

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60107; File No. PCAOB-2008-04]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Annual and Special Reporting by Registered Public Accounting Firms

June 12, 2009.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on June 10, 2008, the Public Company Accounting Oversight Board (the "Board" or "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rules described in Items I and II 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 Rule

On June 10, 2008, the Board adopted rules consisting of eight new rules (PCAOB Rules 2200-2207) concerning annual and special reporting by registered public accounting firms, instructions to two forms to be used for such reporting (Form 2 and Form 3), and related amendments to existing Board Rules. The proposed rules text is set out below.

Section 2. Registration and Reporting

Part 2—Reporting

2200. Annual Report

Each registered public accounting firm must file with the Board an annual report on Form 2 by following the instructions to that form. Unless directed otherwise by the Board, the registered public accounting firm must file such annual report and exhibits thereto electronically with the Board through the Board's Web-based system.

2201. Time for Filing of Annual Report

Each registered public accounting firm must file the annual report on Form 2 no later than June 30 of each year, provided, however, that a registered public accounting firm that has its application for registration approved by the Board in the period between and including April 1 and June 30 of any year shall not be required to file an annual report in that year.

Note: Pursuant to Rule 1002, in any year in which the filing deadline falls on a Saturday, Sunday, or federal legal holiday, the deadline for filing the annual report shall

be the next day that is not a Saturday, Sunday, or federal legal holiday.

2202. Annual Fee

Each registered public accounting firm must pay an annual fee to the Board on or before July 31 of any year in which the firm is required to file an annual report on Form 2. The Board will, from time to time, announce the current annual fee. No portion of the annual fee is refundable.

2203. Special Reports

(a) A registered public accounting firm must file a special report on Form 3 to report information to the Board as follows—

(1) Upon the occurrence, on or after [effective date of this rule], of any event specified in Form 3, a registered public accounting firm must report the event in a special report filed no later than thirty days after the occurrence of the event;

(2) No later than thirty days after receiving notice of Board approval of its application for registration, a registered public accounting firm that becomes registered after [effective date of this rule] must file a special report to report any event specified in Form 3 that occurred after the date used by the firm for purposes of General Instruction 9 to Form 1 and before the date that the Board approved the firm's registration; and

(3) No later than [date thirty days after the effective date of this rule], a registered public accounting firm that is registered as of [effective date of this rule], must file a special report to report, to the extent applicable to the firm, certain information described in General Instruction 4 to Form 3 and current as of [effective date of this rule].

(b) A registered public accounting firm required to file a special report shall do so by filing with the Board a special report on Form 3 in accordance with the instructions to that form. Unless directed otherwise by the Board, a registered public accounting firm must file such special report and exhibits thereto electronically with the Board through the Board's Web-based system.

2204. Signatures

Each signatory to a report on Form 2 or Form 3 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 submission. Such document shall be executed before or at the time the electronic submission is made and shall be retained by the filer for a period of seven years. Upon request, an electronic filer shall provide to the

Board or its staff a copy of all documents retained pursuant to this Rule.

2205. Amendments

Amendments to a filed report on Form 2 or Form 3 shall be made by filing an amended report on Form 2 or Form 3 in accordance with the instructions to those forms concerning amendments. Amendments shall not be filed to update information in a report that was correct at the time the report was filed, but only to correct information that was incorrect at the time the report was filed or to provide information that was omitted from the report and was required to be provided at the time the report was filed.

2206. Date of Filing

(a) An annual report shall be deemed to be filed on the date on which the registered public accounting firm submits a Form 2 in accordance with Rule 2200 that includes the signed certification required in Part X of Form 2.

(b) A special report on Form 3 shall be deemed to be filed on the date that the registered public accounting firm submits a Form 3 in accordance with Rule 2203 that includes the signed certification required in Part VIII of Form 3.

2207. Assertions of Conflicts With Non-U.S. Laws

If, in a report on Form 2 or Form 3, a foreign registered public accounting firm omits any information or affirmation required by the instructions to the relevant form on the ground that it cannot provide such information or affirmation on the form filed with the Board without violating non-U.S. law, the foreign registered public accounting firm shall—

(a) In accordance with the instructions to the form—

(1) Indicate that it has omitted required information or affirmations on the ground that it cannot provide such information or affirmations on the form filed with the Board without violating non-U.S. law;

(2) Identify all Items on the form with respect to which it has withheld any required information or affirmation on that ground; and

(3) Represent that, with respect to all such omitted information or affirmations, the foreign registered public accounting firm has satisfied the requirements of paragraph (b) of this Rule and has in its possession the materials required by paragraph (c) of this Rule;

(b) Before filing the form with the Board, make reasonable, good faith efforts, where not prohibited by law, to seek any consents or waivers that would be sufficient to allow it to provide the required information or affirmation on the form filed with the Board without violating non-U.S. law;

(c) Have in its possession, before the date on which the foreign registered public accounting firm files the form with the Board and for a period of seven years thereafter—

(1) An electronic version of the form that includes all information required by the instructions to the form (including certification and signature) and a manually signed signature page or other document that would satisfy the requirement of Rule 2204 if that version of the form were filed with the Board;

(2) A copy of the provisions of non-U.S. law that the foreign registered public accounting firm asserts prohibit it from providing the required information or affirmations on the form filed with the Board, and an English translation of any such provisions that are not in English;

(3) A legal opinion, in English, addressed to the foreign registered public accounting firm and that the foreign registered public accounting firm has reason to believe is current with respect to the relevant point of law, that the firm cannot provide the omitted information or affirmation on the form filed with the Board without violating non-U.S. law;

(4) A written representation, in English, that the Firm has made reasonable efforts, and a written description of those efforts, to obtain consents or waivers that would be sufficient to allow it to provide the required information or affirmation on the form filed with the Board, manually signed by the same person whose signature appears in the certification portion of the form, and indicating that the signer has reviewed the description and that the description is, based on the signer's knowledge, accurate and does not contain any untrue statements of material fact or omit to state a material fact necessary to make the statements made not misleading, and dated—

(i) For Form 2, after the end of the reporting period and no later than the date of the Form 2 filing; and

(ii) For Form 3, after the date of the reportable event and no later than the date of the Form 3 filing;

(d) Not later than the fourteenth day after any request by the Board or by the Director of the Division of Registration and Inspections for any of the documents described in subparagraphs (2)–(4) of paragraph (c) of this Rule, file

an amended report on Form 2 or Form 3 including, as an exhibit to the amended report, the requested documents; and

(e) Not later than the fourteenth day after any request by the Board for any of the information included in the document described in subparagraph (1) of paragraph (c) of this Rule, file an amended report on Form 2 or Form 3 including the requested information.

Note: Rule 2207(c)(1) does not require that the version of the form maintained by the firm include any affirmation required by Part IX of Form 2. If the firm withholds any such affirmation, however, the asserted legal conflict must be addressed in accordance with subparagraphs (2)–(4) of Rule 2207(c).

Note: Rule 2207(c)(1) does not require a firm to include on the form maintained by the firm any information (1) that the firm does not possess, and (2) as to which the firm asserts that the firm would violate non-U.S. law by requiring another person to provide the information to the firm. The asserted legal conflict that prevents the firm from requiring another person to provide the information to the firm, however, must be addressed in accordance with subparagraphs (2)–(4) of Rule 2207(c).

Note: The “reasonable efforts” element of Rule 2207(c)(4) does not require a firm to renew efforts to seek consents or waivers from parties who have previously declined to provide consents or waivers with respect to disclosure of similar types of information and does not require a firm to seek consents or waivers from parties other than firm personnel and firm clients.

Forms

Form 2—Annual Report Form

General Instructions

1. Submission of this Report. A *registered public accounting firm* must use this Form to file with the Board the annual report required by Section 102(d) of the *Act* and Rule 2200 and to file any amendments to an annual report. Unless otherwise directed by the Board, the Firm must file this Form, and all exhibits to this Form, electronically with the Board through the Board's Web-based system.

2. Defined Terms. The definitions in the Board's rules apply to this Form. Italicized terms in the instructions to this Form are defined in the Board's rules. In addition, as used in the instructions to this Form, the term “the Firm” means the *registered public accounting firm* that is filing this Form with the Board.

3. When Report is Considered Filed. Annual reports on this Form are required to be filed each year on or before June 30, subject to the qualification in Rule 2201 concerning

any firm that has its application for registration approved by the Board in the period between and including April 1 and June 30. An annual report is considered filed when the Firm has submitted to the Board a Form 2 in accordance with Rule 2200 that includes the signed certification required in Part X of Form 2.

4. Period Covered by this Report. Annual reports on this Form shall cover a 12-month period from April 1 to March 31, subject to the qualification in Part VIII of Form 2 relating to the first annual report filed by a firm that becomes registered after [effective date of Rule 2201]. In the instructions to this Form, this is the period referred to as the “reporting period.”

5. Amendments to this Report. Amendments shall not be filed to update information in a filed Form 2 that was correct at the time the Form was filed, but only to correct information that was incorrect at the time the Form was filed or to provide information that was omitted from the Form and was required to be provided at the time the Form was filed. When filing a Form 2 to amend an earlier filed Form 2, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 2 all information, affirmations, and certifications that were required to be included in the original Form 2. The Firm may access the originally filed Form 2 through the Board's Web-based system and make the appropriate amendments without needing to re-enter all other information.

Note: The Board will designate an amendment to an annual report as a report on “Form 2/A.”

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

7. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Part VI, Part VII, or Exhibit 99.3 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. *Foreign registered public accounting firm's* may also request confidential

treatment for Item 3.2 and Exhibit 3.2, though U.S. firms may not do so. If the Firm requests confidential treatment, it must identify the information in Part VI, Part VII, or Exhibit 99.3 (or, for a *foreign registered public accounting firm*, Item 3.2 and Exhibit 3.2) that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, an exhibit that complies with the requirements of Rule 2300(c)(2). The *Board* will determine whether to grant confidential treatment requests on a case-by-case basis. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of that failure.

8. **Assertions of Conflicts with Non-U.S. Law.** If the Firm is a *foreign registered public accounting firm*, the Firm may, unless otherwise directed by the *Board* pursuant to Rule 2207(e), decline to provide certain information and affirmations required by this Form if the Firm could not provide such information or affirmations without violating non-U.S. law and the Firm proceeds in accordance with Rule 2207. The Firm may withhold responsive information and affirmations on that basis from any Part of the Form other than Parts I, II, and X and Items 3.1.a, 3.1.b, 3.1.d, and 4.1. If the firm withholds responsive information or affirmations, the Firm must indicate, in accordance with the instructions in the relevant Part of the Form, the particular Items with respect to which the Firm has withheld responsive information or a required affirmation. The Firm may not use the Form to make any general assertion that a particular requirement may conflict with non-U.S. law, but only to indicate that, on the basis of an asserted conflict, the Firm has in fact withheld from this Form required information or a required affirmation.

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

Part I—Identity of the Firm and Contact Persons

In Part I, the Firm should provide information that is current as of the date of the certification in Part X.

Item 1.1 Name of the Firm

- State the legal name of the Firm.
- If different than its legal name, state the name or names under which the Firm issues *audit reports*, or issued any *audit report* during the reporting period.
- If the Firm's legal name at the beginning of the reporting period was different than the name provided under

Item 1.1.a, state that legal name and any other legal name the Firm had during the reporting period. Include the legal name of any *registered public accounting firm* that merged into, or was acquired by, the Firm during the reporting period.

Item 1.2 Contact Information of the Firm

- State the physical address (and, if different, mailing address) of the Firm's headquarters office.
- State the telephone number and facsimile number of the Firm's headquarters office. If available, state the Web site address of the Firm.

Item 1.3 Primary Contact With the Board

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

Part II—General Information Concerning This Report

Item 2.1 Reporting Period

State the reporting period covered by this report.

Note: The reporting period, which the Firm should enter in Item 2.1, is the period beginning on April 1 of the year before the year in which the annual report is required to be filed and ending March 31 of the year in which the annual report is required to be filed. That is the period referred to where this Form refers to the "reporting period." Note, however, the special instruction at the beginning of Part VIII concerning the first annual report filed by certain firms.

Item 2.2 Amendments

If this is an amendment to a report previously filed with the *Board*—

- Indicate, by checking the box corresponding to this item, that this is an amendment.
- Identify the specific Item numbers of this Form (other than this Item 2.2) as to which the Firm's response has changed from that provided in the most recent Form 2 or amended Form 2 filed by the Firm with respect to the reporting period.

Part III—General Information Concerning the Firm

Item 3.1 The Firm's Practice Related to the Registration Requirement

- Indicate whether the Firm issued any *audit report* with respect to an *issuer* during the reporting period.
- In the event of an affirmative response to Item 3.1.a, indicate whether the *issuers* with respect to which the Firm issued *audit reports* during the reporting period were limited to employee benefit plans that file reports with the *Commission* on Form 11-K.
- In the event of a negative response to Item 3.1.a, indicate whether the Firm *played a substantial role in the preparation or furnishing of an audit report* with respect to an *issuer* during the reporting period.
- In the event of a negative response to both Items 3.1.a and 3.1.c, indicate whether, during the reporting period, the Firm issued any document with respect to financial statements of a non-*issuer* broker-dealer in which the Firm either set forth an opinion on the financial statements or asserted that no such opinion can be expressed.

Item 3.2 Fees Billed to Issuer Audit Clients

a. Of the total fees billed by the Firm to all clients for services that were rendered in the reporting period, state the percentage (which may be rounded, but no less specifically than to the nearest five percent) attributable to fees billed to *issuer audit* clients for—

- Audit services;*
- Other accounting services;*
- Tax services;* and
- Non-audit services.*

b. Indicate, by checking the appropriate box, which of the following two methods the Firm used to calculate the percentages reported in Item 3.2.a—

1. The Firm used as a denominator the total fees billed to all clients for services rendered during the reporting period and used as numerators (for each of the four categories) total fees billed to *issuer audit* clients for the relevant services rendered during the reporting period.

2. The Firm used as a denominator the total fees billed to all clients in the Firm's fiscal year that ended during the reporting period and used as numerators (for each of the four categories) total *issuer audit* client fees as determined by reference to the fee amounts disclosed to the *Commission* by those clients for each client's fiscal year that ended during the reporting period (including, for clients who have not made the required *Commission* filings, the fee amounts required to be disclosed).

c. If the Firm has used a reasonable method to estimate the components of the calculations described in Item 3.2.b, rather than using the specific data, check this box and attach Exhibit 3.2 briefly describing the reasons for doing so and the methodology used in making those estimates.

Note: In responding to Item 3.2, careful attention should be paid to the definitions of the italicized terms, which are found in *Board Rules* 1001(i)(iii) (*issuer*), 1001(a)(v) (*audit*), 1001(a)(vii) (*audit services*), 1001(o)(i) (*other accounting services*), 1001(t)(i) (*tax services*), and 1001(n)(ii) (*non-audit services*). The definitions of the four categories of services correspond to the *Commission's* descriptions of the services for which an *issuer* must disclose fees paid to its auditor. Compare the descriptions of services in Item 9(e) of *Commission Schedule 14A* (17 CFR § 240.14a-101) under the headings "Audit Fees," "Audit-Related Fees," "Tax Fees," and "All Other Fees" with, respectively, the *Board's* definitions of *Audit Services*, *Other Accounting Services*, *Tax Services*, and *Non-Audit Services*.

Part IV—Audit Clients and Audit Reports

Item 4.1 Audit Reports Issued by the Firm

a. Provide the following information concerning each *issuer* for which the Firm issued any *audit report(s)* during the reporting period—

1. The *issuer's* name;
 2. The *issuer's* CIK number, if any; and
 3. The date(s) of the *audit report(s)*.
- b. If the Firm identified any *issuers* in response to Item 4.1.a., indicate, by checking the box corresponding to the appropriate range set out below, the total number of Firm personnel who exercised the authority to sign the Firm's name to an *audit report* during the reporting period. If the Firm checks the box indicating that the number is in the range of 1–9, provide the exact number.

- 1–9
- 10–25
- 26–50
- 51–100
- 101–200
- More than 200

Note: In responding to Item 4.1, careful attention should be paid to the definition of *audit report*, which is found in Rule 1001(a)(vi) of the *Board's Rules*, and which does not encompass reports prepared for entities that are not *issuers*, as that term is defined in Rule 1001(i)(iii). Careful attention should also be paid to the definition of *issuer*. The Firm should not, for example, overlook the fact that investment companies may be *issuers*, or that employee benefit plans that file reports on *Commission Form* 11-K are *issuers*.

Note: In responding to Item 4.1, do not list any *issuer* more than once. For each *issuer*, provide in Item 4.1.a.3 the *audit report* dates (as described in AU 530, Dating of the Independent Auditor's Report) of all such *audit reports* for that *issuer*, including each date of any dual-dated *audit report*.

Note: Note: In responding to Item 4.1.a.3, it is not necessary to provide the date of any consent to an *issuer's* use of an *audit report* previously issued for that *issuer*, except that, if such consents constitute the only instances of the Firm issuing *audit reports* for a particular *issuer* during the reporting period, the Firm should include that *issuer* in Item 4.1 and include the dates of such consents in Item 4.1.a.3.

Item 4.2 Audit Reports With Respect to Which the Firm Played a Substantial Role During the Reporting Period

a. If no *issuers* are identified in response to Item 4.1.a, but the Firm played a substantial role in the preparation or furnishing of an *audit report* that was issued during the reporting period, provide the following information concerning each *issuer* with respect to which the Firm did so—

1. The *issuer's* name;
2. The *issuer's* CIK number, if any;
3. The name of the registered public accounting firm that issued the *audit report(s)*;
4. The end date(s) of the fiscal period(s) covered by the financial statements that were the subject of the *audit report(s)*; and
5. A description of the substantial role played by the Firm with respect to the *audit report(s)*.

Note: If the Firm identifies any *issuer* in response to Item 4.1, the Firm need not respond to Item 4.2.

Note: In responding to Item 4.2, do not list any *issuer* more than once.

Part V—Offices and Affiliations

In Part V, the Firm should provide information that is current as of the last day of the reporting period.

Item 5.1 Firm's Offices

List the physical address and, if different, the mailing address, of each of the Firm's offices.

Item 5.2 Audit-related Memberships, Affiliations, or Similar Arrangements

- a. State whether the Firm has any:
1. Membership or affiliation in or with any network, arrangement, alliance, partnership or association that licenses or authorizes *audit procedures* or manuals or related materials, or the use of a name in connection with the provision of *audit services* or accounting services;

2. Membership or affiliation in or with any network, arrangement, alliance, partnership or association that markets or sells *audit services* or through which joint *audits* are conducted; or

3. Arrangement, whether by contract or otherwise, with another entity through or from which the Firm employs or leases personnel to perform *audit services*.

b. If the Firm provides an affirmative response to Item 5.2.a, identify, by name and address, the entity with which the Firm has each such relationship, and provide a brief description of each such relationship.

Note: Item 5.2.b does not require information concerning every other entity that is part of the network, arrangement, alliance, partnership or association, but only information concerning the network, arrangement, alliance, partnership, or association itself, or the principal entity through which it operates.

Part VI—Personnel

In Part VI, the Firm should provide information that is current as of the last day of the reporting period.

Item 6.1 Number of Firm Personnel

Provide the following numerical totals—

- a. Total number of the Firm's accountants;
- b. Total number of the Firm's certified public accountants (include in this number all accountants employed by the Firm with comparable licenses from non-U.S. jurisdictions); and
- c. Total number of the Firm's personnel.

Part VII—Certain Relationships

Item 7.1 Individuals With Certain Disciplinary or Other Histories

a. Other than a relationship required to be reported in Item 4.1 of Form 3, and only if the Firm has not previously identified the individual and the sanction or *Commission* order on Form 1, Form 2, or Form 3, state whether, as of the end of the reporting period, the Firm has any employee, partner, shareholder, principal, member, or owner who was the subject of a *Board* disciplinary sanction or a *Commission* order under Rule 102(e) of the *Commission's* Rules of Practice, entered within the five years preceding the end of the reporting period and without that sanction or order having been vacated on review or appeal, and who provided at least ten hours of *audit services* for any *issuer* during the reporting period.

b. If the Firm provides an affirmative response to Item 7.1.a, provide—

1. The name of each such individual;
2. A description of the nature of the relationship;

3. The date that the Firm entered into the relationship; and

4. The date of the relevant order and an indication whether it was a *Board* order or a *Commission* order.

Item 7.2 Entities With Certain Disciplinary or Other Histories

a. Other than a relationship required to be reported in Item 4.2 of Form 3, and only if the Firm has not previously reported the information on Form 1, Form 2, or Form 3, state whether, as of the end of the reporting period, the Firm was owned or partly owned by an entity that was the subject of (a) a *Board* disciplinary sanction entered within the five years preceding the end of the reporting period, which has not been vacated on review or appeal, suspending or revoking that entity's registration or disapproving that entity's application for registration, or (b) a *Commission* order under Rule 102(e) of the *Commission's* Rules of Practice entered within the five years preceding the end of the reporting period, which has not been vacated on appeal, suspending or denying the privilege of appearing or practicing before the *Commission*.

b. If the Firm provides an affirmative response to Item 7.2.a, provide—

1. The name of each such entity;
2. A description of the nature of the relationship;
3. The date that the Firm entered into the relationship; and

4. The date of the relevant order and an indication whether it was a *Board* order or a *Commission* order.

Item 7.3 Certain Arrangements To Receive Consulting or Other Professional Services

a. Other than a relationship required to be reported in Item 4.3 of Form 3, state whether the Firm received, or entered into a contractual or other arrangement to receive, from any individual or entity meeting the criteria described in Items 7.1.a or 7.2.a, consulting or other professional services related to the Firm's *audit* practice or related to services the Firm provides to *issuer audit* clients.

b. If the Firm provides an affirmative response to Item 7.3.a, provide—

1. The name of each such individual or entity;
2. A description of the nature of the relationship;
3. The date that the Firm entered into the relationship;

4. A description of the services provided or to be provided to the Firm by the individual or entity; and

5. The date of the relevant order and an indication whether it was a *Board* order or a *Commission* order.

Part VIII—Acquisition of Another Public Accounting Firm or Substantial Portions of Another Public Accounting Firm's Personnel

If the Firm became registered on or after [effective date of Rule 2201], the first annual report that the Firm files must provide this information for the period running from the date used by the Firm for purposes of General Instruction 9 of Form 1 (regardless of whether that date was before or after the beginning of the reporting period) through March 31 of the year in which the annual report is required to be filed.

Item 8.1 Acquisition of Another Public Accounting Firm or Substantial Portions of Another Public Accounting Firm's Personnel

a. State whether the Firm acquired another *public accounting firm*.

b. If the Firm provides an affirmative response to Item 8.1.a, provide the name(s) of the *public accounting firm(s)* that the Firm acquired.

c. State whether the Firm, without acquiring another *public accounting firm*, took on as employees, partners, shareholders, principals, members, or owners 75% or more of the persons who, as of the beginning of the reporting period, were the partners, shareholders, principals, members, or owners of another *public accounting firm*.

d. If the Firm provides an affirmative response to Item 8.1.c, provide the name of the other *public accounting firm* and the number of the other *public accounting firm's* former partners, shareholders, principals, members, owners, and *accountants* that joined the Firm.

Part IX—Affirmation of Consent

Item 9.1 Affirmation of Understanding of, and Compliance With, Consent Requirements

Whether or not the Firm, in applying for registration with the *Board*, provided the signed statement required by Item 8.1 of Form 1, affirm that—

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

b. The Firm has secured from each of its *associated persons*, and agrees to enforce as a condition of each such person's continued employment by or other association with the Firm, a

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

c. The Firm understands and agrees that cooperation and compliance, as described in Item 9.1.a, and the securing and enforcing of consents from its *associated persons* as described in Item 9.1.b, is a condition to the continuing effectiveness of the registration of the Firm with the *Board*.

Note 1: The affirmation in Item 9.1.b shall not be understood to include an affirmation that the Firm has secured such consents from any *associated person* that is a *registered public accounting firm*.

Note 2: The affirmation in Item 9.1.b shall not be understood to include an affirmation that the Firm has secured such consents from any *associated person* that is a *foreign public accounting firm* in circumstances where that *associated person* asserts that non-U.S. law prohibits it from providing the consent, so long as the Firm possesses in its files documents relating to the *associated person's* assertion about non-U.S. law that would be sufficient to satisfy the requirements of subparagraphs (2) through (4) of Rule 2207(c) if that *associated person* were a *registered public accounting firm* filing a Form 2 and withholding this affirmation. This exception to the affirmation in Item 9.1.b does not relieve the Firm of its obligation to enforce cooperation and compliance with *Board* demands by any such *associated person* as a condition of continued association with the Firm.

Note 3: If the Firm is a *foreign registered public accounting firm*, the affirmations in Item 9.1 that relate to *associated persons* shall be understood to encompass every *accountant* who is a proprietor, partner, principal, shareholder, officer, or *audit manager* of the Firm and who provided at least ten hours of *audit services* for any *issuer* during the reporting period.

Part X—Certification of the Firm

Item 10.1 Signature of Partner or Authorized Officer

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2204, both a signature that appears in typed form within the electronic submission and a corresponding manual signature retained by the Firm. The signer must certify that—

a. the signer is authorized to sign this Form on behalf of the Firm;

b. the signer has reviewed this Form;
 c. based on the signer's knowledge, the Firm has filed a special report on Form 3 with respect to each event that occurred before the end of the reporting period and for which a special report on Form 3 is required under the *Board's rules*;

d. based on the signer's knowledge, this Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and

e. either—

1. based on the signer's knowledge, the Firm has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, or

2. based on the signer's knowledge—

(A) the Firm is a *foreign registered public accounting firm* and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form except for information or affirmations that the Firm asserts it cannot provide to the *Board* on this Form 2 without violating non-U.S. law;

(B) with respect to any such withheld information or affirmation, the Firm has satisfied the requirements of PCAOB Rule 2207(b) and has in its possession the materials required by PCAOB Rule 2207(c); and

(C) the Firm has indicated, in accordance with the instructions to this Form, each Item of this Form with respect to which the Firm has withheld any required information or affirmation.

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

Part XI—Exhibits

To the extent applicable under the foregoing instructions or the *Board's rules*, each annual report must be accompanied by the following exhibits:

Exhibit 3.2 Description of Methodology Used To Estimate Components of Calculation in Item 3.2 and Reasons for Using Estimates

Exhibit 99.1 Request for Confidential Treatment

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

Form 3—Special Report Form

General Instructions

1. Submission of this Report. Effective [effective date of Rule 2203], a *registered public accounting firm* must use this Form to file special reports with the *Board* pursuant to Section 102(d) of the Act and Rule 2203 and to file any amendments to a special report. Unless otherwise directed by the *Board*, the Firm must file this Form, and all exhibits to this Form, electronically with the *Board* through the *Board's* Web-based system.

2. Defined Terms. The definitions in the *Board's rules* apply to this Form. Italicized terms in the instructions to this Form are defined in the *Board's rules*. In addition, as used in the instructions to this Form, the term “the Firm” means the *registered public accounting firm* that is filing this Form with the *Board*.

3. When this Report is Required and When It is Considered Filed. Upon the occurrence of any event specified in Part II of this Form, the Firm must report the event on this Form by following the instructions to this Form. With respect to events that occur on or after [effective date of Rule 2203] and while the Firm is registered, the Firm must file the Form no later than thirty days after the occurrence of the event reported. Certain additional requirements apply, but they vary depending on whether a firm was registered as of [effective date of Rule 2203]. A firm that becomes registered after [effective date of Rule 2203], must, within thirty days of receiving notice of *Board* approval of its registration application, file this Form to report any reportable events that occurred in a specified period before approval of the firm's application for registration. See Rule 2203(a)(2). A firm that was registered as of [effective date of Rule 2203], must, by [date 30 days after effective date of Rule 2203], file this Form to report certain additional information that is current as of [effective date of Rule 2203]. See Rule 2203(a)(3) and General Instruction No. 4 below. A special report shall be deemed to be filed on the date that the Firm

submits a Form 3 in accordance with Rule 2203 that includes the signed certification required in Part VIII of Form 3.

4. Required Filing to Bring Current Certain Information for Firms Registered as of [effective date of Rule 2203]. If the Firm is registered as of [effective date of Rule 2203], the Firm must file a special report on this Form no later than [date 30 days after effective date of Rule 2203], to report the information specified below, to the extent that it has not been reported on the Firm's Form 1 filing. The Firm must make this Form 3 filing to report the following information even if the Firm has previously informally disclosed the information to the *Board* or its staff—

a. Information responsive to Items 2.4 through 2.9 and Item 4.1 if (1) the proceeding is pending as of [effective date of Rule 2203], and (2) the defendants or respondents as of that date include either the Firm or a person who is a partner, shareholder, principal, owner, member, or *audit* manager of the Firm as of that date;

b. Information responsive to Items 2.10 and 4.2 if (1) the conclusion of a proceeding as to any party specified there occurred after the date used by the firm for purposes of General Instruction 9 to Form 1 and before [effective date of Rule 2203], and (2) the proceeding resulted in any conviction of, judgment against, imposition of any liability or sanction on, or *Commission* Rule 102(e) order against the Firm or any person who is a partner, shareholder, principal, owner, member, or *audit* manager of the Firm as of [effective date of Rule 2203];

c. Information responsive to Items 2.11 and 4.3 if the Firm is the subject of a petition or proceeding described there as of [effective date of Rule 2203];

d. Information responsive to Items 2.12 through 2.14 and Part V if (1) the relationship commenced after the date used by the firm for purposes of General Instruction 9 to Form 1, (2) the specified disciplinary sanction or *Commission* Rule 102(e) order continued to be in effect as of [effective date of Rule 2203], and (3) the specified relationship continues to exist as of [effective date of Rule 2203];

e. Information responsive to Items 2.15 and 6.1 if (1) the loss of authorization relates to a jurisdiction or authority identified in Item 1.7 of the Firm's Form 1 and, (2) as of [effective date of Rule 2203], the Firm continues to lack the specified authorization in that jurisdiction;

f. Information responsive to Items 2.16 and 6.2 if the license or certification is in effect as of [effective date of Rule 2203]; and

g. Information responsive to Items 2.17 and 2.18 and Part VII that is current as of [effective date of Rule 2203] to the extent that it differs from the corresponding information provided on the Firm's Form 1.

5. Completing the Form. A firm filing this Form must always complete Parts I, II, and VIII of this Form. Parts III through VII should be completed to the extent applicable, as described more fully in the instructions to Part II of the Form.

6. Amendments to this Report. Amendments shall not be filed to update information in a filed Form 3 that was correct at the time the Form was filed, but only to correct information that was incorrect at the time the Form was filed or to provide information that was omitted from the Form and was required to be provided at the time the Form was filed. When filing a Form 3 to amend an earlier filed Form 3, the Firm must supply not only the corrected or supplemental information, but must include in the amended Form 3 all information, affirmations, and certifications that were required to be included in the original Form 3. The Firm may access the originally filed Form 3 through the Board's Web-based system and make the appropriate amendments without needing to re-enter all other information.

Note: The Board will designate an amendment to a special report as a report on "Form 3/A."

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

8. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Item 3.1.c, Part IV, Part V, Item 6.1.d, Item 7.1.d, or Exhibit 99.3 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. If the Firm requests confidential treatment, it must identify the information in Item 3.1.c, Part IV, Part V, Item 6.1.d, Item 7.1.d, or Exhibit 99.3 that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, an exhibit that complies with the

requirements of Rule 2300(c)(2). The Board will determine whether to grant confidential treatment requests on a case-by-case basis. If the Firm fails to include Exhibit 99.1, or includes an Exhibit 99.1 that fails to comply with Rule 2300(c)(2), the request for confidential treatment may be denied solely on the basis of that failure.

9. Assertions of Conflicts with Non-U.S. Law. If the Firm is a *foreign registered public accounting firm*, the Firm may, unless otherwise directed by the Board pursuant to Rule 2207(e), decline to provide certain information required by this Form if the Firm could not provide such information without violating non-U.S. law and the Firm proceeds in accordance with Rule 2207. The Firm may withhold responsive information on that basis from any Part of the Form other than Parts I, II, and VIII, and Items 7.1.a, 7.1.b, 7.1.c, and 7.2. If the firm withholds responsive information, the Firm must indicate, in accordance with the instructions in the relevant Part of the Form, the particular Items with respect to which the Firm has withheld responsive information. The Firm may not use the Form to make any general assertion that a particular requirement may conflict with non-U.S. law, but only to indicate that, on the basis of an asserted conflict, the Firm has in fact withheld from this Form required information.

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

Part I—Identity of the Firm

Item 1.1 Name of Firm

a. State the legal name of the Firm.

Note: If the Firm is filing this Form 3 to report that the Firm's legal name has changed, the name entered in Item 1.1.a should be the Firm's legal name before the name change that is being reported. The Firm's new name should be included in the response to Item 1.1.c.

b. If different than its legal name, state the name or names under which the Firm issues *audit reports*.

c. If the Firm is filing this Form 3 to report that the Firm's legal name has changed, state the new legal name of the Firm.

Part II—Reason for Filing This Report

Indicate, by checking the relevant box(es) from among Items 2.1 through 2.18 below, the event(s) being reported on this Form. More than one event may be reported in the same Form 3 filing. For each event indicated below, proceed to the Parts and Items of this Form indicated parenthetically for the specific

event being reported and provide the information therein described. Provide responses only to those Parts and Items of the Form specifically indicated for the event or events that the Firm identifies in this Part II as an event being reported on this Form. (For example, if the Form is being filed solely to report that the Firm has changed its name, check the box for Item 2.17 in this Part of the Form, and complete only Item 7.1 and Part VIII of the Form.) If the Firm is filing this Form to amend a previous filing, the Firm also should complete Item 2.19.

Note: In Items 2.4 through 2.11 and Item 2.15, the reportable event is described in terms of whether the Firm "has become aware" of certain facts. For these purposes, the Firm is deemed to have become aware of the relevant facts on the date that any partner, shareholder, principal, owner, or member of the Firm first becomes aware of the facts.

Audit Reports

Item 2.1 The Firm has withdrawn an *audit report* on financial statements, or withdrawn its consent to the use of its name in a report, document, or written communication containing an *issuer's* financial statements, and the *issuer* has failed to comply with a *Commission* requirement to make a report concerning the matter pursuant to Item 4.02 of *Commission* Form 8-K. (Complete Item 3.1 and Part VIII.)

Item 2.2 The Firm has issued *audit reports* with respect to more than 100 *issuers* in a calendar year immediately following a calendar year in which the Firm did not issue *audit reports* with respect to more than 100 *issuers*. (Complete Part VIII.)

Item 2.3 The Firm has issued *audit reports* with respect to 100 or fewer *issuers* in a completed calendar year immediately following a calendar year in which the Firm issued *audit reports* with respect to more than 100 *issuers*. (Complete Part VIII.)

Certain Legal Proceedings

Item 2.4 The Firm has become aware that the Firm has become a defendant in a criminal proceeding prosecuted by a governmental criminal law enforcement authority. (Complete Item 4.1 and Part VIII.)

Item 2.5 The Firm has become aware that, in a matter arising out of his or her conduct in the course of providing *audit services* or *other accounting services* to an *issuer*, a partner, shareholder, principal,

owner, member, or *audit* manager of the Firm has become a defendant in a criminal proceeding prosecuted by a governmental criminal law enforcement authority. (Complete Item 4.1 and Part VIII.)

Item 2.6 The Firm has become aware that a partner, shareholder, principal, owner, member, or *audit* manager of the Firm who provided at least ten hours of *audit services* for any *issuer* during the Firm's current fiscal year or its most recently completed fiscal year has become a defendant in a criminal proceeding prosecuted by a governmental criminal law enforcement authority and is charged with fraud, embezzlement, forgery, extortion, bribery, obstruction of justice, perjury, or false statements; or charged with any crime arising out of alleged conduct relating to accounting, auditing, securities, banking, commodities, taxation, consumer protection, or insurance. (Complete Item 4.1 and Part VIII.)

Item 2.7 The Firm has become aware that, in a matter arising out of the Firm's conduct in the course of providing professional services for a client, the Firm has become a defendant or respondent in a civil or alternative dispute resolution proceeding initiated by a governmental entity or in an administrative or disciplinary proceeding other than a *Board* disciplinary proceeding. (Complete Item 4.1 and Part VIII.)

Item 2.8 The Firm has become aware that, in a matter arising out of his or her conduct in the course of providing *audit services* or *other accounting services* to an *issuer*, a partner, shareholder, principal, owner, member, or *audit* manager of the Firm has become a defendant or respondent in a civil or alternative dispute resolution proceeding initiated by a governmental entity or in an administrative or disciplinary proceeding other than a *Board* disciplinary proceeding. (Complete Item 4.1 and Part VIII.)

Item 2.9 The Firm has become aware that, in a matter arising out of his or her conduct in the course of providing professional services for a client, a partner, shareholder, principal, owner, member, or *audit* manager of the Firm who provided at least ten hours of *audit services* for any *issuer* during the Firm's current fiscal year or its most recently completed fiscal year has become a defendant or respondent

in a civil or alternative dispute resolution proceeding initiated by a governmental entity or in an administrative or disciplinary proceeding other than a *Board* disciplinary proceeding. (Complete Item 4.1 and Part VIII.)

Item 2.10 The Firm has become aware that a proceeding meeting the criteria described in Items 2.4, 2.5, 2.6, 2.7, 2.8, or 2.9 above has been concluded as to the Firm or a partner, shareholder, principal, owner, member, or *audit* manager of the Firm (whether by dismissal, acceptance of pleas, through consents or settlement agreements, the entry of a final judgment, or otherwise). (Complete Item 4.2 and Part VIII.)

Item 2.11 The Firm has become aware that the Firm, or the parent or a subsidiary of the Firm, has become the subject of a petition filed in a bankruptcy court, or has otherwise become the subject of a proceeding in which a court or governmental agency (or, in a non-U.S. jurisdiction, a person or entity performing a comparable function) has assumed jurisdiction over substantially all of the assets or business of the Firm or its parent or a subsidiary. (Complete Item 4.3 and Part VIII.)

Certain Relationships

Item 2.12 The Firm has taken on as an employee, partner, shareholder, principal, or member, or has otherwise become owned or partly owned by, a person who is currently the subject of (a) a *Board* disciplinary sanction suspending or barring the person from being an *associated person of a registered public accounting firm* or (b) a *Commission* order under Rule 102(e) of the *Commission's* Rules of Practice suspending or denying the privilege of appearing or practicing before the *Commission*. (Complete Item 5.1 and Part VIII.)

Item 2.13 The Firm has become owned or partly owned by an entity that is currently the subject of (a) a *Board* disciplinary sanction suspending or revoking that entity's registration or disapproving that entity's application for registration, or (b) a *Commission* order under Rule 102(e) of the *Commission's* Rules of Practice suspending or denying the privilege of appearing or practicing before the *Commission*. (Complete Item 5.2 and Part VIII.)

Item 2.14 The Firm has entered into a contractual or other arrangement to receive consulting or other

professional services from a person or entity meeting any of the criteria described in Items 2.12 or 2.13 above. (Complete Item 5.3 and Part VIII.)

Licenses and Certifications

Item 2.15 The Firm has become aware that its authorization to engage in the business of auditing or accounting in a particular jurisdiction has ceased to be effective or has become subject to conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction. (Complete Item 6.1 and Part VIII.)

Item 2.16 The Firm has obtained a license or certification authorizing the Firm to engage in the business of auditing or accounting and which has not been identified on any Form 1 or Form 3 previously filed by the Firm, or there has been a change in a license or certification number identified on a Form 1 or Form 3 previously filed by the Firm. (Complete Item 6.2 and Part VIII.)

Changes in the Firm or the Firm's *Board* Contact Person

Item 2.17 The Firm has changed its legal name while otherwise remaining the same legal entity that it was before the name change. (Complete Item 7.1 and Part VIII.)

Item 2.18 There has been a change in the business mailing address, business telephone number, business facsimile number, or business e-mail of the person most recently designated by the Firm (on Form 2, Form 3, or Form 4) as the Firm's primary contact with the *Board*, or the Firm is designating a new person to serve as the primary contact. (Complete Item 7.2 and Part VIII.)

Amendment

Item 2.19 *Amendments*

If this is an amendment to a report previously filed with the *Board*—

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

b. Identify the specific Item numbers of this Form (other than this Item 2.19) as to which the Firm's response has changed from that provided in the most recent Form 3 or amended Form 3 filed by the Firm with respect to the events reported on this Form.

Part III—Withdrawn Audit Reports**Item 3.1 Withdrawn Audit Reports and Consents**

If the Firm has withdrawn an *audit report* on financial statements, or withdrawn its consent to the use of its name in a report, document, or written communication containing an *issuer's* financial statements, and the *issuer* has failed to comply with a *Commission* requirement to make a report concerning the matter pursuant to Item 4.02 of *Commission* Form 8-K, provide—

- a. The *issuer's* name and CIK number, if any;
- b. The date(s) of the *audit report(s)* that the Firm has withdrawn, or to which the Firm's withdrawal of consent relates; and
- c. A description of the reason(s) the Firm has withdrawn the *audit report(s)* or the consent.

Note: The 30-day period in which the Firm must report the event does not begin to run unless and until the *issuer* fails to report on Form 8-K within the time required by the *Commission's* rules. The Firm must then report the event on Form 3 within 30 days of the expiration of the required Form 8-K filing deadline, unless, within that 30-day period, the *issuer* reports on a late-filed Form 8-K.

Part IV—Certain Proceedings**Item 4.1 Criminal, Governmental, Administrative, or Disciplinary Proceedings**

If the Firm has indicated in this Form 3 that any of the events described in Items 2.4, 2.5, 2.6, 2.7, 2.8 or 2.9 has occurred, provide the following information with respect to each such event—

- a. The name, filing date, and case or docket number of the proceeding, and the nature of the proceeding, *i.e.*, whether it is a criminal proceeding, a civil or alternative dispute resolution proceeding, or an administrative or disciplinary proceeding.

- b. The name of the court, tribunal, or body in or before which the proceeding was filed.

- c. An indication whether the Firm itself is a defendant or respondent in the proceeding and, if so, the statutes, rules, or legal duties that the firm is alleged to have violated, and a brief description of the firm's alleged conduct in violation of those statutes, rules, or legal duties.

- d. The names of every defendant or respondent who is a partner, shareholder, principal, owner, member, or *audit* manager of the Firm, or who was such either at the time the Firm received notice of the proceeding or at the time of the alleged conduct on

which any claim or charge is based, and who provided at least ten hours of *audit services* for any *issuer* during the Firm's current fiscal year or its most recent fiscal year; and, as to each such defendant or respondent, the statutes, rules, or legal duties that he or she is alleged to have violated, and a brief description of his or her alleged conduct in violation of those statutes, rules, or legal duties.

- e. The name of any client that was the recipient of the professional services to which any claim or charge in the proceeding relates.

Note: For the purpose of this Part, administrative or disciplinary proceedings include those of the *Commission*; 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.

Item 4.2 Concluded Criminal, Governmental, Administrative, or Disciplinary Proceedings

If any proceeding meeting the criteria described in Items 2.4, 2.5, 2.6, 2.7, 2.8 or 2.9, including any proceeding reported in Item 4.1, has been concluded as to the Firm or a partner, shareholder, principal, owner, member, or *audit* manager of the Firm (whether by dismissal, acceptance of pleas, through consents or settlement agreements, the entry of a final judgment, or otherwise), provide—

- a. The name, filing date, and case or docket number of the proceeding, and the nature of the proceeding, *i.e.*, whether it is a criminal proceeding, a civil or alternative dispute resolution proceeding, or an administrative or disciplinary proceeding;

- b. The name of the court, tribunal, or body in or before which the proceeding was filed; and

- c. A brief description of the terms of the conclusion of the proceeding as to the Firm or partner, shareholder, principal, owner, member, or *audit* manager.

Item 4.3 Bankruptcy or Receivership

If the Firm, or the parent or a subsidiary thereof, has become the subject of a petition filed in a bankruptcy court, or has otherwise become the subject of a proceeding in which a court or governmental agency (or, in a non-U.S. jurisdiction, a person or entity performing a comparable function) has assumed jurisdiction over substantially all of the assets or business of the Firm or its parent or a subsidiary, provide—

- a. the name of the proceeding;

- b. the name of the court or governmental body;

- c. the date of the filing or of the assumption of jurisdiction; and

- d. the identity of the receiver, fiscal agent or similar officer, if applicable, and the date of his or her appointment.

Part V—Certain Relationships**Item 5.1 New Relationship With Person Subject to Bar or Suspension**

If the Firm has taken on as an employee, partner, shareholder, principal, or member, or has otherwise become owned or partly owned by, a person who is currently the subject of (a) a *Board* disciplinary sanction suspending or barring the person from being an *associated person of a registered public accounting firm* or (b) a *Commission* order under Rule 102(e) of the *Commission's* Rules of Practice suspending or denying the privilege of appearing or practicing before the *Commission*, provide—

- a. the name of the person;
- b. the nature of the person's relationship with the Firm; and
- c. the date on which the person's relationship with the Firm began.

Item 5.2 New Ownership Interest by Firm Subject to Bar or Suspension

If the Firm has become owned or partly owned by an entity that is currently the subject of (a) a *Board* disciplinary sanction suspending or revoking that entity's registration or disapproving that entity's application for registration, or (b) a *Commission* order under Rule 102(e) of the *Commission's* Rules of Practice suspending or denying the privilege of appearing or practicing before the *Commission*, provide—

- a. the name of the entity that has obtained an ownership interest in the Firm;
- b. the nature and extent of the ownership interest; and
- c. the date on which the ownership interest was obtained.

Item 5.3 Certain Arrangements To Receive Consulting or Other Professional Services

If the Firm has entered into a contractual or other arrangement to receive consulting or other professional services from a person or entity meeting any of the criteria described in Items 2.12 or 2.13 above, provide—

- a. the name of the person or entity;
- b. the date that the Firm entered into the contract or other arrangement; and
- c. a description of the services to be provided to the Firm by the person or entity.

Part VI—Licenses and Certifications**Item 6.1 Loss of, or Limitations Imposed on, Authorization To Engage in the Business of Auditing or Accounting**

If the Firm's authorization to engage in the business of auditing or accounting in a particular jurisdiction has ceased to be effective or has become subject to conditions or contingencies other than conditions or contingencies imposed on all firms engaged in the business of auditing or accounting in the jurisdiction, provide—

- the name of the *state*, agency, board or other authority that had issued the license or certification related to such authorization;
- the number of the license or certification;
- the date that the authorization ceased to be effective or became subject to conditions or contingencies, and
- a brief description of the reason(s) for such action, including a description of the conditions or contingencies, if any.

Item 6.2 New License or Certification

If the Firm has obtained any license or certification authorizing the Firm to engage in the business of auditing or accounting, and which has not been identified on any Form 1 or Form 3 previously filed by the Firm, or there has been a change in any license or certification number identified on a Form 1 or Form 3 previously filed by the Firm, provide —

- the name of the issuing *state*, agency, board or other authority;
- the number of the license or certification;
- the date the license or certification took effect; and
- if the license or certification replaces another license or certification issued by the same authority, the number of the replaced license or certification.

Note: If the Firm is filing a Form 4 to report a change in its form of organization, change in jurisdiction, or a business combination, the Firm should report on Form 4, rather than Form 3, any related license change that takes effect before the submission of the Form 4.

Part VII—Changes in the Firm or the Firm's Board Contact Person**Item 7.1 Change in Name of Firm**

If the Firm is reporting a change in its legal name—

- State the new legal name of the Firm;
- State the legal name of the Firm immediately preceding the new legal name;

- State the effective date of the name change;
- Provide a brief description of the reason(s) for the change; and
- Affirm, by checking the box corresponding to this Item, that, other than the name change, the Firm is the same legal entity that it was before the name change.

Note: If, other than the name change, the Firm is not the same legal entity that it was before the name change, whether because of a change in the Firm's legal form of organization or because of other transactions, the registration status of the predecessor firm does not automatically attach to the Firm, and the Firm cannot report the event as a name change. If the Firm cannot make the affirmation required by Item 7.1.e, the Firm cannot execute the certification in Part VIII as to Item 7.1, and this Form cannot be deemed filed under Rule 2206.

In that event, the Firm should consider whether, pursuant to the provisions of Rule 2108, the Firm can make the representations required in a Form 4 filing to enable the predecessor firm's registration to attach to the Firm. If the Firm cannot or does not file with the *Board* a Form 4 making all necessary representations, the predecessor firm's registration does not attach to the Firm. In those circumstances, the Firm may not lawfully prepare or issue an *audit report* without first filing an application for registration on Form 1 and having that application approved by the *Board*.

Note: If the Firm is filing a Form 4 to report a change in its form of organization, change in jurisdiction, or a business combination, the Firm should report any related name change on Form 4 and not on Form 3.

Item 7.2 Change in Contact Information

If there has been a change in the business mailing address, business telephone number, business facsimile number, or business e-mail address of the person most recently designated by the Firm (on Form 2, Form 3, or Form 4) as the Firm's primary contact with the *Board*, or if the Firm is designating a new person to serve as the primary contact, provide the name and current business mailing address, business telephone number, business facsimile number, and business e-mail of the partner or authorized officer of the Firm who will serve as the Firm's primary contact with the *Board*.

Part VIII—Certification of the Firm**Item 8.1 Signature of Partner or Authorized Officer**

This Form must be signed on behalf of the Firm by an authorized partner or officer of the Firm including, in accordance with Rule 2204, both a signature that appears in typed form within the electronic submission and a

corresponding manual signature retained by the Firm. The signer must certify that—

- the signer is authorized to sign this Form on behalf of the Firm;
- the signer has reviewed this Form;
- based on the signer's knowledge, this Form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and

d. either—

- based on the signer's knowledge, the Firm has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, with respect to the event or events being reported on this Form, or
- based on the signer's knowledge—

(A) the Firm is a *foreign registered public accounting firm* and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form, with respect to the event or events being reported on this Form, except for information or affirmations that the Firm asserts it cannot provide to the *Board* on this Form 3 without violating non-U.S. law;

(B) with respect to any such withheld information or affirmation, the Firm has made the efforts required by PCAOB Rule 2207(b) and has in its possession the materials required by PCAOB Rule 2207(c); and

(C) the Firm has indicated, in accordance with the instructions to this Form, each Item of this Form with respect to which the Firm has withheld any required information.

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

Part IX—Exhibits

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

Exhibit 99.1 Request for Confidential Treatment**Exhibit 99.3 Materials Required by Rule 2207(c)(2)–(4)—Submit Only as an Exhibit to an Amended Form 3 in Response to a Request Made Pursuant to Rule 2207(d)**

In addition to the above rules and form instructions, the Board has adopted related amendments to PCAOB

Rules 1001, 2107, 2300, 4000, and 4003. The amendments are shown below, with new language italicized, deleted language in brackets, and unchanged language indicated by a series of three asterisks.

Section 1. General Provisions

Rule 1001. Definitions of Terms Employed in Rules

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

* * *

(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.

* * *

(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.

* * *

Section 2. Registration And Reporting

Part 1—Registration of Public Accounting Firms

* * *

Rule 2107. Withdrawal from Registration

* * *

(c) Effect of Filing

[(1)] Beginning on the date of Board receipt of a completed Form 1–WD, [the firm that filed the Form 1–WD shall not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period, unless it first withdraws its Form 1–WD.

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

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

(1) *the firm shall not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period;*

(2) *the firm’s obligation to file annual reports on Form 2, and special reports on Form 3 shall be suspended;*

[(ii) any annual fee assessed shall be zero;]

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

(4) [(iv)] the firm’s registration status shall be designated as “registered—withdrawal request pending,” and the firm shall not publicly represent its registration status without specifying it as “registered—withdrawal request pending.”

* * *

(f) Withdrawal of Form 1–WD

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

Part 3—Public Availability of Applications and Reports

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

(a) Except as provided in paragraph (b) below—

(1) *an application for registration will be publicly available as soon as practicable after the Board approves or disapproves such application; and*

(2) *all other forms filed pursuant to Part 1 or Part 2 of this Section of the Rules of the Board, and any amendments thereto, will be publicly available as soon as practicable after filing, except to the extent otherwise specified in the Board’s rules or the instructions to the form.*

(b) Confidential Treatment Requests.

(1) A public accounting firm may request confidential treatment of any information submitted to the Board in connection with its application for registration *on Form 1, and may request confidential treatment of information on other forms filed pursuant to Part 1 or Part 2 of this Section of the Rules of the Board to the extent specified in the instructions to the form*, provided that the information as to which confidential treatment is requested—

[(1) *i*] has not otherwise been publicly disclosed, and

[(2) *ii*] either (A) [i] contains information reasonably identified by the public accounting firm as proprietary information, or (B) [ii] is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

(2) *Failure to provide an exhibit that complies with the requirements of paragraph (c)(2) of this Rule constitutes sufficient grounds for denial of any request for confidential treatment.*

(c) Application Procedures.

To request confidential treatment of information *for which such requests are permitted by paragraph (b)(1) of this Rule* submitted to the Board in connection with an application for registration], the [applicant] *requestor* must—

(1) identify, in accordance with the instructions [on Form 1] *to the form*, 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.] *the form a representation that, to the requestor’s knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed and—*

(i) a detailed explanation of the grounds on which the information is considered proprietary; or

(ii) a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law that the requestor claims protects the information from public disclosure.

* * * * *

(f) Unless the [applicant] requestor 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 [r]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] public accounting firm of such subpoena, to the extent permitted by law, to allow the [applicant] public accounting firm the opportunity to object to such subpoena.

* * * * *

Section 4. Inspections

Rule 4000. General

(a) Every registered public accounting firm shall be subject to all such regular and special inspections as the Board may from time to time conduct in order to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the Board's rules, the rules of the Commission, and professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(b) In furtherance of the Board's inspection process, the Board may at any time request that a registered public accounting firm provide to the Board additional information or documents relating to information provided by the firm in any report filed pursuant to Section 2 of these Rules, or relating to information that has otherwise come to the Board's attention. Any request for information or documents made pursuant to this Rule, and any information or documents provided in response to such a request, shall be considered to be in connection with the

next regular or special inspection of the registered public accounting firm.

(c) Inspection steps and procedures shall be performed by the staff of the Division of Registration and Inspections, and by such other persons as the Board may authorize to participate in particular inspections or categories of inspections.

* * * * *

Rule 4003. Frequency of Inspections

* * * * *

(c) With respect to a registered public accounting firm that has filed a completed Form 1-WD under Rule 2107, the Board shall have the discretion to forgo any regular inspection that would otherwise commence during the period beginning on the [fifth day following the filing of the] date of Board receipt of a completed Form 1-WD and continuing until the firm's registration is deemed withdrawn or the firm withdraws the Form 1-WD.

* * * * *

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

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

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

(a) Purpose

Section 102(d) of the Act provides that each registered public accounting firm shall provide an annual report to the Board, and may be required to report more frequently, as necessary to update information in its application for registration and to provide such additional information as the Board or the Commission may specify. The purpose of the proposed new rules and forms is to establish the foundation of a reporting and disclosure system for registered public accounting firms pursuant to Section 102(d) of the Act, and to specify the details of certain reporting obligations and provide forms for such reporting. To the extent that the Board identifies additional reporting requirements that are necessary or appropriate in the public interest or for the protection of investors, the Board

may propose and adopt them in the future.

The proposed reporting requirements serve three fundamental purposes. First, firms will report information to keep the Board's records current about such basic matters as the firm's name, location, contact information, and licenses. Second, firms will report information reflecting the extent and nature of the firm's audit practice related to issuers in order to facilitate analysis and planning related to the Board's inspection responsibilities and to inform other Board functions, as well as for the value the information may have to the public. Third, firms will report circumstances or events that could merit follow-up through the Board's inspection process or its enforcement process, and that also may otherwise warrant being brought to the public's attention (such as a firm's withdrawal of an audit report in circumstances where the information is not otherwise publicly available).

The reporting framework includes two types of reporting obligations. First, it requires each registered firm to provide basic information once a year about the firm and the firm's issuer-related practice over the most recent 12-month period. The firm must do so by filing an annual report on Form 2. Second, upon the occurrence of specified events, a firm must report certain information by filing a special report on Form 3.

Proposed Rule 2201 sets June 30 as the deadline for the annual filing of Form 2. The reporting period covered by the report would be April 1 to March 31, leaving each firm with three months to prepare and file a Form 2 reflecting information from that 12-month period. Any firm that was registered as of March 31 of a particular year would be required to file Form 2 by June 30 of that year, but any firm that became registered in the period between and including April 1 and June 30 would not be required to file a Form 2 until June 30 of the following year.

Under the proposed rules, the occurrence of specified events triggers an obligation to file a special report on Form 3. The proposed rules provide that special reports must be filed within 30 days of the triggering event.

The Board expects annual and special reports to be complete and accurate, and inaccuracies or omissions could form the basis for disciplinary sanctions for failing to comply with the reporting requirements reflected in Rules 2200 and 2203 and the instructions to Forms 2 and 3. Proposed Rule 2205 provides for the filing of amendments to previously filed annual or special reports if the originally filed report

included information that was incorrect at the time of the filing, or if the originally filed form omitted any information or affirmation that was, at the time of such filing, required to be included in that report.

Annual and special reports will be made public on the Board's Web site promptly upon being filed by a firm, subject to exceptions for information for which a firm requests confidential treatment. The Board intends that as much reported information as possible be publicly available as soon as possible after filing. The proposed forms identify certain categories of information for which a firm may request confidential treatment. The proposed rules include new requirements concerning the support that a firm must supply for a confidential treatment request.¹ The proposed amendments require that a firm support a request with both a representation that the information has not otherwise been publicly disclosed and either (1) a detailed explanation of the grounds on which the information is considered proprietary, or (2) a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law. The proposed amendments also provide that the firm's failure to supply the required support constitutes sufficient grounds for denial of the request.

Under proposed Rule 2207, a non-U.S. firm may withhold required information from Form 2 or Form 3 if the firm cannot provide the information without violating non-U.S. law. If the firm withholds information on that ground, it must have certain supporting materials, including (1) a copy of the relevant provisions of non-U.S. law, (2) a legal opinion concluding that the firm would violate non-U.S. law by submitting the information to the Board, and (3) a written explanation of the firm's efforts to seek consents or waivers that would be sufficient to overcome the conflict with respect to the information. The firm must certify on the form that it has the supporting materials in its possession. The rule reserves to the Board, and to the Director of the Division of Registration and Inspections, the discretion to require that a firm submit any of those supporting materials in a particular case. The rule also reserves to the Board the discretion to require that the firm provide any of the withheld information in a particular case.

¹ The proposed amendments to Rule 2300(b)-(c), concerning the required support, would also apply prospectively to confidential treatment requests on applications for registration on Form 1.

The proposed rules include an amendment to the Board's inspection rules that makes clear that the Board may require a firm to provide additional information. Specifically, existing Rule 4000 provides that registered firms shall be subject to such regular and special inspections as the Board chooses to conduct. The proposed amendment adds a paragraph providing that the Board, in the exercise of its inspection authority, may at any time request that a registered firm provide additional information or documents relating to information provided on Form 2 or Form 3, or relating to information that has otherwise come to the Board's attention. The amendment provides that the request and response are considered to be in connection with the firm's next regular or special inspection. Accordingly, the cooperation requirements of Rule 4006 apply, and the request and response are subject to the confidentiality restrictions of Section 105(b)(5) of the Act.

Existing Rule 2107 governs the process by which a firm may seek to withdraw from registration with the Board. Under Rule 2107, a firm cannot withdraw at will, but must request the Board's permission to withdraw, and the Board may withhold that permission under certain conditions. The proposed rules include an amendment to Rule 2107 to change the way it addresses the reporting obligations of a firm that has filed Form 1-WD seeking leave to withdraw. Existing Rule 2107(c)(2)(i) provides that, beginning on the fifth day after the Board receives a completed Form 1-WD, the firm can satisfy any annual reporting requirement by submitting a report stating that a completed Form 1-WD has been filed and is pending. Under the proposed amendment, the firm's reporting obligation, including both annual and special reporting, would simply be suspended while Form 1-WD was pending. If a firm withdraws its Form 1-WD and continues as a registered firm, however, Rule 2107 would require the filing of any annual or special reports, and the payment of any annual fee, that otherwise would have been required while the Form 1-WD was pending. The Board is also eliminating from Rule 2107 the five-day delay between receipt of a completed Form 1-WD and the effect of that filing on a firm's reporting obligation. Suspension of that obligation would occur immediately upon the Board's receipt of the completed Form 1-WD.²

² In connection with that change to Rule 2107, the amendment also eliminates the five-day delay before certain other consequences take effect.

The Board also proposed to delete from definitions in PCAOB Rule 1001 certain provisions that ceased to apply after December 15, 2003. Specifically, the Board proposes to amend Rules 1001(a)(vii) (definition of "audit services"), 1001(o)(i) (definition of "other accounting services"), and 1001(n)(ii) (definition of "tax services") by deleting the paragraph denominated "(1)" from each rule.

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

(b) Statutory Basis

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

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rules impose no burden beyond burdens clearly imposed and contemplated by the Act.

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

The Board released the proposed rules and form instructions for public comment in Release No. 2006-004 (May 23, 2006). A copy of Release No. 2006-004 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at <http://www.pcaobus.org>. The Board received twelve written comment letters. The Board has clarified and modified certain aspects of the proposed rules and form instructions in response to the comments it received, as discussed below.

Commenters voiced concern about burdens associated with the proposed requirement to report the percentage of total fees billed to all clients that is attributable to fees billed in each of four categories of services provided to issuer audit clients. Commenters indicated that firms, particularly large firms, may not be able to comply with the proposed requirement without making costly changes to their internal systems. The Board has weighed these concerns carefully, bearing in mind that the purposes for which the information is

Among other things, the Board is amending Rule 2107(c)(2)(iii) so that the Board would, immediately upon receipt of the completed Form 1-WD, have the discretion to forego any regular inspection of the firm that otherwise would commence. This change necessitates a conforming change to Rule 4003(c), and the Board is making that conforming change as well.

sought do not depend upon a high level of precision in the data. The Board is adopting a modified version of the proposed requirement, incorporating some elements of alternatives suggested by commenters.

Form 2 will allow a firm to select from two methods of calculating the percentages to report. Firms that are reasonably able to report the requested percentages based on data precisely coinciding with the annual reporting period (*i.e.*, the data specified by the proposed requirement) may do so. As an alternative, a firm may, for each category of services, report the percentage derived by (1) using as a denominator the total fees billed to all clients in the firm's fiscal year that ended during the annual reporting period and (2) using as a numerator the total issuer audit client fees as determined by reference to the fee amounts disclosed to the Commission by those clients for each client's fiscal year that ended during the reporting period (or, for clients who have not made the required Commission filings, the fee amounts required to be disclosed). Under either approach, a firm may use any reasonable method to estimate the components and may round the reported percentages to the nearest five percent. Firms that use estimated data in their calculations should briefly describe their methodology in an exhibit to Form 2.

Some commenters also expressed concern about what they saw as a disconnect between the four categories of services used in the proposed form and the four categories of fees that the Commission requires issuers to report in proxy filings. The Board reiterates that its definitions of these four categories of services correspond to the Commission's descriptions of services for which an issuer must disclose the fees paid to its auditor.³ The Board is not adopting commenters' suggestions to make the Board's labels conform to the Commission's labels (*i.e.*, to say "audit-related services" instead of "other accounting services" and to say "all other services" instead of "non-audit services") because the labels that the Board uses come from Section 102(b)(2)(B) of the Act and have been used in all applications for registration on Form 1. Commenters also noticed a

disconnect between Item 3.2's focus on fees billed and the reference to "revenues" in Item 3.2's caption. The Board has changed the caption to refer to fees billed instead of revenues.

Item 4.1 of Form 2 requires information relating to a firm's issuance of audit reports during the reporting period. As it was proposed, Item 4.1 would have required, among other things, the total number of firm personnel who exercised authority to sign the firm's name to an audit report during the reporting period. Commenters suggested various alternatives to requiring that precise number. Bearing in mind that, here too, the purposes for which the information is sought—principally inspection scoping and planning—do not depend upon precise information, the Board has adopted a slightly modified version of an approach suggested by a commenter. As adopted, Item 4.1.b requires a firm to indicate from among the following ranges how many individuals exercised the authority to sign the firm's name to an audit report in the reporting period: 1–9, 10–25, 26–50, 51–100, 101–200, or more than 200. If the firm indicates that the range is 1–9, the firm must also provide the exact number.

One commenter sought clarification on whether the audit report date being requested referred to the date of the auditor's report, the report release date pursuant to PCAOB Auditing Standard No. 3, *Audit Documentation*, or the date that the issuer filed the report with the Commission. A note to Item 4.1 now clarifies that the date called for by Item 4.1.a.3 is the date of the audit report, as described in AU 530, *Dating of the Independent Auditor's Report*. A note has also been added to clarify that it is not necessary to provide the date of any consent to an issuer's use of an audit report previously issued for that issuer, except that, if such consents constitute the only instances of the firm issuing audit reports for a particular issuer during the reporting period, the firm should include that issuer in Item 4.1 and include the dates of such consents in Item 4.1.a.3.

If, during the reporting period, a firm plays a substantial role in the preparation or furnishing of an audit report that was issued in the reporting period, but the firm did not issue audit reports required to be reported under Item 4.1, the firm must report certain information under Item 4.2. As proposed, Item 4.2.a.4 would have required the firm to report the date of each such audit report. One commenter expressed concern that a firm might not have access to the date of an audit report issued by another firm. The

Board has revised Item 4.2.a.4 to require, instead, the end date of the fiscal period covered by the financial statements that were the subject of the audit report.

Item 5.2.a.3, as proposed, would have required the firm to state whether it has any "affiliation, whether by contract or otherwise, with another entity through or from which the firm commonly employs or leases personnel to perform audit services, or with which the firm otherwise engages in an alternative practice structure." Commenters asked for clarification of "commonly" and also suggested that the term "affiliation" could cause confusion since the item does not appear intended to be limited to relationships commonly viewed as "affiliate" relationships. The final version of Item 5.2.a.3 avoids the use of "affiliation" and "commonly" and requires the firm to state whether it has any "arrangement, whether by contract or otherwise, with another entity through or from which the firm employs or leases personnel to perform audit services." One commenter also asked the Board to clarify that Item 5.2.a.3 does not encompass a firm's hiring of, or contracting for, support personnel. Item 5.2.a.3, by its terms, encompasses only arrangements through which the firm employs or leases "personnel to perform audit services."

Regarding Part VI, commenters expressed concern about Item 6.1.d's requirement to provide information about the number of firm personnel, segregated by functional level, who provided audit services during the reporting period. Commenters stated that some firms cannot readily track with precision the number of such individuals. Commenters constructively suggested various alternative ways to collect a rough surrogate for that number. The Board has concluded, however, not to adopt any version of Item 6.1.d at this time.

Item 6.1.b requires the firm to report the total number, as of the end of the reporting period, of the firm's certified public accountants, and requires the firm to include in that number any firm accountants with "comparable licenses" from non-U.S. jurisdictions. One commenter asked for clarification of the "comparable license" concept. The "comparable license" concept is not new, but is employed in the Form 1 application for registration. Even so, the commenter suggested clarifying that the requirement refers to accountants that are (1) licensed by the jurisdiction in which they render services and (2) by virtue of such license, are certified to perform the functions of a public accountant. The Board confirms this as

³ Compare the descriptions of services in Item 9(e) of Commission Schedule 14A (17 CFR 240.14a-101) under the headings "Audit Fees," "Audit-Related Fees," "Tax Fees," and "All Other Fees" with, respectively, the Board's definitions of "Audit Services" (Rule 1001(a)(vii)), "Other Accounting Services" (Rule 1001(o)(ii)), "Tax Services" (Rule 1001(t)(i)), and "Non-Audit Services" (Rule 1001(n)(ii)). The note to Item 3.2 on Form 2 has been expanded to highlight this point.

the appropriate understanding of the requirement.

In Part VII of Form 2, the firm must report information if it stands in certain relationships to individuals who, or entities that, were the subject of a Board order imposing a disciplinary sanction or a Commission Rule 102(e) order entered within the five years preceding the end of the reporting period.

As proposed, the Part VII items would have required a firm to report new relationships commenced during the reporting period, and the proposal would have required every firm's first Form 2 filing to report this information not only for the reporting period but for the entire period back to the cut-off date that the firm used for information it supplied in its Form 1 application. For hundreds of firms' first Form 2 filings, that period would be more than five years.

In response to comments about that burden, the Board has restructured the Part VII items relating to firm personnel or owners to capture only relationships that (1) exist as of the end of the reporting period, (2) are with individuals or entities whose relevant disciplinary sanction or Rule 102(e) order was entered within the five years preceding the end of the reporting period, and (3) have not previously been reported by the firm on Forms 1, 2, or 3. The Board has also restructured the Part VII item relating to receipt of consulting or professional services to capture only relationships that involve services received, or contracted for, in the reporting period. With these changes, a firm's first Form 2 will still effectively serve to fill any gap, but the burden will only extend to currently relevant information. Subsequent Form 2 filings need not report the same information again just because the relationship continues to exist at the end of the reporting period.

In response to commenters' concerns and suggestions, the Board has also limited the scope of relevant firm personnel to those who provided at least ten hours of audit services for any issuer during the reporting period. It is important to note, however, how this change intersects with the structural change described above. Just because an individual does not meet the ten-hour threshold during the reporting period in which the relationship begins does not mean that the firm need never report the relationship. If there is a later reporting period in which that person meets the ten-hour threshold, and that reporting period end is still within five years of the entry of the disciplinary sanction or Commission order, the firm must report that relationship in its annual report for

that period. The relationship need only be reported one time, however, and need not be reported again for future reporting periods in which the criteria are met.

Also in response to comments, the Board has added a scope limitation to Part VII's approach concerning the firm's receipt of consulting or other professional services. The Board has narrowed the reporting trigger to encompass only arrangements for services related to the firm's audit practice or related to services the firm provides to issuer audit clients. The reporting obligation is triggered for any reporting period that ends less than five years after entry of the disciplinary sanction or Commission order and in which the firm has received or arranged to receive such services.

Finally, the Board is eliminating one category of reportable relationships that was included in the proposal. The Board proposed that firms report information if they entered into a relationship with any individual who, while not having been sanctioned personally, was a principal of a firm at the time of conduct for which the firm was later subjected to specified sanctions. After carefully considering comments, however, the Board is persuaded that any occasional value this information might have is outweighed by the fact that treating this information as a risk indicator about either the firm or the individual has the potential to diminish the professional opportunities of (1) individuals who had no connection to the misconduct at all, and (2) individuals who had a connection to alleged misconduct, but who never had an opportunity to defend against charges because a regulator was satisfied to conclude the matter through a settlement with the firm. In addition, the Board is sensitive to the unusual burden that would be placed on firms not only to ascertain this information at the time they commence the relationship, but also to continually monitor for it, since the relevant sanction might not be entered until years after the conduct.

In Part VIII of Form 2, the firm must report information if it has acquired another public accounting firm or taken on 75 percent or more of another accounting firm's principals. Commenters suggested the need for some clarification, and the Board has made changes to clarify two points. First, where the proposal referred only to acquisition of an "accounting firm"—which commenters correctly noted is not a term defined in the Act or the Board's rules—the final form now refers to a "public accounting firm," which is

defined in both the Act and the rules. Second, with respect to taking on 75 percent or more of another firm's principals, the final form includes language clarifying that the reference is to 75 percent of the persons who were principals of the other firm "as of the beginning of the reporting period."

Form 2 requires an annual affirmation related to the Act's requirements that the firm consent to cooperate with the Board and enforce cooperation by the firm's associated persons. Tracking the consent language included in Form 1, Form 2 requires the firm (1) to affirm its consent to cooperate with Board requests for testimony or documents, (2) to affirm that it has secured from each of its associated persons the required consents to cooperate with the Board, and (3) to affirm the firm's understanding and agreement that its cooperation and compliance, and the securing and enforcing of consents from its associated persons, is a condition of its continued registration with the Board.

One commenter seemed to misunderstand the proposal and suggested that the Board make clear that this requirement is an update of the Form 1 consent and is required only for new employees since a firm's initial registration. The Form 2 affirmation does not impose a new substantive requirement but merely requires the firm to affirm that it remains aware of its continuing obligation to cooperate and that it has in fact been keeping up with its ongoing obligation to secure the requisite consents from all of its associated persons.

The reporting framework includes accommodations for firms faced with potential non-U.S. legal obstacles to their ability to comply with Form 2 requirements. One such accommodation is reflected in a note to the Form 2 affirmation section. The note explains that the affirmation shall not be understood to include an affirmation that the firm has secured consents from associated persons that are unregistered foreign firms that assert that non-U.S. law prohibits them from providing the consent, as long as certain requirements concerning that assertion are satisfied. Two commenters expressed concern about the note's provision that the registered firm (filing the Form 2) must have in its possession documents relating to the unregistered firm's asserted conflict that would be sufficient to satisfy the requirements of Rule 2207(c)(2)–(4). The commenters expressed concern about whether that language effectively requires the registered firm (filing the Form 2) to assess the substance of the unregistered

non-U.S. firm's conflict assertion. The note requires no such assessment by the registered firm, but only requires the firm to ascertain that the documents appear, on their face, to be the documents described in Rule 2207(c)(2)–(4).

Rule 2201 sets June 30 as the deadline for the annual filing of Form 2. The reporting period covered by the report would be April 1 to March 31. Commenters suggested alternatives, such as tying a firm's reporting deadline to that firm's fiscal year, to avoid what those commenters saw as unnecessary burdens on firms. In the Board's view, a single filing deadline for all firms is more appropriate than varying deadlines tied to individual firms' fiscal years. The Board has considered the comments about burden and has made changes that will address those concerns—such as allowing a firm to use its and its clients' fiscal year data in reporting the fee billing information—without introducing varying reporting periods and deadlines for different firms. With those changes, the required Form 2 reporting does not involve any complexity or burden that makes it unreasonable to require all firms to supply the information according to the same schedule.

Under the rules, the occurrence of specified events triggers an obligation to file a special report on Form 3. The list of reporting triggers reflects the Board's decision, after consideration of comments, to drop some items from the list that was proposed and to refine the focus of other items. The changes and clarifications relate to a client's unauthorized use of the firm's name, reportable criminal and other proceedings, reportable new relationships, and changes in authorization to engage in the business of auditing.

The Board has excluded from the final requirements one special reporting trigger that was proposed: An issuer's unauthorized use of the firm's name, such as by making a filing with the Commission that includes an audit report that the issuer falsely represents as having been issued by the firm. In proposing that item, the Board noted that it might protect investors and serve the public interest by drawing attention to a potential problem relatively quickly. The commenters who addressed the point expressed a view that this reporting requirement would be fundamentally about issuer conduct and, therefore, is more appropriately left to the Commission in the context of its disclosure framework and its framework for addressing Section 10A(b) reports from auditors. After consideration of

those comments, the Board has decided not to adopt such a requirement at this time.

The proposed rules included a requirement that a firm file a special report when it withdraws an audit report, but also provided an exception to that requirement if the issuer audit client had already disclosed the relevant information in a Form 8–K filing with the Commission. The views expressed by commenters on this point were similar to the views described above with respect to an issuer's unauthorized use of a firm's name.

The Board is adopting this item as proposed. The point of this item is not to have the firm draw the Board's attention to potential problems with an issuer's financial statements. A withdrawn audit report is a risk indicator concerning the auditor's conduct preceding the withdrawal, not merely a risk indicator concerning the issuer's financial statements. The Board has a regulatory interest in being aware of that information and possibly following up on that information for reasons directly related to its oversight of auditors.

Nor is the point of the item to have the firm draw the Board's attention to a failure by the issuer to file a required Form 8–K. The Board's interest is in the fact of the withdrawn audit report. In the usual case, the Board can obtain that information from issuer Form 8–K filings without requiring duplicative filing by the firm, but the Board cannot do so if the issuer does not file the Form 8–K. For that reason, the Form 3 requirement is limited to circumstances in which the information is not otherwise available to the Board through a Form 8–K filing.

One commenter noted that if an issuer is no longer a client, the firm may not be in a position to monitor whether that former client has made the Form 8–K filing. Item 4.02(c) of Form 8–K, however, requires the issuer to provide the firm with a copy of the disclosures it is making in response to Item 4.02 no later than the day the issuer files the Form 8–K, and also requires the issuer to request that the firm furnish to the issuer a letter addressed to the Commission stating whether the firm agrees with the statements made by the issuer in response to Item 4.02. The firm should, therefore, generally be in a position to know whether the issuer has made the filing.

As proposed, Form 3 would have required a firm to file a special report if a partner, shareholder, principal, owner, member, or audit manager of the firm became a defendant in criminal proceedings involving certain categories

of offenses. After consideration of comments, the Board has narrowed this requirement in two respects. First, the Board has reformulated these Form 3 reporting triggers to distinguish between proceedings that arise out of conduct in providing audit services or other accounting services for issuers and proceedings that do not arise out of such conduct. As to the latter category, the reporting obligation will be triggered only if the relevant individual provided at least ten hours of audit services for any issuer during the firm's current or most recently completed fiscal year. Second, the Board has eliminated from the categories of relevant offenses two relatively broadly described categories: Crimes arising out of alleged conduct relating to "dishonesty," and crimes arising out of alleged conduct that, if proven, "would bear materially on the individual's fitness to provide audit services to issuers."

One commenter expressed uncertainty about whether a firm would need to report the event if the firm suspended or terminated the individual or prohibited the individual from providing audit services for issuers. The reporting obligation includes no such qualification. The firm's reporting obligation is triggered when it becomes aware of the proceeding, and that obligation is not cut off if the firm terminates its relationship with the individual.

Some commenters sought clarification about the inclusion of "managers" and "members" within the scope of relevant individuals. One commenter asked whether "members" was meant to include employees generally. "Members" is not meant to include all employees but, rather, is intended as it is often used in firms' structures and parlance to distinguish those with certain ownership or governance rights from others. Some commenters noted that "managers" typically are not owners or partners and so questioned whether the Board intended to include them within the scope of this requirement. The Board is aware of the distinction and does intend the requirement to encompass manager-level personnel. The Board has, however, referred in the final rules to "audit manager" rather than merely "manager," to avoid any possible confusion about other sorts of managers, as the term is more generally used.

Some commenters expressed concern about the information that Form 3 would require the firm to provide about the proceedings that triggered the reporting requirement. Commenters suggested that providing descriptions of the proceedings could be burdensome,

that the descriptions would be inherently subjective, and that the descriptions should not be in the public arena while the proceeding is ongoing. The Board has not made any changes related to this point. Form 3 requires the firm to list the statutes, rules, or legal duties that are alleged to have been violated, which involves no subjective or qualitative analysis, and requires a brief description of the alleged conduct, which can be drawn from the relevant complaint or charging document without creating any implication that the firm concedes anything about the allegations. If grounds exist, under Rule 2300, for keeping the reported information confidential, the firm may request confidential treatment.

Form 3 requires a firm to file a special report if it enters into certain specified relationships with individuals or entities that are currently subject to any of the following: (1) A Board disciplinary sanction suspending or barring an individual from being an associated person of a registered public accounting firm, (2) a Board order disapproving an entity's application for registration, or (3) a Commission order under Rule 102(e) of the Commission's Rules of Practice suspending or denying the privilege of appearing or practicing before the Commission. Commenters suggested that the scope of relevant individuals should be limited to those who provide audit services. Although the Board has made such a change to the similar Form 2 requirement, such a change is not appropriate for this Form 3 requirement, which is generally intended to gather information about new relationships with persons or entities that are effectively restricted from providing audit services. In this context, the qualification suggested by commenters would have the effect of either negating the requirement entirely or transforming it into a requirement for a firm to report that a person or entity is violating such a restriction in connection with audits performed by the firm. For similar reasons, the Board has rejected suggestions to narrow the scope of consulting and professional services received by the firm that trigger this reporting requirement.

Commenters also expressed concern about the burden associated with identifying the existence of the sanction or 102(e) order. Firms should understand, however, that to a significant extent that burden effectively exists regardless of whether the firm has a reporting obligation. Not only does the firm have an obvious need to know, for its own purposes, of any such limitations on the person's ability to provide services, but Board Rule 5301(b)

provides that "no registered public accounting firm that knows, or in the exercise of reasonable care should have known, of the suspension or bar of a person may permit such person to become or remain associated with it, without the consent of the Board, pursuant to Rule 5302, or the Commission."⁴

Form 3 requires a firm to file a special report regarding certain changes in its authorization to engage in the business of auditing or accounting in a particular jurisdiction. After considering comments, the Board has made wording changes to clarify three points: (1) The requirement is intended only to cover circumstances that involve a loss of the firm's authorization to engage in the business of auditing or accounting; (2) the proposed phrase, "made subject to condition or contingencies," was not intended to encompass conditions or contingencies that are broadly applicable to all firms licensed in the jurisdiction; and (3) the requirement to report new licenses or certifications, or changes in existing licenses or certifications, is limited to licenses and certifications that authorize the firm to engage in the business of auditing or accounting.

The proposed rules would have required that special reports on Form 3 be filed no later than 14 days after the triggering event. Several commenters expressed concern that 14 days was not sufficient time in which to review and assess an event and report the required information, and that this was particularly true for non-U.S. firms that may need to assess possible legal obstacles to reporting and prepare the materials necessary to comply with Rule 2207. Commenters' alternative suggestions included 30 days, 45 days, 60 days, and 90 days. The Board is persuaded that a longer period than 14 days is appropriate and is adopting a requirement to file special reports within 30 days of the triggering event.

Commenters also raised questions about when, for certain reportable events, the "trigger" actually occurs. In particular, several triggering events are described in Form 3 in terms of when the firm has "become aware" that something has occurred. Commenters asked for clarification of what it means, in this context, to say that the firm has become aware of a matter. The Board has added a note to the beginning of

⁴ Rule 5301(b)'s prohibition on allowing such a person to "become or remain associated with" the firm is not a prohibition against any and all employment or other relationships, but only a prohibition against allowing the person to be an "associated" person as that term is defined in Section 2(a)(9) of the Act and Board Rule 1001(p)(i).

Part II of Form 3 to specify that the firm is deemed to have become aware of the relevant facts on the date that any partner, shareholder, principal, owner, or member of the firm first becomes aware of the facts. The Board believes it is reasonable to expect a firm to have controls designed to ensure that any such person who becomes aware of relevant facts understands the firm's reporting obligation and brings the matter to the attention of persons responsible for compliance with the obligation.

As proposed, Rule 2205 would have required a firm to amend its filing within a fixed time after becoming aware of an error or omission. Commenters raised concerns about the practical difficulties posed in this context by reliance on the concept of a firm becoming "aware" of an error or omission. The Board recognizes those difficulties. Rather than prescribe requirements for firms to have systems and procedures to surface such errors or omissions and then report them within a prescribed time, the Board's revised approach relies on the firm understanding its self-interest. The Board expects annual and special reports to be complete and accurate, and inaccuracies or omissions could form the basis for disciplinary sanctions for failing to comply with the reporting requirements reflected in Rules 2200 and 2203 and the instructions to Forms 2 and 3. Firms should be sufficiently motivated to have procedures to detect any need for amendments, and to amend filings as soon as possible, in order to mitigate the possibility of disciplinary sanctions for the inaccurate original filing.

The amendment to Rule 4000 adds a paragraph providing that the Board, in the exercise of its inspection authority, may at any time request that a registered firm provide additional information or documents relating to information provided on Form 2 or Form 3, or relating to information that has otherwise come to the Board's attention. The amendment provides that the request and response are considered to be in connection with the firm's next regular or special inspection. In response to concerns raised by some commenters, the Board confirms that the information-gathering activity described in the amendment is an exercise of the Board's inspection authority. It does not provide a basis for the Board to compel a firm to provide information beyond the scope of information encompassed by the inspection authority, or for purposes other than assessing compliance by the firm or its associated persons with the

“Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.”⁵

Annual and special reports will be made public on the Board’s Web site promptly upon being filed by a firm, subject to exceptions for information for which a firm requests confidential treatment. The amendments to Rule 2300 require that a firm support a request with both a representation that the information has not otherwise been publicly disclosed and either (1) a detailed explanation of the grounds on which the information is considered proprietary, or (2) a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law. The amendments also provide that the firm’s failure to supply the required support constitutes sufficient grounds for denial of the request.

In response to questions raised by commenters, the Board emphasizes that this approach to confidential treatment requests does nothing to change a firm’s right to seek review of an initial denial of confidential treatment. Initial decisions will continue to be made by the Director of Registration and Inspections, pursuant to delegated authority, under Rule 2300(h). A firm may, under Rule 5468, seek Board review of any denial.

One commenter noted that confidentiality protection might arise from sources other than statutes and regulation, including common law, judicial orders, and contractual terms, and that the Board should more broadly define the scope of documentation that may be presented in support of a confidential treatment request. Rule 2300(b), however, does not limit the scope of documentation that a firm may present to support its argument that the rule’s criteria for confidentiality are satisfied. The Board also agrees that “applicable law related to the confidentiality of proprietary, personal, or other information” that may protect information from public disclosure is not limited to statutes and regulations. At the same time, however, a contractual agreement between two parties does not constitute “applicable law” and is unlikely to satisfy the rule’s criteria.

Under proposed Rule 2207, a non-U.S. firm may initially withhold required information from Form 2 or Form 3 if it could not provide the

information without violating non-U.S. law. If non-U.S. firm withholds information on that ground, it must have certain supporting materials, including (1) a copy of the relevant provisions of non-U.S. law, (2) a legal opinion concluding that the firm would violate non-U.S. law by submitting the information to the Board, and (3) a written explanation of the firm’s efforts to seek consents or waivers that would be sufficient to overcome the conflict with respect to the information.

To address a concern raised by commenters, the Board has revised Rule 2207(c)(4), and added a related note at the end of the rule, to make clear that the rule does not require a firm to repeat previously futile efforts to obtain consents and waivers. Specifically, Rule 2207(c)(4) requires the firm to prepare and maintain a written representation that it has made “reasonable efforts” to obtain relevant consents and waivers. The note at the end of the rule makes clear that the “reasonable efforts” element of the rule does not require either (1) that the firm renew efforts with parties that have previously declined to provide consents or waivers with respect to similar types of information, or (2) that the firm seek consents or waivers from parties other than firm personnel and firm clients.

In its initial proposal, the Board stated that it intended for the reporting requirements to take effect 21 days after Commission approval, with “catch-up” Form 3 filings due 14 days later. The Board has considered comments expressing concern that this is too ambitious a schedule, and the Board is now taking a different approach. The Board intends that the rules, rule amendments, and Forms 2 and 3 that it is adopting today will take effect on the date that is 60 days after Commission approval. This will build in more than ample lead time for firms to become aware of Commission approval of the rules and to prepare any reports that will be due after the rules take effect.

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

Within 60 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/pcaob.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number PCAOB 2008–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number PCAOB 2008–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/pcaob/shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. PCAOB–2008–04 and should be submitted on or before July 20, 2009.

⁵ Section 104(a) of the Act.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

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