, what is feasibly possible to be requested without coming across a major stumbling block from another country.
And again, you may have to consider some registration information that is slightly different than what you're requesting from U.S. companies just because it is illegal or impossible to meet without breaking the law elsewhere.

MR. NIEMEIER: Thank you, Mr. Peña. Dr. Knorr.
DR. KNORR: It is beyond the power of the registrant, I think, to judge what time is needed if there

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is a minority of ex-employees that left the firm in conflict, or former clients which you lost because of litigation, and they have to consent. They might take the cases to court, and that takes a year or more. That's beyond our power.
If, on the other hand, you have to sign a commitment that you complied in every single case with the listings you want, there should be either an exception, or tolerance or whatever, otherwise a small minority of data missing would lead to not signing the commitment, so that's a problem. It is not in the hands of the registrant.
MR. NIEMEIER: Thank you, Dr. Knorr. Mr. Devlin.
MR. DEVLIN: Well, just briefly, I referred earlier, we all have heard about the potential legal issues, but it is necessary I think to make a comprehensive examination of the legal consequences and to identify any impediments to registration. That's one big reason why time is needed. A second reason is the extensive nature of the information sought. FEE's initial discussion of this in terms of the practical collection and verification of the data is that it's likely to be very challenging, and we particularly emphasized the extreme challenge that might pose to smaller firms.

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Overall, this seems to put very much in question, as Dr. Knorr has mentioned, the ability of firms -- we suspect from our initial discussion it puts in question their ability to deliver on what they are invited to promise, a situation which any accounting firm would feel extremely uncomfortable with, and speaking on behalf, if you like, of the European profession, we have very grave concerns about the timetable that is indicated.
MR. NIEMEIER: Very good. Mr. Jennings.
MR. JENNINGS: Thank you, Mr. Chairman. Just a brief remark. I mean, right now the foreign firms find themselves between a regulatory rock and a hard place, and that is not a comfortable place to be.
On one side we have the PCAOB taking a very firm stance on registration. On the other side we have the European Commission and the other regulators around this table saying they don't believe registration is required, and what we would like to see is this one-year period during which time the regulators around the world reach agreement as to what is and what is not required, and then, of course, the firms will comply. We are not looking for a way out. We are just looking for a way forward.
Thank you.
MR. NIEMEIER: Thank you, Mr. Lerner.
MR. LERNER: I just wanted to give you perhaps a

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bit of color to back up my earlier remarks about some of

the difficulties. Item 5.5 of the application for registration talks about other proceedings, and A.3 talks about an accountant, that rising out of such person's contact with an accountant that involves the violation of section 152, 1341, 1342, 34348, 49152, -153, -159, et cetera, of title 18 of the United States Code, or the substantial equivalent non-U.S. statute.

So I have to, in each of the 40 jurisdictions around the world that I'm responsible for organizing the registration of my firms for, I have to go through all the domestic legislation and find out, with the help of both local law, lawyers and U.S. lawyers what the equivalent criminal code is in the local jurisdiction in order that I can then analyze all my files against that. I think that gives you perhaps a practical idea of the scale of the undertaking involving the registration of 40 firms.

MR. NIEMEIER: Very good. Thank you, Mr. Lerner. Mr. Wright.

MR. WRIGHT: Thank you, Chairman. I think this is a very problematic deadline. I'd like to use a directive about data protection to illustrate the difficulties that our member states and our auditors will face.

Directive 19-95-46 of the European Union prohibits

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the transfer of personal data outside the European Union to countries that do not provide adequate data protection in accordance with the directive, and I think many in the United States are well aware of this directive.

Now, personal data in this context would certainly cover details of accountants, information on civil or criminal actions, disciplinary issues, sanctions, and so forth. Those are sensitive issues. Now, one way around that would be to have a safe harbor data flow contractual clause. Unfortunately the present clauses, as I understand, do not cover financial services issues, and therefore we could be in a situation whereby it would be legally impossible to transfer this data requested.

Furthermore, for sensitive information, consent is required by the data subject under this directive, and this would be certainly applied by our member states in a very rigorous manner. That consent must be freely given, specific, informed.

Furthermore, I read in article 8.5 of this directive that the processing of data relative to offenses, criminal convictions and so forth, may be carried out only under the control of official authorities in the member states, so you see here a number of very complex legal questions which would be faced by our auditors and by our member states in the application of

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the current draft from the PCAOB.

I use that as simply an illustration to suggest that this 180-day deadline looks extremely difficult from a legal perspective.

Thank you very much.

MR. NIEMEIER: Thank you, Mr. Wright.

Chairman Thiessen.

MR. THIESSEN: I must say, as we have talked about the registration issue I had in mind something that would initially require much less information than you are proposing.

My reaction was that I wanted to define the universe of firms, accounting firms doing public audit. I wanted to know which public companies they were auditing, and I wanted to know all those people in their firm who were engaged in doing that, and then follow it up later with more extensive information depending on what we felt we needed as time went by, but I thought the initial registration could be something rather more minimal, and I was wondering whether you had considered that approach, as opposed to the large amount of information that you are asking for initially.

MR. NIEMEIER: At this point we certainly have an open mind about what registration means when it comes to non-U.S. auditors. It is an issue that we have wanted

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to have not only written comments, but enough to have this roundtable. It is certainly something we need to study based on your comments.

MS. GILLAN: I would add, though, that the content of the registration is prescribed in a fair degree of detail in Sarbanes-Oxley itself. Our proposed registration only in very minor respects even varies, goes further than Sarbanes-Oxley, and it's only really in order to reasonably obtain the information that is prescribed by Sarbanes-Oxley.

Now, this again is for each registered public accounting firm and doesn't address the exemption issue, but our registration package as initially proposed is really very limited to the law.

MR. THIESSEN: And you have no flexibility with respect to timing?

MS. GILLAN: We have flexibility with respect to timing for the foreign auditors.

MR. THIESSEN: But not for domestic ones?

MS. GILLAN: No, except on a case-by-case basis.

MR. NIEMEIER: The mandate is clear when it comes to us.

MR. THIESSEN: I thought you had some timing flexibility in that.

MR. NIEMEIER: We would be open to how you

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interpret that.

(Laughter.)

MR. THIESSEN: Well, it's a good economist's interpretation rather than a good lawyer's interpretation, obviously.

MR. NIEMEIER: Mr. Grewe.

MR. GREWE: Thank you, Chairman. Just a brief point, talking about proposals to extend the time frame for foreign accounting firms, I just don't want us to get confused on some of the points that have been made around the table, and slip from what was being said earlier,

which was essentially I think that more time was needed to consider in a sense the principle of registration and also were there to be registration, what sort of information should be requested, rather than saying that an extension of the time was really just to enable the audit firm the time to collect the information as prescribed.

There was certainly a more fundamental reason for extending the time scale than the one we are talking about now. It is really just a point of clarification to avoid the one slipping into the other, which I think could happen.

MR. NIEMEIER: That's fair. Thank you.

Let's focus on another issue related to registration. I'm sorry.

MR. MATSUO: In addition to that, we have a language problem.

MR. NIEMEIER: Thank you. Let's focus on Form 1, the form we propose. Do you believe that there are certain portions of it that are inapplicable, that certain aspects of it should be modified? Do any of the requirements in proposed Form 1 conflict with the laws in your jurisdiction?

MR. DEVLIN: I can offer you just some initial comments from FEE, but I would point first of all to the whole principle of whether a regulatory dialogue might not deal with the matter in a better and more effective way, thereby fulfilling your mandate in a more definite and quicker way than by registration in the first place, but putting that to one side, in this case there seems to the members of FEE's council to be considerable ambiguity about some of the terminology used.

I mean, the example we have quoted in our comment letter is what might be constituted by pending legislation. Depending on your legal system, you could have an investigating judge. Might a preliminary investigation by him count as a pending case, or at what point does it become pending in the sense it is meant in America? That's a small example of it.

There are also the sort of instances which Mr. Lerner has pointed out, the difficulty of establishing what is the comparable law, the results of the language difficulty. I know there are 15 or 20 languages in which the national laws are promulgated in Europe at the moment, and there are very many practical difficulties, probably, that have not been identified, I would say.

It's not been possible, I would have thought in all reason, to identify the answer to this in the period since the proposals were published, even with the best will in the world, and the way we have put this at FEE is that we have not been able to give this full consideration, and this again is an argument for saying that it does need full consideration so that you can have the benefit of fully understanding the implication abroad of what your requirements might reasonably appear to be.

And equally from the point of view of those

affected, they need to understand fully and have a full opportunity to understand the implications of what they're being invited to commit to, and to assess whether they will be able to respect those commitments should they enter into them.

MR. NIEMEIER: Thanks, Mr. Devlin. Mr. Muter.

MR. MUTER: A comment on two or three points of detail, really. I mentioned the audit fee information going backwards, which is difficult to produce. Again

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with respect to fee information, it is obviously desirable that the content of that information be the same as required by the SEC independence rule so we're not gathering two different types of information.

I think another point I would make is that it would appear that some information on firm revenues, possibly litigation which would be required to be provided, would relate to non-SEC clients, and I think we should consider as a general matter that the firm should not be required to provide information that does not relate to SEC clients.

A final point I would make is that on some things in detail there should be some way of making it more efficient, for example, on the associated entities. I think it would be useful if foreign firms just cross-referenced the network firm, otherwise all 40 firms are going to be listing all 40 firms in their application, so some sort of cross-referencing might be useful in terms of what the foreign firms put in their Form 1 registration.

MR. NIEMEIER: Very good. Thank you. Mr. Lerner.

MR. LERNER: Again with the same caveat that Mr. Devlin had of not entering into the debate about whether this is -- not to prejudge the debate about whether registration is needed, but the whole of Part 5 I think

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could be looked at with advantage from the perspective of the foreign firms in order perhaps just to focus on really what the Board needs in terms of proceedings, what the real focus is in order to make the task of supplying the information in Part 5, which is I think from my judgment one of the most time-consuming aspects of the registration process.

If you could look at that again to see if you could narrow down the historic type of information relating to matters long dead and buried, that would be an enormous reduction in the burdens of foreign firms.

MR. NIEMEIER: Thank you, Mr. Lerner. Mr. Matsuo.

MR. MATSUO: Well, thank you. Well, I have the impression that the required information is excessive for PCAOB, because I think we should have two principles, that the Board need for information should be focused on the SEC-registered issuers in the United States securities markets, and not on issuers in the United States market. From this point of view, Part 3, Applicant Financial Information requires all the financial information of the

audit firm, but this kind of information is not necessary.
And the second one is, as other colleagues mentioned, Part 5, this listing of certain proceedings involving the applicant's audit practice, and under Part

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5, even the information here, information required which is not in connection with the issuer in the United States, but information should be limited to the one related to the U.S. issuers, and the second principle is that the Board should not be an oversight body of the Japanese audit firms.
I have a serious concern with Part 8 of the proposed form which says, constents of applicants, and require that the consents incorporate in and comply with any request for testimony or production of documents made by the PCAOB, this is very broad. Any request for testimony or production of documents is very broad.
We are the other oversight body in Japan. We have authority to require the Japanese audit firms to provide information when we think it is in the public interest, or when it is needed in the public interest for protection of investors, but here, the requirement of Part 8 is rather equivalent to our oversight power over Japanese audit firms, so this is not appropriate for the foreign oversight body, and excluding this kind of excessive information, then I think that the fact that the Board needs information, which Board's needs can be provided by us, not the Japanese audit firms, so I will reiterate that cooperations between the regulators is very important.

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MR. NIEMEIER: Very good. Thank you, Mr. Matsuo.
I should mention that we have actually gone beyond the time when we were going to end session 2. However, we have not received any questions from the audience, so we're going to proceed to the next question.
Should there be a difference in how the firms associated with the U.S. firm, that is, the non-U.S. firms associated with the U.S. firm, are treated from those that are actually not associated with the U.S. firm either in registration or oversight?
MR. DEVLIN: I referred a couple of hours back to FEE's belief in uniform standards of audit, and we think that's important to the public perception and confidence in the audit process, and because FEE has always believed that audit should mean the same thing in Europe -- an audit is an audit, so to speak -- we don't favor distinctions in the Board's approach to those public accounting firms that are associated entities of U.S.-registered public accounting firms and its approach to other foreign public accounting firms that are not so associated, so that's a short answer to your question.
MR. NIEMEIER: Very good. Thank you. Any other comment? Yes, Ms. Drought.
MS. DROUGHT: I just had a question. If the

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U.S.-affiliated firms, if there was no responsibility by the U.S. affiliate, I just wonder if there would be perhaps an incentive to steer audit work for those companies that trade in U.S. markets to the related foreign firm that does not have the same oversight and accountability.

MR. NIEMEIER: Mr. Lerner.

MR. LERNER: I could perhaps answer that. The audit of any registrant has to be carried out by a firm qualified to carry out audits in the country in which that registrant is domiciled, so the question of just willy-nilly shifting things around the world to our whim, a Belgian registrant has to be audited by a Belgian firm and a Swiss one by a Swiss, and we certainly don't move things around to suit, or to go for the lowest common denominator of oversight.

MR. NIEMEIER: Very good.

We are right at 5:00. I want to thank everyone for your participation. You have provided us with a great deal of information. It is a great supplement to your written comments, which we will be reviewing. In light of this roundtable, this Board will not be having its regularly scheduled public meeting later this week, but we will be having a public meeting later next month.

We intend to address the issue of registration sometime during the month of April. Issues related to inspection, disciplinary issues, further oversight are issues which we will probably not address during April, and it may take several months for us to actually reach our final conclusions on that, but thank you again. I know many of you traveled a long way, and we do appreciate it.

(Whereupon, at 5:00 p.m., the meeting was adjourned.)

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BRIEFING PAPER

PROPOSED AUDITOR REGISTRATION SYSTEM

MARCH 4, 2003 PUBLIC MEETING OF THE BOARD

At its public meeting on March 4, 2003, the Public Company Accounting Oversight Board ("Board") will consider whether to propose, and seek comment on, a registration system for public accounting firms. Section 102 of the Sarbanes-Oxley Act of 2002 (the "Act") prohibits persons that are not registered with the Board from preparing or issuing audit reports on U.S. public companies (i.e., "issuers", as defined in the Act) and from participating in such audits. 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 the Act. That determination must be made no later than April 26, 2003.

The proposed registration system consists of nine rules (PCAOB Rules 1000, 1001, 2100 through 2105, and 2300) and a form (PCAOB Form 1). In addition, the Board will consider whether to issue a public release discussing the registration system and announcing a roundtable concerning the operation of the registration system with respect to foreign public accounting firms.

Content of Proposed Rules and Forms

Appended to this paper are (1) a list of the titles of the nine registration-related rules, and (2) an outline of the instructions to PCAOB Form 1 (Application for Registration as a Public Accounting Firm). Set forth below are an overview of the

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proposed registration system and a list of some of the issues discussed in the release with respect to foreign public accounting firms.

A. Overview of the Proposed Registration System

- All public accounting firms that wish to prepare or issue audit reports on U.S. public companies must register with the Board. In addition, any public accounting firm that "plays a substantial role in the preparation and furnishing of an audit report" (as defined in the Board's rules) must register.

- While the definition of "public accounting firm" includes sole proprietorships, individual accountants that are associated with firms are not required to register. However, firms are required, as part of their registration application, to disclose the names of all accountants associated with the firm.

- The Board will propose instructions for its registration form (Form 1). However, the form itself will be web-enabled and available only electronically. Applications for registration must be submitted via the internet.

- Form 1 consists of ten parts, subdivided into 29 items requiring the disclosure of particular information concerning the applicant and its associated accountants and the applicant's issuer clients. The information these items call for is, in general, required by Section 102(b) of the Act.

- Applications for registration will be available to the public in accordance with Section 102(e) of the Act. The Board will not, however, disclose social security or taxpayer identification numbers (or equivalent foreign identifiers.)

- Applicants may request confidential treatment of any other portion of an application that contains non-public personal or proprietary information. The Board will decide whether to grant confidential treatment requests on a case-by-case basis.

- Applicants for registration must pay a fee to cover the costs of processing and reviewing applications. The Board has not yet established the level of the

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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.

- As provided in Section 102(c) of the Act, within 45 days of receipt of a completed registration application, the Board must (1) approve the application, (2) issue a written notice of disapproval, or (3) request more information from the prospective registrant.

- The Board's registration system is expected to be ready to receive registration applications in late June or early July, 2003. As noted above, public accounting firms must be registered with the Board if they wish to engage in issuer audits after the end of the 180-day period following the Commission's determination that the Board has the capacity to carry out the requirements of the Act. This period will end approximately October 24, 2003. In light of the 45-day review period, such firms' registration applications will have to be filed by, at the latest, early September. The Board recommends that these firms begin to compile the information necessary to complete Form 1 as soon as possible.

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. The Board may in the future 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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B. Registration of Foreign Public Accounting Firms

The Board's proposal does not exempt non-U.S. public accounting firms from registration. The Board's registration rules require registration of all public accounting firms that prepare or issue audit reports with respect to issuers, and of all public accounting firms that play a substantial role in the preparation and furnishing of such audit reports, regardless of the jurisdiction in which the firm operates.

The Board recognizes that the registration of non-U.S. firms may raise special issues. Over the course of the next 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 will convene a public roundtable concerning the registration 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 foreign public accounting firms. The date, place, and format of that roundtable will be the subject of a separate release.

With regard to the registration process, commenters will be 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?

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- 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 and furnishing of an audit report on a U.S. issuer, is the Board's definition of "substantial role" appropriate?

- 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 will be 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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Public Comment

Interested persons will be afforded an opportunity to express their views regarding the Board's proposed registration system. Because of the limited time available before the registration system must be operational, written comments must be received by the Board prior to the close of business on Monday, March 31, 2003. The release announcing the Board's proposal will contain detailed information concerning the submission of comments. In addition, as set forth above, the Board intends to convene a public roundtable concerning the registration of foreign public accounting firms.

The Board will carefully consider all comments concerning the registration system that are submitted either in writing or at the roundtable. Following the close of the comment period, the Board will determine whether to amend its proposals, will adopt final registration rules, and will submit those rules to the Securities and Exchange Commission for approval. Pursuant to Section 107 of the Act, Board rules do not take effect unless and until approved by the Commission.

* * * *

The PCAOB is a private-sector, non-profit corporation, created by the Sarbanes-Oxley Act of 2002. Its mission is to protect investors in the U.S. securities markets and to further the public interest by ensuring that public company financial statements are audited according to the highest standards of quality, independence, and ethics. The Board will be principally funded by fees collected from public companies. The costs of processing and reviewing public accounting firm registration applications will be recovered from registration fees paid by those firms.

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BRIEFING PAPER

PROPOSED AUDITOR REGISTRATION SYSTEM

MARCH 4, 2003 PUBLIC MEETING OF THE BOARD

APPENDIX

(1) List of Proposed Registration-Related Rules.

Rule 1000 -- Application of Rules

Rule 1001 -- Definition of Terms Employed in Rules

Rule 2100 -- Registration Requirements for Public Accounting Firms

Rule 2101 -- Application for Registration

Rule 2102 -- Date of Receipt

Rule 2103 -- Registration Fee

Rule 2104 -- Signatures

Rule 2105 -- Action on Applications for Registration

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

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(2) Outline of the Proposed Requirements of PCAOB Form 1 (Application for Registration as a Public Accounting Firm).

General Instructions

[There are seven general instructions to Form 1.]

Part I -- Identity of the Applicant

[This part contains eight items.]

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

[This part contains four items.]

Part III -- Applicant Financial Information

[This part contains one item.]

Part IV -- Statement of Applicant's Quality Control Policies

[This part contains one item.]

Part V -- Listing of Certain Proceedings involving the Applicant's Audit Practice

[This part contains six items.]

Part VI -- Listing of Filings Disclosing Accounting Disagreements With Public Company Audit Clients

[This part contains three items.]

Part VII -- Roster of Associated Accountants

[This part contains three items.]

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REGISTRATION SYSTEM FOR PUBLIC ACCOUNTING FIRMS	PCAOB Release No. 2003-007 May 6, 2003 PCAOB Rulemaking Docket Matter No. 001

Summary: After public comment, the Public Company Accounting Oversight Board ("Board" or "PCAOB") has adopted a registration system for public accounting firms. All U.S. public accounting firms must be registered with the Board if they wish to prepare or issue audit reports on U.S. public companies, or to play a substantial role in the preparation or issuance of such reports, after October 22, 2003. Non-U.S. public accounting firms that wish to prepare or issue audit reports on U.S. public companies, or to play a substantial role in the preparation or issuance of such reports, must be registered by April 19, 2004. The registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300), plus definitions that appear in Rule 1001, and a form (PCAOB Form 1). The Board will submit these rules and form to the Securities and Exchange Commission ("Commission" or "SEC") for its approval pursuant to Section 107 of the Sarbanes Oxley Act of 2002 ("Act") by filing an SEC Form 19b-4. The Board's registration rules and form will not take effect until approved by the Commission.

The Board recognizes that the registration of non-U.S. firms will raise special issues. Accordingly, the Board has permitted non-U.S. firms an additional 180 days before registration will be mandatory.

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Public Comment: The Board released for public comment proposed rules on registration, and a form and instructions, on March 7, 2003. The Board received 46 letters of comment. On March 31, 2003, the Board also held a public roundtable meeting on special issues raised by registration and oversight of non-U.S. public accounting firms.

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* * * * * * *

Section 102 of the Act prohibits accounting firms that are not registered with the Board from preparing or issuing audit reports on U.S. public companies or from participating in these activities.[1/] Section 106(a) of the Act provides that any non-U.S. public accounting firm that prepares or furnishes an audit report with respect to any U.S. public company is subject to the Board's rules to the same extent as a U.S. public accounting firm. Section 106(a) further authorizes the Board to require that non-U.S. public accounting firms that do not issue such reports, but that play a substantial role in the preparation of the audit reports, register.

The Act provides that 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

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[1/] 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.

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enforce compliance therewith.[2/] In order to permit public accounting firms to comply with this requirement, the Board has adopted a registration system. Section A of this release summarizes the operation of the Board's registration system.

The Board's rules require the registration of all public accounting firms that issue or prepare audit reports on U.S. public companies, or that play a substantial role in the preparation of such audit reports. However, the Board recognizes that the registration of non-U.S. public accounting firms raises issues that are not present in the case of U.S. firms. Accordingly, the Board has afforded non-U.S. firms certain accommodations to address, in particular, difficulties that may be posed by conflicts with non-U.S. laws and by differences in approaches and custom. Section B of this release discusses the special issues facing non-U.S. firms and certain accommodations made by the Board to address these issues.

The Board's proposed registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300), plus definitions that would appear in Rule 1001, and a form (PCAOB Form 1). The text of these rules, 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.

The Board has carefully reviewed all of the public comments received on the registration rules and form, as proposed in PCAOB Release No. 2003-001. Section B of this release includes discussion of the Board's response to comments regarding the registration of foreign public accounting firms. The Board's response to comments on specific proposed rules and requirements of proposed Form 1 are included in Appendix 3.

The Board's rules will be submitted to the Commission for approval. Pursuant to Section 107 of the Act, Board rules do not take effect until approved by the Commission.

[2/] See Sections 101(d) and 102(a) of the Act. This determination was made on April 25, 2003.

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A. Overview of the Board's 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.[3/] 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.[4/] 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.[5/]

The Board's registration requirements do not exempt non-U.S. 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.[6/] However, the Board's rules allow non-U.S.

[3/] Rule 2100(a).

[4/] Rule 2100(b). The phrase "plays a substantial role in the preparation or furnishing of an audit report" is defined in Rule 1001(p)(ii).

[5/] The term "issuer" is defined in Rule 1001(i)(iii). It should be noted that the definition of "audit report" in Rule 1001(a)(vi) is phrased to include only audit reports with 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.

[6/] Rule 2100(b).

accounting firms an additional 180 days (i.e., until April 19, 2004) to register with the Board. 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,[7/] 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. A firm must list on the firm's registration application certain individual accountants who are associated with the firm and who participate in or contribute to the preparation of audit reports.[8/]

2. Are accounting firms that only audit broker-dealers permitted or required to register with the Board? May accounting firms voluntarily register with the Board?

Section 102(a) of the Act only requires public accounting firms that prepare or issue audit reports on "issuers" (as defined in the Act), or that participate in these activities, to register with the Board. Section 205 of the Act, however, amends Section 17(e) of the Securities Exchange Act of 1934 ("Exchange Act") to require registered broker-dealers annually to file with the Commission a balance sheet and income statement audited by a registered public accounting firm. A number of accounting firms that currently audit such statements for registered broker-dealers, but that do not prepare or issue any audit reports on issuers (or participate in the preparation or issuance of any such audit report), have asked the Board whether they will be required

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[7/] Rule 1001(p)(iii).

[8/] See Part VII of Form 1. U.S. public accounting firms are required to list only accountants who are "persons associated with the applicant" and who provided at least ten hours of audit services for any issuer during the last calendar year. Non-U.S. public accounting firms are required to list only accountants who are a proprietor, partner, principal, shareholder, officer or manager of the applicant and who provided at least ten hours of audit services for any issuer during the last calendar year.

or permitted to register with the Board.[9/] In addition, several accounting firms that do not currently have any issuer audit clients, but plan or wish to in the future, have asked the Board whether they would be permitted to register.

While, consistent with Section 102(a) of the Act, the Board's rules would only *require* public accounting firms that prepare or issue an audit report on an issuer, or play a substantial role in preparing or issuing an audit report, to register with the Board, the Board's rules would *allow* any other public accounting firm to register. Accordingly, firms that, absent an exemption,[10/] are impliedly required by Section 17(e) of the Exchange Act to be registered, and those firms that want to register in order to be able to prepare or issue, or play a substantial role in preparing or issuing, an audit report for an issuer, may register with the Board. In designing and implementing its inspection and other programs, the Board will take into account the nature of the practice of a registered public accounting firm.

[9/] In addition, one public accounting firm asked whether it would be required to register if its practice consisted only of auditing employee stock purchase, savings and similar plans (Form 11-K filers). If a public accounting firm prepares or issues an audit report, or plays a substantial role in preparing or issuing an audit report, for any "issuer," as that term is defined in Section 2(a)(7) of the Act and the Board's rules, the public accounting firm is required to register with the Board, whether the "issuer" is a public traded company or not. Therefore, a public accounting firm that audits employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act of 1933, must register.

[10/] See Exchange Act Section 17(e)(1)(C) (providing that the Commission may, by rule or order, exempt a registered broker-dealer from any provision of Section 17(e) if the Commission determines that such exemption is consistent with the public interest and the protection of investors); see also Exchange Act Section 36 (Commission's general exemptive authority under the Exchange Act).

3. 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.[11/] The Board has adopted 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 Web site (or on a dedicated registration Web site linked to the Board's Web site). Form 1 will be Web-based and must be completed and submitted to the Board electronically.[12/] 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.

4. What information must applicants provide?

Form 1 consists of nine 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, either necessary to facilitate the Board's responsibilities or reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application.[13/]

[11/] Rule 2101.

[12/] Exhibits to Form 1 must also be submitted electronically. 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 Web site.

[13/] 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 and certain contact details concerning an applicant. The Board believes that such information is

If the submission of the information called for by Form 1 would cause an applicant to violate non-U.S. laws, Form 1 allows such applicant to disclose in its application the non-U.S. legal impediments that prevent it from furnishing information otherwise required by the application.[14/] In addition, the Board recognizes that, in some cases, particular parts of Form 1 may not be relevant to some applicants. For example, firms registering voluntarily, or solely because they audit statements required under Section 17(e) of the Exchange Act, would have no information responsive to Part II of the Form.

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

Rule 2300(a) provides that applications for registration will be made public as soon as practicable after the Board approves or disapproves an application. This is consistent with Section 102(e) of the Act, which provides that applications for registration "or such portions of such applications * * * as may be designated under the rules of the Board" must be available for public inspection. However, Section 102(e) also states that public availability of registration applications is subject to "applicable

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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 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 certain proceedings that are no longer pending, and has required that information in Part V of Form 1.

[14/] Rule 2105. An applicant claiming that submitting information would conflict with non-U.S. laws must identify the information that conflicts with non-U.S. laws, and include, as an exhibit to Form 1, a copy of the relevant portion of the conflicting non-U.S. law and a legal opinion that submitting such information would cause the applicant to violate the conflicting non-U.S. law. In addition, applications must include, as an exhibit, an explanation of the applicant's efforts to seek consents and waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation from the applicant as to its inability to obtain such consents or waivers. All applications and all exhibits must be in the English language.

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."[15/] In order to prevent the disclosure of such information, Rule 2300 provides for the confidentiality of portions of registration applications.

An applicant for registration may request confidential treatment of any portion of an application that has not been publicly disclosed, and either (i) contains information reasonably identified by the applicant as proprietary, or (ii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.[16/] 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.[17/] 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.[18/] The Board will decide whether to grant confidential treatment requests on a case-by-case basis. If the Board determines to deny a confidential treatment request, the applicant requesting the confidential treatment will be notified in writing 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.[19/]

[15/] 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 the disclosure by federal departments and agencies of personal or proprietary information, are not applicable to the Board.

[16/] Rule 2300(b).

[17/] Rule 2300(c). 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.

[18/] Rule 2300(d).

[19/] Rule 2300(e).

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

6. Is there a registration fee?

Applicants for registration must pay a fee.[20/] 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 yet to establish the level of the registration fee, but will do so in the near future. 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 and the number of its issuer audit clients.

7. 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 issue a written notice of a hearing.[21/] A written notice of a hearing will specify the proposed grounds for disapproval and may, at the applicant's election, be treated as the Board's written notice of disapproval for purposes of Section 102(c)(2) of the Act. A notice of disapproval may be appealed to the Commission.

[20/] Rule 2103. Registration fees will not be refundable, regardless of whether the application is approved, disapproved, or withdrawn.

[21/] Rule 2106.

In the event that a hearing is held on an application for registration, the staff of the Board's Division of Registration and Inspections will be required to present evidence supporting the proposed grounds for disapproval of registration. The applicant will have the opportunity to present contrary evidence and to demonstrate why, in its view, the application should be granted. At the close of the hearing, the presiding officer will issue a written decision concerning whether the application should be granted or disapproved and setting forth the findings and conclusions on which that decision is based. The decision of the hearing officer will constitute the Board's action on the application, except that hearing officer decisions will be reviewable by the Board, at the request of either party. If the hearing officer disapproves an application, and if the Board does not review the decision of the hearing officer, that decision will constitute the Board's written notice of disapproval for purposes of Section 102(c)(2). If the Board reviews the decision of the hearing officer, the Board will, upon the completion of its review, issue a further written decision concerning the application.

8. 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.[22/] 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 submitted to the Board through its Web-based registration mechanism. 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. The Board may request additional information when an applicant has failed to complete fully Form 1, or when the information is otherwise necessary in order to make a determination on the

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[22/] Rule 2106(b). As noted above, such action may consist of approval, issuance of a written notice of a hearing setting forth the proposed grounds for disapproval, or a request for additional information.

application.[23/] 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 on that basis provide written notice of a hearing to the applicant to determine whether to approve or disapprove the application, pursuant to Rule 2106(b)(2)), may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.[24/]

As noted above, an applicant that receives a written notice of hearing may elect to treat that notice (which will include the Board's proposed grounds for disapproval) as a final notice of Board disapproval of the application. Such an election will permit that applicant to appeal the disapproval to the Commission. An applicant that does not elect to treat a notice of hearing as a notice of disapproval (i.e., an applicant that proceeds to a hearing) will be deemed to have waived the provision in Section 102(c)(1) that requires the Board to act on applications with 45 days.

9. 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.[25/]

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

[24/] Rule 2106(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.

[25/] The Board may also consider rules and forms governing withdrawal from registration after approval of a registration application.

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10. 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. Before registration can begin, 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 until approved by the Commission. In addition, the Board must complete the construction and testing of its Web-based registration mechanism, some of which must necessarily occur only after the registration rules have been approved by the Commission.

As noted above, public accounting firms, with the exception of non-U.S firms, must be registered with the Board if they wish to engage in issuer audits after October 22, 2003. The Board's rules afford non-U.S. firms an additional 180 days within which to register (i.e, until April 19, 2004). In light of the 45-day review period, U.S. firms' registration applications will have to be filed no later than early September (and non-U.S. firms' applications will have to be filed by, at the latest, early March 2004) to ensure Board action before the date after which firms must be registered. Because any requests by the Board for more information will restart the 45-day review period, the Board encourages firms to file their applications as soon as possible.

The Board also recommends that both U.S. and non-U.S. firms begin to compile the information necessary to complete Form 1 as soon as possible in order to meet their respective deadlines.

B. Registration of Foreign Public Accounting Firms

The Board has determined not to exempt from registration any public accounting firm that prepares or issues, or plays a substantial role in the preparation or issuance of, any audit report on financial statements that are filed in the United States. Registration is the predicate to all the Board's other oversight programs – compliance with auditing and other professional standards, inspections, and discipline – and therefore an exemption from registration would be tantamount to a complete exemption from any oversight by the Board. Subsection B.1., below, discusses in more detail the reasons why the Board, based on the provisions of the Act and on pre-Act requirements and practice, is unable to conclude that a general exemption for foreign public accounting firms that audit, or participate in audits of, U.S. public companies is appropriate.

The Board recognizes, however, that the registration of foreign public accounting firms raises unique issues. Section B.2 discusses the Boards' response to comments regarding foreign registration and the changes to its proposals that the Board has made in response to those comments. Section B.3. discusses the Board's efforts to coordinate its activities with foreign regulators in order to minimize the burdens imposed on firms based in other jurisdictions that audit, or participate in audits of, U.S. public companies.

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." 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 registration rules reflect the exercise of this authority and require such firms to register.[26/]

The Board recognizes that its registration system will, for the first time, require non-U.S. public accounting firms (like U.S. public accounting firms) to register with a single U.S.-based body as a condition of preparing, issuing, or playing a substantial role in the preparation or issuance of, audit reports on U.S. public companies. However, non-U.S. accountants that participate in the audit of U.S. issuers 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 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.[27/]

[26/] Rule 2100.

[27/] Rule 2-02(b) of Regulation S-X, 17 C.F.R. 210.2-02(b).

- All financial statements filed as part of reports with the Commission must also be audited by an auditor that has satisfied U.S. independence requirements. Again, this applies whether the report is filed by a domestic issuer or by a foreign private issuer.[28/]

- Non-U.S. 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.[29/]

- Among those policies and procedures required by the SEC Practice Section 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 involve 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 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.

[28/] 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.

[29/] See AICPA SEC Practice Section Manual ("SECPS") § 1000.08(n).

independence standards, including independence requirements of the SEC and [Independence Standards Board] with respect to the SEC registrant."[30/]

- 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.[31/]

- 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.

While non-U.S. accounting firms that audit U.S. issuers have long been subject to U.S. securities laws, and U.S. accounting and auditing standards, the Board recognizes that registration of those firms raises additional issues and entails additional administrative burdens. For this reason, the Board has given careful consideration to the impact of its registration rules on non-U.S. firms and, as discussed below, has crafted certain changes to its original proposal to accommodate conflicts in law and differences in approaches and custom.

30/ SECPS § 1000.45, App. K.01(b).

31/ Id. at App. K.01(a).

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2. Public Comment on the Registration of Non-U.S. Auditors and Modifications to the Original Rule Proposal in Response

Under Section 106(c) of the Act, the Board and the Commission each have the authority to "exempt any foreign public accounting firm" from any provision of the Act as "necessary or appropriate in the public interest or for the protection of investors." The Board received numerous comments in letters from public accounting firms, foreign governments and foreign professional accounting associations, requesting such exemptions from the Board's registration requirements, as well as its inspections and disciplinary programs.[32/] The Board also held a public roundtable meeting to discuss special issues raised by registration and oversight of non-U.S. firms, at which 14 representatives of foreign governments, non-U.S. public accounting firms and professional organizations, and U.S. institutional investors participated.[33/]

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

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

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

would lessen competition among public accounting firms by discouraging some firms from registering.

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

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

Furthermore, in light of concerns with respect to conflicts with confidentiality, data protection, and privacy laws, the Board has eliminated or narrowed the scope of information required by Form 1, as originally proposed. Specifically, any requirements to provide Social Security numbers, taxpayer numbers, and comparable non-U.S. tax identifiers have been eliminated. In part to address concerns with respect to the confidentiality of information on criminal, civil and administrative proceedings in Part V, the Board has significantly narrowed the disclosure required for non-U.S. applicants. Also, the list of accountants associated with a non-U.S. firm has been narrowed. In particular, as revised, Form 1 requires non-U.S. accounting firms to a list only those accountants who are proprietors, partners, principals, shareholders, officers or managers of the applicant and who each provide at least 10 hours of audit services for any issuer during the last calendar year. Finally, to accommodate privacy restrictions related to employment in certain non-U.S. jurisdictions, the scope of "associated persons" from whom the applicant is required to secure consents has been narrowed to cover only those accountants identified on the list of accountants. As discussed above, to the extent that a non-U.S. law would prohibit disclosure of information that is still

required, new Rule 2105 permits a firm to withhold the information and submit instead (i) a copy of the conflicting non-U.S. law, in English, (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law, and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

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

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

In addition, the Board has tried to facilitate the reporting in Part II by allowing applicants to use estimates to the extent that such information has not been previously disclosed or is not known. Finally, in an effort to minimize the administrative burden of

compiling information for the registration process, the requirements in Form 1 to provide accountant names and license numbers, consents to cooperate with Board inspections and investigations, and information about certain legal proceedings, as applied to non-U.S. firms, have been significantly narrowed to include only partners and managers who participate in or contribute to the preparation of audit reports for issuers.

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

3. Cooperation with Non-U.S. Regulators

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

In addition, the nature of the oversight to be exercised over registered foreign public accounting firms is a matter the Board has yet to resolve. The Board is aware that several countries have adopted or proposed corporate reforms that include new regulatory oversight of the auditing profession, and many countries have already adopted or planned programs to register, inspect and discipline accounting firms that prepare and issue audit reports for filing in those respective jurisdictions. The Board expects that the various reforms being considered in other jurisdictions will continue to improve the quality of audit reports prepared by firms worldwide. In this regard, the

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Board has already commenced dialogue with other oversight bodies outside the United States in order to achieve its objectives generally, as well as to try to find ways to reduce administrative burdens and to provide for coordination in areas where there is a common programmatic interest, such as annual reporting, inspection, and discipline.

* * *

On the 6th day of May, in the year 2003, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Acting Secretary

May 6, 2003

APPENDICES:

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

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Appendix 1 – Rules Relating to Registration

RULES OF THE BOARD

SECTION 1. GENERAL PROVISIONS

1000. [Reserved]

1001. Definitions of Terms Employed in Rules.

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

(a)(ii) Accountant

The term "accountant" means a natural person –

(1) who is a certified public accountant, or

(2) who holds –

(i) a college, university, or higher professional 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 a college, university, or higher professional degree in a field, other than accounting, and

(ii) participates in audits;

provided, however, that the term "accountant" does not include a person engaged only in clerical or ministerial tasks.

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(a)(iii) Act

The term "Act" means the Sarbanes-Oxley Act of 2002.

(a)(iv) 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.

(a)(v) 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.

(a)(vi) 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.

(a)(vii) Audit Services

The term "audit services" means –

(1) subject to paragraph (a)(vii)(2) of this Rule, 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.

(2) effective after December 15, 2003, professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

(b)(i) Board

The term "Board" means the Public Company Accounting Oversight Board.

(c)(i) Commission

The term "Commission" means the Securities and Exchange Commission.

(e)(i) Exchange Act

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

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(f)(i) 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.

(i)(iii) 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.

(n)(ii) Non-Audit Services

The term "non-audit services" means –

(1) subject to paragraph (n)(ii)(2) of this Rule, services related to financial information systems design and implementation as defined in Rule 2-01(c)(4)(ii) of Regulation S-X, 17 C.F.R. 2-01(c)(4)(ii), and all other services, other than audit services or other accounting services.

(2) effective after December 15, 2003, all other services other than audit services, other accounting services, and tax services.

(o)(i) Other Accounting Services

The term "other accounting services" means –

(1) subject to paragraph (o)(i)(2) of this Rule, services that are normally provided by the public accounting firm that audits the issuer's financial statements in connection with statutory and regulatory filings or engagements and assurance and related services that are

reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services.

(2) effective after December 15, 2003, assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services.

(p)(i) 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" or "applicant") and "associated person of a public accounting firm" (or of a "registered public accounting firm" or "applicant") mean any individual proprietor, partner, shareholder, principal, accountant, or professional employee of a public accounting firm, or any independent contractor 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 on behalf of such accounting firm in any activity of that firm;

provided, however, that these terms do not include a person engaged only in clerical or ministerial tasks or a person whom the public accounting firm reasonably believes is a person primarily associated with another registered public accounting firm.

(p)(ii) 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 –

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(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report with respect to any issuer, or

(2) to perform the majority of the 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 necessary for the principal accountant to issue an audit report on the issuer.

Note 1: For purposes of paragraph (1) 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 principal accountant in connection with the issuance of all or part of its audit report with respect to any issuer. The term does not include non-audit services provided to non-audit clients.

Note 2: For purposes of paragraph (2) 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.

Note 3: For purposes of determining "20% or more of the consolidated assets or revenues" under paragraph (2) of this Rule, this determination should be made at the beginning of the issuer's fiscal year using prior year information and should be made only once during the issuer's fiscal year.

(p)(iii) 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.

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(r)(i) Registered Public Accounting Firm

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

(r)(ii) 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.

(s)(ii) Securities Laws

The term "securities laws" means the provisions of the law referred to in Section 3(a)(47) of the Exchange Act, as amended by the Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(s)(iii) State

The term "State" means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(t)(i) Tax Services

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

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SECTION 2. REGISTRATION AND REPORTING

Part 1 – Registration of Public Accounting Firms

2100. Registration Requirements for Public Accounting Firms.

Effective [Insert the date 180 days after the Commission's determination pursuant to 101(d) of the Act] (or, for foreign public accounting firms, [Insert the date 360 days after the Commission's determination pursuant to 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 1: 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.

Note 2: The issuance of a consent to include an audit report for a prior period by a public accounting firm, which does not currently have and does not expect to have an engagement with an issuer to prepare or issue, or to play a substantial role in the preparation or furnishing of an audit report with respect to any issuer, will not by itself require a public accounting firm to register under Rule 2100.

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. An applicant may withdraw its application for registration by written notice to the Board at any time before the approval or disapproval of the application.

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 submitted to the Board through its 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.

2105. Conflicting Non-U.S. Laws

(a) An applicant may withhold information from its application for registration when submission of such information would cause the applicant to violate a non-U.S. law if that information were submitted to the Board.

(b) An applicant that claims that submitting information as part of its application would cause it to violate non-U.S. laws must –

(1) identify, in accordance with the instructions on Form 1, the information that it claims would cause it to violate non-U.S. laws if submitted; and

(2) include as an exhibit to Form 1 –

(i) a copy of the relevant portion of the conflicting non-U.S. law;

(ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and

(iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

2106. 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.

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(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 determine that the standard for approval in paragraph (a) of this Rule is met, or if the Board determines that the application may be materially inaccurate or incomplete, the Board will:

(i) request more information from the applicant; or

(ii) provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings, to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval. Such notice may, at the applicant's election, be treated as a written notice of disapproval for purposes of Section 102(c) of the Act.

(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 for purposes of paragraph (b) of this Rule. The Board will take action on such supplemented applications as soon as practicable, and not later than 45 days after receipt of the supplemented application by the Board. If such firm declines to provide the requested information, or 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

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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 paragraph (b) below, an application for registration will be publicly available as soon as practicable after the Board approves or disapproves such application.

(b) 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 information reasonably identified by the public accounting firm as proprietary information, or (ii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

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(c) 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 paragraph (b) of this Rule.

(d) 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.

(e) If the Board determines to deny a confidential treatment request, the requestor will be notified in writing 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.

(f) Unless the applicant requests otherwise, the exhibit containing an explanation supporting a confidential treatment request will be afforded confidential treatment without the need for a request for confidential treatment.

(g) 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. In the event the Board receives such a subpoena, the Board will notify the applicant of such subpoena, to the extent permitted by law, to allow the applicant the opportunity to object to such subpoena.

(h) Pursuant to Section 101(g)(2) of the Act, the Board hereby delegates, until the Board orders otherwise, to the Director of Registration and Inspection the Board's functions under this Rule.

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Appendix 2 – Form 1

FORM 1 – APPLICATION FOR REGISTRATION

GENERAL INSTRUCTIONS

1. The definitions in the *Board's rules* apply to this form. Italicized terms in the instructions to this form are defined in the *Board's rules*. See Rule 1001.

2. Any *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.

3. 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.

4. 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.

5. 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 2102.

6. An applicant may request confidential treatment of any portion of its application for registration that has not otherwise been publicly disclosed and that either contains information reasonably identified by the applicant as proprietary information 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 99.1 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 or is protected from disclosure by applicable laws related to the confidentiality of proprietary,

personal, or other information. The *Board* will normally grant 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).

7. If an applicant is prohibited by the law(s) of a non-U.S. jurisdiction from submitting to the *Board* information requested by all or a part of an Item to this form, the applicant shall so indicate by making a notation under the relevant item number of the form and furnishing, as Exhibit 99.2 to the application for registration, the following information: (i) a copy of the relevant portion of the conflicting non-U.S. law, (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the *Board* with a consent or waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict.

8. 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.

9. Where this form requires non-historical (i.e., current) information, applicants may submit the information as of a date not earlier than 90 days prior to submission of the application. Such information will be deemed current for purposes of this form.

10. Information submitted as part of this form, including any exhibit to this form, must be in the English language.

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PART I – IDENTITY OF THE APPLICANT

Item 1.1 Name of Applicant

State the legal name of the applicant; if different, also state the name or names under which the applicant (or any predecessor for which the applicant is the successor in interest with respect to the entity's liabilities) issues *audit reports*, or has issued any *audit report* during the five years prior to the date of this application.

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. If available, state the Website address of the applicant.

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

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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 Item 7.1.

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.

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* dated 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*).

b. The date of the *audit report*.

c. The total amount of fees billed for *audit services* for the *issuer's* fiscal year for which the *audit report* was issued.

d. The total amount of fees billed for *other accounting services* for the *issuer's* fiscal year for which the *audit report* was issued.

e. The total amount of fees billed for *non-audit services* for the *issuer's* fiscal year for which the *audit report* was issued.

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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. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company issuers, the fees disclosed in response to paragraphs (c) – (e) 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* dated 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*).

b. The date of the *audit report*.

c. The total amount of fees billed for *audit services* for the *issuer's* fiscal year for which the *audit report* was issued.

d. The total amount of fees billed for *other accounting services* for the *issuer's* fiscal year for which the *audit report* was issued.

e. The total amount of fees billed for *non-audit services* for the *issuer's* fiscal year for which the *audit report* was issued.

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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. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company issuers, the fees disclosed in response to paragraphs (c) – (e) 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* dated during the calendar year in which this application is filed. In addition to the *issuer's* name, include, with respect to each *issuer,* the *issuer's* business address (as shown on its most recent filing with the *Commission*).

Note: An applicant may presume that it is expected to prepare or issue an *audit report* for an *issuer* (i) if it has been engaged to do so, or (ii) if it issued an *audit report* during the preceding calendar year for an *issuer*, absent an indication from the *issuer* that it no longer intends to engage the applicant.

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

For applicants that did not prepare or issue an *audit report* dated during the preceding or current calendar year, and that do not expect to prepare or issue an *audit report* dated during the current calendar year, list the names of all *issuers* for which the applicant *played, or expects to play, a substantial role in the preparation or furnishing of an audit report* dated 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*).

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b. The name of the *public accounting firm* that issued, or is expected to issue, the *audit report*.

c. The date of the *audit report*, if it has been issued.

d. The type of substantial role played by the applicant with respect to the *audit report*.

Note: Applicants that disclosed the name of an *issuer* in response to any of Items 2.1 – 2.3 need not respond to this Item. 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*, an applicant may presume that it is *expected to play a substantial role in the preparation or furnishing of an audit report* for an *issuer* (i) if it has been engaged to do so, or (ii) if it *played a substantial role in the preparation and furnishing of an audit report* during the preceding calendar year, absent an indication from the *issuer* or principal accounting firm that it no longer intends to engage the applicant.

PART III – [RESERVED]

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.

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PART V – LISTING OF CERTAIN PROCEEDINGS INVOLVING THE APPLICANT

Item 5.1 Certain Criminal, Civil and Administrative Proceedings

a. Indicate whether or not the applicant or any *associated person* of the applicant is a defendant or respondent –

    1. in any pending criminal proceeding, or was a defendant in any such proceeding in which a judgment was rendered against the applicant or such person, whether by plea or after trial, during the previous five years;

    2. in any pending civil or alternative dispute resolution proceeding initiated by a governmental entity (including a non-U.S. jurisdiction) arising out of the applicant's or such person's conduct in connection with an *audit report*, or a comparable report prepared for a client that is not an *issuer*, 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;

    3. in any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an *audit report*, or a comparable report prepared for a client that is not an issuer, 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 five 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;

b. In the event of an affirmative response to Item 5.1.a, furnish the following information with respect to each such proceeding:

    1. The name, filing date, and case or docket number of the proceeding.

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2. The name and address of the court, tribunal, or body 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* or comparable report.

5. With respect to each person named in Item 5.1.b.3, the statutes, rules, or other requirements such person was found to have violated (or, in the case of a pending proceeding, is charged with having violated).

6. With respect to each person named in Item 5.1.b.3, the outcome of the proceeding, including any sentence or sanction imposed. (If no judgment or award has yet been rendered, enter the word "pending.")

Note: *Foreign public accounting firm* applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

Item 5.2 Pending Private Civil Actions

a. Indicate whether or not the applicant or any *associated person* of the applicant is a defendant or respondent in any pending civil proceeding or alternative dispute resolution proceeding initiated by a non-governmental entity 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 5.2.a, 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, tribunal or body 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* or comparable report.

5. With respect to each person named in Item 5.2.b.3, the statutes, rules, or other requirements such person is alleged to have violated.

Note: *Foreign public accounting firm* applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

Item 5.3 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 or 5.2, the applicant may, at its discretion, furnish, as Exhibit 5.3, 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).

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 6.1.a or 6.1.b, 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 Applicants

List the names 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 *state*, agency, board, or other authority.

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Note: For purposes of this Item, applicants that are not *foreign public accounting firms* must list all *accountants* who are *persons associated with the applicant* and who provided at least ten hours of *audit services* for any *issuer* during the last calendar year. Applicants that are *foreign public accounting firms* must list all *accountants* who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

Item 7.2 Number of Firm Personnel

State the –

a. Total number of *accountants* employed by the applicant.

b. Total number of certified public accountants, or *accountants* with comparable licenses from non-U.S. jurisdictions, employed by 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.

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.

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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 1: 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 in the exact words of Note 2 below and must be secured by the applicant not later than 45 days after 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. Consents required by paragraph (b) of this Item are not required to be furnished as an exhibit to this form.

Note 2: Other than the insertion of the name of the *associated person*, the consents required by paragraph (b) of this Item must state: [Name of *associated person*] 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. [Name of *associated person*] understands and agrees that this consent is a condition of their continued employment by or other association with [name of applicant].

Note 3: For applicants that are *foreign public accounting firms*, the term "*associated persons*" as used in this Item means all *accountants* who are a proprietor, partner, principal, shareholder, officer, or manager of the applicant and who provided at least ten hours of *audit services* for any *issuer* during the last calendar year.

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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 name of the signer, the capacity in which the signer signed the application, 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:

Exhibit 1.5 Listing of Offices

Exhibit 4.1 Statement of Quality Control Policies

Exhibit 5.3 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 99.1 Request for Confidential Treatment

Exhibit 99.2 Evidence of Conflicting Non-U.S. Law

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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 4.1.3, etc.), and the applicant must provide a list of the title or description of each document comprising the exhibit.

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

The Board's proposed registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300), plus definitions that would appear in Rule 1001, and a form (PCAOB Form 1). Each of the rules and each part of the form are discussed below.

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.[1/] Other definitions are based on those used in the Commission's rules.

Accountant

Although used in the Act, the term "accountant" is not defined in the Act. As used in the Act, the term refers to a natural person, as opposed to a legal entity.[2/] 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

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

[2/] 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 * * *."

accounting firm.[3/] Therefore, to reflect the context in which the term "accountant" is used in the Act, and to distinguish the Board's definition from that in Regulation S-X, the Board is adopting a definition of "accountant" in Rule 1001(a)(ii) that is limited to natural persons.[4/]

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

[3/] 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).

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

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

change this part of the definition to refer to a "college, university, or higher professional degree."

Associated Entity

Rule 1001(a)(iv) defines "associated entity," as "with respect to a public accounting firm (i) any entity that directly, indirectly, or through one or more intermediaries, controls or is controlled by, or is under common control with, such public accounting firm; or (ii) any "associated entity," as used in Rule 2-01(f)(2) of Regulation S-X, 17 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.[5/]

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

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[5/] 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, at notes 490 & 491 (November 21, 2000).

interpretation of the term, in some contexts, and does not seem more definite than the SEC's interpretation.

Audit

In general, Rule 1001(a)(v) defines "audit" as an examination of an issuer's financial statements by an independent public accounting firm in accordance with the rules of the Board or the Commission for purposes of expressing an opinion on such statements. For the period preceding the adoption of the Board's applicable rules under Section 103 of the Act, however, the term covers an examination of an issuer's financial statements by an independent public accounting firm in accordance with generally accepted auditing standards ("GAAS").[6/] The Board has adopted the same meaning for "audit" as used in Section 2(a)(2) of the Act.

Audit Report

Rule 1001(a)(vi) defines "audit report" to mean "a document or other record (1) prepared following an audit performed for purposes of compliance by an issuer with the

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[6/] Because GAAS and Commission rules require interim reviews of issuers' financial statements by independent public accountants, the term audit includes work performed in the context of such reviews. See SAS 100 and Rule 10-01 of Regulation S-X, 17 C.F.R. 210.10-01; see also Section 2(a)(8) of the Act (implicitly stating that these reviews are audit services, by excluding from the definition of "non-audit services" services provided to an issuer "in connection with an audit or review of the financial statements of an issuer").

requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report or other document; or (ii) asserts no such opinion can be expressed." The Board has adopted the same meaning for audit as used in Section 2(a)(4) of the Act.

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

Audit Services

Rule 1001(a)(vii)(1) defines "audit services" as "professional services rendered for the audit of an issuer's annual financial statements and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports." This definition of "audit services" is intended to capture the same category of services for which fees were required to be disclosed as "audit fees" pursuant to the Commission's 2000 proxy disclosure rules.[7/]

[7/] 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).

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

Foreign Public Accounting Firm

Rule 1001(f)(i) defines foreign public accounting firm as a "public accounting firm that is organized and operates under the laws of a non-U.S. jurisdiction, government or political subdivision thereof." This definition, which follows closely the definition of foreign public accounting firm in Section 106(d) of the Act, is intended to clarify that the

term covers accounting firms that are organized and operate in any jurisdiction outside of the United States.[8/]

Issuer

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

Non-Audit Services

Rule 1001(n)(ii)(1) defines "non-audit services" to mean services related to financial information systems design and implementation as defined in Rule 2-01(c)(4)(ii) of Regulation S-X, 17 C.F.R. 2-01(c)(4)(ii), and all other services, other than audit services or other accounting services. This definition will be effective through December 15, 2003. Paragraph (2) of the rule provides that effective after December 15, 2003, "non-audit services" will mean "all other services other than audit services, other accounting services, and tax services." The definition in paragraph (2) is

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[8/] 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."

designed to be consistent with the category of services disclosed as "all other fees" under the Commission's revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. This definition is further addressed as part of the discussion of Part II of the Form below.

Other Accounting Services

Rule 1001(o)(i)(1) defines "other accounting services" as services that are normally provided by the public accounting firm that audits the issuer's financial statements in connection with statutory and regulatory filings or engagements and assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than "audit services." The Board has modeled its definition of "other accounting services" on concepts used in the Commission's recent revision of its auditor independence disclosure rules.[9/] The term is meant to capture two categories of services: (1) services the fees for which are to be disclosed as "audit fees" under the Commission's revised rules, but that were not previously disclosed as "audit fees," and (2) services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised rules.

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

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.[10/] 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."[11/]

The term is also meant to capture services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised auditor independence disclosure rules.[12/] In general, these are fees for "assurance and related services (e.g., due diligence services) that traditionally are performed by the independent accountant."

[10/] Id. At 39.

[11/] Id.

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

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."[13/]

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

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

The Board is adopting the same meaning for "person associated with a public accounting firm" as used in Section 2(a)(9) of the Act, with a few, technical modifications. Commenters raised a number of concerns about the proposed definition.

[13/] See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), as amended by Release No. 33-8183A (March 26, 2003), 40.

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

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

Rule 1001(p)(ii) defines the phrase "play a substantial role in the preparation or furnishing of an audit report" to mean "(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report with respect to

any issuer, or (2) to perform the majority of audit procedures with respect to a subsidiary or component of any issuer the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer necessary for the principal accountant to issue an audit report" on the issuer.

The first prong of this definition is based on language in Section 106(b)(1) of the Act.[14/] Note 1 to Rule 1001(p)(ii) explains that the term "material services" as used in this definition means services for which the engagement hours or fees constitute 20% or more of the total engagement hours or fees, respectively, provided by the principal accountant in connection with the issuance of all or part of its audit report with respect to any issuer.[15/]

[14/] 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."

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

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The second prong of this definition is based on a similar standard used in the Commission's auditor independence rules related to partner rotation.[16/] As Note 2 to the rule indicates, the phrase "subsidiary or component" is meant to include any subsidiary, division, branch, office or other component of an issuer, regardless of its form of organization and/or control relationship with the issuer.

For both the definition of material services as well as the second prong of the overall definition, the Board believes that a quantitative, as opposed to a qualitative, test imposes less of a burden on firms in determining whether or not they fall into this category. The Board has included a threshold of 20 percent, since this threshold is consistent with accounting literature on "significance" tests.[17/] Several commenters indicated their agreement with the 20% threshold.

[16/] 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, 22 (January 28, 2003), as amended by Release No. 33-8183A (March 26, 2003).

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

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

After carefully considering the comments it received, the Board has decided to keep both prongs of the definition, but to modify both prongs slightly and to clarify the second prong's application. Specifically, the Board has decided to add a sentence to Note 1 to the rule to clarify that "material services" does not include non-audit services

provided to a non-audit client. Second, to avoid capturing routine procedures on a significant subsidiary as part of an audit, the second prong has been limited to performing "the majority of audit procedures * * * necessary for the principal accountant to issue an audit report on the issuer." Finally, the Board has addressed commenters' concerns about the implementation of the second prong by adding Note 3 to the rule, which clarifies that the 20% determination should be made at the beginning of the issuer's fiscal year using prior year information and should be made only once during the issuer's fiscal year.

Public Accounting Firm

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

"any associated person of any entity" described in Section 2(a)(11)(A) as a "public accounting firm." The Board has not chosen to exercise this authority at this time.

State

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

Tax Services

Rule 1001(t)(i) defines "tax services" as "professional services rendered for tax compliance, tax advice, and tax planning." This definition is based on, and meant to include the same group of services the fees for which would be disclosed as "tax fees" under the Commission's recently revised auditor independence disclosure rules."[18/] More specifically, as set forth in the Commission's adopting release, "tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment planning-services" and "[t]ax planning and tax advice encompass a

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[18/] See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), as amended by Release No. 33-8183A (March 26, 2003), 40 (footnotes omitted).

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."[19/] This definition is discussed further below in connection with the discussion of Part II of the Form.

Rule 2100 – Registration Requirements for Public Accounting Firms

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

By introducing the "substantial role" test (defined through the quantitative test in Rule 1001(p)(ii) as described above), the rule clarifies the phrase "participate in the preparation or issuance of, any audit report with respect to any issuer" used in Section 102(a) of the Act. In so doing, the Board intends to create a bright-line test to make it

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[19/] Id.

easier for firms and others to determine which firms are required to register with the Board. Stated differently, a firm that does not prepare or issue audit reports with respect to any issuer, but that does "participate" in the preparation of such reports, is only required to register if that participation amounts to a "substantial role," as defined in Rule 1001(p)(ii).

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

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

viewed as a sole proprietor and required to register.[20/] Individual accountants that are associated with public accounting firms, however, are not required to register.

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

Several commenters suggested that the Board's proposed rules were unclear as to whether they required the registration of firms that do not plan to participate in audits of issuers after October 22, 2003, but that have issued audit reports for issuers covering periods prior to the mandatory registration date. These commenters noted that such a firm may be asked to issue a consent with respect to the use of its opinion for the prior period. To address this concern, the Board has added a note to the rule that provides that the issuance of a consent to include an audit report for a prior period by a public

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[20/] See Rule 1001(p)(iii).

accounting firm, that does not currently have and does not expect to have an engagement with any issuer to prepare or issue, or to play a substantial role in the preparation or furnishing of an audit report with respect to any issuer, will not by itself require a public accounting firm to register under Rule 2100.

Rule 2101 – Application for Registration

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

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

In addition, several commenters suggested that the Board should provide a procedure for applicants to withdraw their applications. In response to these comments, the Board has added a sentence to Rule 2101 providing that an applicant may withdraw

its application for registration by written notice to the Board at any time before the approval or disapproval of the application. The Board will consider rules relating to the withdrawal from registration of registered public accounting firms at a later date.

Rule 2102 – Date of Receipt

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

Rule 2103 – Registration Fee

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

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

Rule 2104 – Signatures

Rule 2104 requires each person signing the application for registration (including any consents) to manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing of the application for registration. Such a document is required to be signed before the application is electronically filed with the Board through the Board's Web-based system. Further, consistent with the Act's provision on the

retention of audit workpapers,[21/] filers are required to retain the manually signed documents for seven years. In addition, under the rules, the Board or its staff may request a copy of any manually signed document retained pursuant to Rule 2104. The Board's rule tracks the Commission's requirement on signatures for electronic filings in Regulation S-T.[22/]

Rule 2105 – Conflicting Non-U.S. Laws

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

[21/] 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).

[22/] See Rule 302(b) of Regulation S-T, 17 C.F.R. 232.302(b).

The rule further provides, however, that an applicant that claims that submitting information as part of its application would cause it to violate non-U.S. laws must identify, in accordance with the instructions on Form 1, the information that it claims would cause it to violate non-U.S. laws if submitted,[23/] and include as exhibits to Form 1 -- (i) a copy of the relevant portion of the conflicting non-U.S. law; (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict. Like all other parts of the application, these exhibits must be submitted in English.

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

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

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Rule 2106 – Action on Applications for Registration

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

Specifically, Rule 2106(a) provides that after reviewing the application for registration, and any additional information provided by the applicant or obtained by the Board, the Board will determine whether to approve the application. The Board will

approve an application for registration if it determines that registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. If the Board is unable to determine that this standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings, to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval and may, at the applicant's election, be treated as a written notice of disapproval for purposes of Section 102(c) of the Act.

If the Board requests additional information, a new 45-day review period will begin when the requested information is received. The Board may request additional information when an applicant has failed to complete fully Form 1, or when the information is otherwise necessary in order to make a determination on the

application.[24/] Rule 2106(c) provides that the Board will take action on such supplemented applications as soon as practicable, and not later than 45 days after receipt of the supplemented application.[25/] If the applicant declines to provide the requested information, or fails to do so within a reasonable amount of time, the Board may deem the application incomplete (and disapprove it on that basis, pursuant to Rule 2106(b)(2)), may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.

Commenters raised several concerns with Rule 2106 as proposed by the Board. Some commenters suggested that the Board's standard for approval was too subjective or, at least, that the Board should provide more guidance on how it will be applied by the Board. Section 102 of the Act does not provide an explicit standard for the Board's determination to approve or disapprove an application for registration. At the same time, the Act clearly contemplates that the Board will apply some standard to applications for registration before deciding whether to approve or disapprove a

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

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

completed application.[26/] The standard in Rule 2106(a) is based on the Board's mandate under Section 101(a) of the Act. The Board considered providing more specific criteria, but has decided that additional criteria would be inappropriate in light of the varied circumstances of public accounting firms that likely will be applying for registration. For instance, the Board considered providing that the failure of an applicant or its associated accountants to have all licenses and registrations required by governmental and professional organizations would be a basis for disapproval. In response to the Board's proposal to require applicants to represent that they have all such licenses, a number of commenters gave reasons why they could not provide such a representation. In addition, the Board considered providing that certain criminal and/or civil governmental actions would be a basis for disapproval. Actions against an accountant that might justify disapproval of the application of a sole proprietor might not warrant disapproval of the application of a large public accounting firm if the accountant was one of many employees of the firm, however. Accordingly, the Board has determined to retain the current standard and make an evaluation based on the facts and circumstances of whether each application meets the criteria in Rule 2106(a).

[26/] See Section 102(c) of the Act.

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Several commenters suggested that applicants should have "due process" procedures through which they could seek and obtain review of a disapproval of their application within the Board. The Board has addressed these comments by changing the rule to provide that, if the Board is unable to determine that the statutory standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings,[27/] to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval. Because the statute provides for the Board to make these decisions within 45 days and also provides for appeal to the Commission, the applicant may, at its election, treat the notice as a written notice of disapproval for purposes of Section 102(c) of the Act. Under Sections 102(c)(2) and 107(c) of the Act, a written notice of disapproval may be appealed to the Commission. Therefore, an election to treat a hearing notice as a disapproval will afford applicants an immediate opportunity to seek Commission review.

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

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

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

In order to prevent the disclosure of confidential information,[28/] Rule 2300 also sets forth a procedure by which applicants can request confidential treatment of any information submitted to the Board in connection with their applications for registration. Under Rule 2300(b), an applicant for registration may request confidential treatment of any portion of an application that either (i) contains information reasonably identified by the public accounting firm as proprietary information, or (ii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

[28/] 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."

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

Under Rule 2300(g), the information as to which the Board grants confidential treatment under Rule 2300 will not be made public. The Board anticipates that a notation in the application that is made publicly available will appear in the place of the information for which confidential treatment was granted. However, the granting of confidential treatment will not limit the Board's ability to provide this information to the Commission or to comply with any subpoena issued by a court or other body of competent jurisdiction, nor will it prevent the Board from making use of this information

in connection with the execution of its responsibilities under the Act. For example, the information may be used in the Board's inspection program and investigations, as well as in any resulting proceedings, subject to the applicant's right to seek a protective order in such a proceeding. In the event the Board receives a subpoena, the Board will notify the applicant of such subpoena to allow the applicant an opportunity to object to the subpoena. Finally, Rule 2300(h) delegates the Board's functions under this Rule to the Director of Registration and Inspection.

Commenters made several suggestions to improve the Board's proposed confidentiality rule. One commenter suggested the Board delegate the function of determining these requests and allow for appeal to the Board. Rule 2300(h) responds to this suggestion. Several commenters noted that the proposed rule did not specify when applications would be made available publicly and suggested that that should not take place until the applications had been approved or disapproved. Rule 2300(a) has been modified to reflect that applications will not be made available publicly until after the Board has approved or disapproved them. Commenters also suggested that the Board should provide notice to an applicant upon receiving a third-party subpoena seeking access to information the Board has granted confidential treatment and oppose such subpoenas. Rule 2300(g) now provides for such notice. While the Board does not

believe it would be appropriate to provide in its rules that it will object to all such subpoenas, the Board will respond to such subpoenas in a manner consistent with its responsibilities under the Act, including its responsibility to protect proprietary information under Section 102(e) of the Act. The confidential treatment requester will, of course, be free to protect its interests by seeking to participate in the proceeding from which the subpoena arose.

Form 1

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

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

deciding whether to approve or disapprove an application. The general instructions and each of the parts of the Form is explained in more detail below.

General Instructions

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

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

applicant's efforts to seek consents or waivers, if applicable, and a representation that the applicant was unable to obtain such consents to eliminate the conflict.

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

Part I – Identity of the Applicant

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

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

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

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

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

Item 1.5 requires applicants with more than one office to furnish, as an exhibit, the physical address (and, if different, mailing address) of each of the applicant's offices. Item 1.6 requires applicants to list the name and address of their "associated entities" that engage in the practice of public accounting or preparing or issuing audit reports or comparable reports prepared for clients that are not issuers. The term "associated

entities" is defined in the Board's rules in a manner consistent with the term's use in the Commission's auditor independence rules.[29/]

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

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[29/] See Rule 2-01(f)(2) of Regulation S-X, 17 C.F.R. 210.2-01(f)(2).

appropriate balance between the Board's need for information about the applicant's operations and the need to avoid overburdening applicants for registration.

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

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

accountants' licenses or certifications is still required through Items 1.7 and 7.1, the Board has decided to eliminate Item 1.8.

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

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

The first three items require disclosures about the applicant's issuer audit clients, including their names, identifying information, and disclosures about the fees billed the issuer by the applicant. The contours of the required fee disclosures are specified through definitions of the terms "audit services," "other accounting services," and "non-audit services."[30/]

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

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

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

is expected to issue, the audit report, the date (or expected date) of the audit report, and the type of substantial role played by the applicant with respect to the audit report.

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

In response to these comments, the Board has modified the definitions of "audit services," "other accounting services," and "non-audit services" to make clear that, once the revised SEC rules are effective, the Board intends to use these categories for the fee disclosures required by Part II of the Form.

The Board understands that fee information in these categories has not been collected historically and that public accounting firms are in the process of putting in place systems to track information in these categories. Nonetheless, Section 102(b)(2)(B) of the Act specifically requires applications for registration to include disclosure of fees for "audit services," "other accounting services" and "non-audit services." Accordingly, until such time as the SEC's revised rules are effective, the

Board has, to the extent permissible under the Act, used categories from the existing SEC proxy disclosure rules that were adopted in November 2000 for the disclosures required by this Part of the Form.

Specifically, until December 15, 2003, the term "audit services" will be defined to mean the same category of services for which fees are required to be disclosed as "audit fees" pursuant to the Commission's 2000 proxy disclosure rules.[31/] Section 102(b)(2)(B) of the Act specifically requires applicants to disclose fees for "other accounting services," which are not required to be disclosed under the existing proxy disclosure rules. Accordingly, the Board has defined "other accounting services" by reference to concepts from the SEC's revised auditor independence disclosure rules. As explained in greater detail above in connection with the discussion of the definition of "other accounting services," until December 15, 2003, this term will include two categories of services: 1) services the fees for which are to be disclosed as "audit fees" under the Commission's revised rules, but that were not previously disclosed as "audit fees," and 2) services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised rules.

[31/] 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).

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

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

The Board understands that not all issuers are subject to these requirements and that companies subject to the requirements currently are not required to disclose fees for "other accounting services," as specifically required by Section 102(b)(2)(B) of the

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

In response to other comments received, the Board has simplified and clarified Part II of the Form in several other respects. First, the Board has eliminated the requirement to provide the issuer's standard industry code ("SIC"). Second, the Board has slightly modified the wording of Items 2.1 through 2.3 to make clear that the disclosure requirements pertain to audit reports *dated* during the relevant time period. Third, the Board has added language to the Notes to Items 2.2 and 2.3 to further clarify when applicants can "expect to prepare or issue" an audit report for an issuer.

Specifically, those Notes now provide that an applicant may presume that it is expected to prepare or issue an audit report for an issuer (i) if it has been engaged to do so, or (ii) if it issued an audit report during the preceding calendar year for an issuer, absent an indication from the issuer that it no longer intends to engage the applicant.

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

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

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Part III – Applicant's Financial Information

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

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

these four categories for all their clients in order to be able to report revenue in this format on an ongoing basis in the future.

Part IV – Statement of Applicant's Quality Control Policies

As required by Section 102(b)(2)(D) of the Act, Part IV requires the applicant to provide, as an exhibit, a narrative, summary description of its quality control policies for its accounting and auditing practices, including procedures to monitor compliance with independence requirements. GAAS requires accounting firms to have quality controls for their audit practices.[32/]

A few commenters suggested that this Part of the Form should be limited to a representation about the firm's quality control policies complying with applicable standards. The Board does not believe that this approach would be consistent with the statutory directive. Several other commenters sought clarification of the parameters of the description called for by this Part of the Form. As explained in the proposing release, the description should be in a clear, concise, and understandable format and should convey the scope and the key elements of the applicant's quality controls for its accounting and auditing practice. A description that addresses all of the elements of

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[32/] See AICPA Statement on Auditing Standards ("SAS") No. 25; AU §161; see also Statements on Quality Control Standards ("SQCS") No. 2; AICPA SECPS Membership Requirements, Appendix K, SECPS sec. 1000.45.

quality control covered by the professional quality control standards the firm is subject to will be sufficient. Technical descriptions and detailed explanations of procedures are not required. Absent unusual circumstances, the Board does not contemplate granting confidential treatment requests for this Item.

Part V – Listing of Certain Proceedings Involving the Applicant

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

As proposed, this Part of the Form was divided into six specific items that sought disclosure of different types of proceedings involving different persons for different periods of time. Many commenters expressed concerns about both the scope and the complexity of the disclosures required of applicants by this Part of the Form.[33/] Accordingly, the Board has sought both to simplify and to narrow its request for

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[33/] In particular, a number of non-U.S. accounting firms and professional associations expressed concern that proposed Item 5.5 would require applicants to

information in this Part of the Form, while still preserving the information necessary to decide whether to approve or disapprove registration applications.

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

1. any pending criminal proceeding;

2. any pending civil (or ADR) proceeding initiated by a governmental entity arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer; and

3. any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer.

The third part of this Item further specifies what types of proceedings qualify as "administrative or disciplinary proceedings" and provides that investigations that have not resulted in the commencement of a proceeding need not be included. At least one commenter specifically suggested that, if the Board required disclosure of more than

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familiarize themselves with, and analogize to, a number of provisions of the U.S. Code. This Item has been eliminated from the Form.

pending proceedings, the look-back period should be limited to five years since this period is consistent with the disclosure requirements for past proceedings against officers and directors of public companies.[34/]

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

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

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[34/] Item 401 of Regulation S-K. 17 C.F.R. sec. 229.401(f).

listed in response to Part VII of the Form and for which consents must be obtained under Part VIII of the Form.

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

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

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

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To clarify an issue raised by a few commenters, an applicant is only required to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in such issuers' Commission filings. Therefore, if an issuer did not disclose a disagreement in a Commission filing or if such disclosure is not required by a Commission filing,[35/] the applicant of that issuer audit client need not disclose such disagreement in Form 1.

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

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

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Part VII – Roster of Associated Accountants

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

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

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

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Many commenters indicated that the disclosure required by Items 7.1 and 7.2, as originally proposed, was administratively burdensome and suggested that the Board narrow the scope of the roster and clarify which accountants would be covered by the roster. To address these concerns, the Board has limited the roster reporting requirements for domestic applicants to accountants who are "persons associated with the applicant" and provided at least ten hours of audit services for any issuer during the last calendar year, and the requirements for non-U.S. applicants to partners or managers who provided at least ten hours of audit services for any issuer during the last calendar year.[36/] In addition, as noted above, by excluding from its definition of the term "accountant" persons who are engaged in only clerical or ministerial tasks, the Board has further limited the disclosure required in Part VII of the Form, as originally proposed.

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

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

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

Part VIII – Consents of Applicant

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

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

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

In addition, some commenters noted that Part VIII, as originally proposed, did not specify the language to be used in the consents that the applicant is required to secure from its associated persons. In response to this comment, the Board has added Note 2 to this item, which sets forth the exact language to be used in the associated persons' consents. Moreover, in response to the suggestion that the Board extend the 45-day deadline for securing consents from associated persons in order to ease the

administrative burden for larger firms, the Board has clarified that applicants must secure such consents not later than 45 days after submitting their applications. In other words, an applicant does not have to wait until its application is submitted to the Board to secure such consents, but can begin obtaining these consents as soon as possible. Further, many commenters objected to the blanket consent used in Part VIII and suggested that the Board amend its proposal to include a reservation in the consent form, to only require applicants to use their best efforts to secure the associated person consents, to clarify that the consent would only apply prospectively to independent contractors, and/or to limit the consents to cover only reasonable, and not simply any, requests by the Board. Section 102(b)(3) of the Act,[37/] however, specifies the scope and contents of the consents, and the Board therefore has decided not to modify this item to include these suggested qualifications.[38/] Some commenters expressed

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

[38/] While commenters did not identify any state laws that conflict with the required consents, one commenter suggested that the Board make explicit that the Board's rules, as approved by the Commission, requiring the consents would preempt any contrary state law. The Board's rules implement Congress's determination in the

concern about the amount of work involved in securing, gathering and maintaining written consents from each of their associated persons in accordance with Rule 2104. While the Board is requiring that the applicant's consent and the associated persons' consents be manually signed and that such manually signed documents be retained for seven years in accordance with Rule 2104, the Board leaves it to the individual applicants to determine other details as to how such consents will be obtained and maintained internally.

Part IX – Signature of Applicant

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

Act that applicants for registration must agree to "secure and enforce [such] consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with the firm." Accordingly, any otherwise applicable state or local law that conflicts with this requirement or stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress would be preempted. See Crosby v. National Foreign Trade Council, 530 U.S. 363, 372-73 (2000); City of New York v. FCC, 486 U.S. 57, 64 (1988).

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Part X – Exhibits

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