FEDERAL REGISTER

Vol. 79 Monday,
No. 22 February 3, 2014

Part II

Securities and Exchange Commission

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments To Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71237; File No. PCAOB–2013–03)

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments To Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications

January 6, 2014.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on December 23, 2013, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rules described in items I 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 Rules

On December 4, 2013, the Board adopted amendments to conform the Board's rules and forms to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') and make certain updates and clarifications (collectively, the ''proposed rules''). The text of the proposed rules is set out below.

Amendments to Board Rules, Interim Quality Control Standards, and Ethics Code

The Board is amending Sections 1, 2, 3, 4, 5, and 7 of its rules, Sections 1000.08(m) and 1000.43, Appendix I of the Interim Quality Control Standards, and its Ethics Code as set out below. Language deleted by these amendments is bracketed. Language that is added is set in Italic.

Rules of the Board

SECTION 1. GENERAL PROVISIONS

Rule 1001. Definitions of Terms Employed in Rules

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

* * * * *

(a)(v) Audit

The term ''audit'' means an examination of the financial statements*, reports, documents, procedures, controls, or notices* of any issuer*, broker, or dealer* by an independent public accounting firm in accordance with the rules of the Board or the Commission [(or, for the period preceding the adoption of applicable Rules of the Board under Section 103 of the Act, in accordance with then applicable generally accepted auditing standards for such purposes)], for the purpose of expressing an opinion on *the financial* [such] statements *or providing an audit report.*

[Note: Effective [insert effective date of Rule 4020T], pursuant to Rule 4020T, when used in Rule 3502, Section 5 of the Rules of the Board, or the definition of ''disciplinary proceeding'' in Rule 1001(d)(i), the term ''audit'' has the meaning provided in Section 110 of the Act.]

(a)(vi) Audit Report

The term ''audit report'' means a document*, report, notice,* or other record—

(1) prepared following an audit performed for purposes of compliance by an issuer*, broker, or dealer* with the requirements of the securities laws; and

(2) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report*, notice,* or other document*, procedures, or controls;* or

(ii) asserts *that* no such opinion can be expressed.

[Note: Effective [insert effective date of Rule 4020T], pursuant to Rule 4020T, when used in Rule 3502, Section 5 of the Rules of the Board, or the definition of ''disciplinary proceeding'' in Rule 1001(d)(i), the term ''audit report'' has the meaning provided in Section 110 of the Act.]

(a)(vii) Audit Services

(1) With respect to issuers, t[T]he term ''audit services'' means professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years;[.]

(2) With respect to brokers and dealers, the term ''audit services'' means professional services rendered for the audit of a broker's or dealer's annual financial statements, supporting schedules, supplemental reports, and for the report on either a broker's or dealer's compliance report or exemption report, as described in Rule 17a–5(g) under the Exchange Act.

(f)(iii) Foreign Auditor Oversight Authority

The term ''foreign auditor oversight authority'' means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.

* * * * *

(n)(i) *Reserved*

* * * * *

(o)(i) Other Accounting Services

The term ''other accounting services'' means assurance and related services that are reasonably related to the performance of the audit or review of the [issuer's] *client's* financial statements, other than audit services.

* * * * *

(p)(i) Person Associated With a Public Accounting Firm (and Related Terms)

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

(1) shares in the profits of, or receives compensation in any other form from, that firm; or

(2) participates as agent *or otherwise* on behalf of such accounting firm in any activity of that firm;

provided, however, that these terms do not include a person engaged only in clerical or ministerial tasks*, or, for purposes of completing a registration application on Form 1, Part IX of an annual report on Form 2, or Part IV of a Form 4 filed to succeed to the registration status of a predecessor, these terms do not include* [or] a person whom the public accounting firm reasonably believes is a person primarily associated with another registered public accounting firm.

Note: Section 2(a)(9)(C) of the Act provides that, for purposes of, among other things, Section 105 of the Act, and the Board's rules thereunder, the terms defined in Rule 1001(p)(i) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except that:

(1) the authority to conduct an investigation of such person under Section 105(b) of the Act shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking

to become associated with a registered public accounting firm; and

(2) the authority to commence a disciplinary proceeding under Section 105(c)(1) of the Act, or impose sanctions against such person under Section 105(c)(4) of the Act, shall apply only with respect to:

(i) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

(ii) non-cooperation, as described in Section 105(b)(3) of the Act, with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.

(p)(ii) Play a Substantial Role in the Preparation or Furnishing of an Audit Report

The phrase ''play a substantial role in the preparation or furnishing of an audit report'' means—

(1) to perform material services that a public accounting firm uses or relies on in issuing all or part of its audit report [with respect to any issuer], or

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

Note 1: For purposes of paragraph (1) of this definition, the term ''material services'' means services, for which the engagement hours or fees constitute 20% or more of the total engagement hours or fees, respectively, provided by the principal *auditor* [accountant] in connection with the issuance of all or part of its audit report [with respect to any issuer]. The term does not include non-audit services provided to non-audit clients.

Note 2: For purposes of paragraph (2) of this definition, the phrase ''subsidiary or component'' is meant to include any subsidiary, division, branch, office or other component of an issuer*, broker, or dealer,* regardless of its form of organization and/or control relationship with the issuer*, broker, or dealer.*

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

* * * * *

(p)[(iii)]*(v)* Party

The term ''party'' means the interested division, any person named as a respondent in an order instituting proceedings or notice of a hearing, any applicant named in the caption of any order, or any person seeking Board review of a decision.

* * * * *

(p)(vi) Professional Standards

The term ''professional standards'' means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act [of 1933, as amended by the Act], or prescribed by the Commission under section 19(a) of the Securities Act [of 1933] or section 13(b) of the [Securities] Exchange Act [of 1934]; and

(ii) relevant to audit reports for particular issuers*, brokers, or dealers,* or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing Title II of the Act) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers*, brokers, or dealers;* and

(ii) are established or adopted by the Board under section 103(a) of the Act, or are promulgated as rules of the Commission.

[Note: Effective [insert effective date of Rule 4020T], pursuant to Rule 4020T, when used in Rule 3502, Section 5 of the Rules of the Board, or the definition of ''disciplinary proceeding'' in Rule 1001(d)(i), the term ''professional standards'' has the meaning provided in Section 110 of the Act.]

* * * * *

(s)[(iii)]*(vi)* Secretary

The term ''Secretary'' means the Secretary of the Board.

(s)(iv) Suspension

The term ''suspension'' means a temporary disciplinary sanction, which lapses by its own terms, prohibiting—

(1) a registered public accounting firm from preparing or issuing, or participating in the preparation or issuance of, any audit report [with respect to any issuer]; or

(2) a person from being associated with a registered public accounting firm.

* * * * *

SECTION 2. REGISTRATION AND REPORTING

Part 1—Registration of Public Accounting Firms

Rule 2100. Registration Requirements for Public Accounting Firms

[Effective October 22, 2003 (or, for foreign public accounting firms, July 19, 2004),] *E*[e]ach public accounting firm that—

(a) prepares or issues any audit report with respect to any issuer*, broker, or dealer;* or

(b) plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer*, broker, or dealer* must be registered with the Board.

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

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

Rule 2106. Action on Applications for Registration.

(a) Standard for Approval.

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

* * * * *

Rule 2107. Withdrawal from Registration

* * * * *

(d) Board Action

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

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

* * * * *

SECTION 3. AUDITING AND RELATED PROFESSIONAL PRACTICE STANDARDS

Part 1—General Requirements

Rule 3101. Certain Terms Used in Auditing and Related Professional Practice Standards

* * * * *

[(c) The documentation requirement in paragraph (a)(2) is effective for audits of financial statements or other engagements with respect to fiscal years ending on or after November 15, 2004.]

Rule 3200T. Interim Auditing Standards

In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with generally accepted auditing standards, as described in the AICPA Auditing Standards Board's Statement of Auditing Standards No. 95, as in existence on April 16, 2003 (Codification of Statements on Auditing Standards, AU § 150 (AICPA 2002)), to the extent not superseded or amended by the Board.

[Note: Under Section 102(a) of the Act, public accounting firms are not required to be registered with the Board until 180 days after the date of the determination of the Commission under section 101(d) that the Board has the capacity to carry out the requirements of Title I of the Act (the ''mandatory registration date''). The Board intends that, during the period preceding the mandatory registration date, the Interim Auditing Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

[Rule 3201T. Temporary Transitional Provision for PCAOB Auditing Standard No. 2, ''An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements.'']

[(a) Notwithstanding Auditing Standard No. 2, in connection with the audit of an issuer that does not file Management's annual report on internal control over financial reporting in reliance on SEC Release No. 34–50754, Order Under Section 36 of the Securities Exchange Act of 1934 Granting an Exemption from Specified Provisions of Exchange Act Rules 13a–1 and 15d–1 (November 30, 2004), a registered public accounting firm and its associated persons need not:]

[(1) Date the auditor's report on management's assessment of the effectiveness of internal control over financial reporting with the same date as the auditor's report on the issuer's financial statements, provided that the date of the auditor's report on management's assessment of the effectiveness of internal control over financial reporting is later than the date of the auditor's report on the issuer's financial statements; or]

[(2) Add a paragraph to the auditor's separate report on the financial statements of an issuer that refers to a separate report on management's assessment of the effectiveness of internal control over financial reporting.]

[(b) This temporary rule will expire on July 15, 2005.]

Rule 3300T. Interim Attestation Standards

In connection with an engagement (i) described in the AICPA's Auditing Standards Board's Statement on Standards for Attestation Engagements No. 10 (Codification of Statements on Auditing Standards, AT § 101.01 (AICPA 2002)) and (ii) related to the preparation or issuance of audit reports [for issuers], a registered public accounting firm, and its associated persons, shall comply with the AICPA Auditing Standards Board's Statements on Standards for Attestation Engagements, and related interpretations and Statements of Position, as in existence on April 16, 2003, to the extent not superseded or amended by the Board.

[Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Attestation Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

Rule 3400T. Interim Quality Control Standards

A registered public accounting firm, and its associated persons, shall comply with quality control standards, as described in—

(a) the AICPA's Auditing Standards Board's Statements on Quality Control Standards, as in existence on April 16, 2003 (AICPA Professional Standards, QC §§ 20–40 (AICPA 2002)), to the extent not superseded or amended by the Board; and

(b) the AICPA SEC Practice Section's Requirements of Membership (d), [(f)(first sentence),] (l), (m), (n)(1) and (o), as in existence on April 16, 2003 (AICPA SEC Practice Section Manual § 1000.08(d), [(f),] (j), (m), (n)(1) and (o)), to the extent not superseded or amended by the Board.

Note: The AICPA SEC Practice Section's Requirements of Membership only apply to those registered public accounting firms that were members of the AICPA SEC Practice Section on April 16, 2003.

[Note: The second sentence of requirement (f) of the AICPA SEC Practice Section's Requirements of Membership provided for the AICPA's peer review committee to ''authorize alternative procedures'' when the requirement for a concurring review could not be met because of the size of the firm. This provision is not adopted as part of the Board's Interim Quality Control Standards. After the effective date of the Interim Quality Control Standards, requests for authorization of alternative procedures to a concurring review may, however, be directed to the Board.]

[Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Quality Control Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

Part 5—Ethics *and Independence*

Rule 3500T. Interim Ethics and Independence Standards

(*a*) In connection with the preparation or issuance of any audit report, a

registered public accounting firm, and its associated persons, shall comply with ethics standards, as described in the AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 102 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board.

[Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Ethics Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

(b) In connection with the preparation or issuance of any audit report, a registered public accounting firm, and its associated persons, shall comply with independence standards—

(1) as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 101 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board; and

(2) Standards Nos. 2 and 3, and Interpretation 99–1 of the Independence Standards Board, to the extent not superseded or amended by the Board.

Note: The Board's Interim Independence Standards do not supersede the Commission's auditor independence rules. See Rule 2–01 of Reg. S–X, 17 CFR 210.2–01. Therefore, to the extent that a provision of the Commission's rule is more restrictive—or less restrictive—than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.

Rule 3501. Definitions of Terms Employed in Section 3, Part 5 of the Rules

When used in Section 3, Part 5 of the Rules, unless the context otherwise requires:

* * * * *

(a)(v) Audit Committee

The term ''audit committee'' means a committee (or equivalent body) established by and among the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of the entity and audits of the financial statements of the entity; if no such committee exists with respect to the entity, the entire board of directors of the entity. For audits of non-issuers, if no such committee or board of directors (or equivalent body) exists with respect to the entity, ''audit committee'' means the person(s) who oversee(s) the accounting and financial reporting processes of the entity and audits of the financial statements of the entity.

* * * * *

(i)(ii) Investment Company Complex

(1) The term ''investment company complex'' includes—

* * * * *

(iii) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act [of 1940] (15 U.S.C. § 80a–(c)) that has an investment adviser or sponsor included in this definition by either paragraph (i) or (ii) of this definition.

* * * * *

Subpart 1—Independence

Rule 3520. Auditor Independence

A registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement period.

Note 1: Under Rule 3520, a registered public accounting firm or associated person's independence obligation with respect to an audit client [that is an issuer] encompasses not only an obligation to satisfy the independence criteria *applicable to the engagement* set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws.

Note 2: Rule 3520 applies only to those associated persons of a registered public accounting firm required to be independent of the firm's audit client by standards, rules or regulations of the *Board or* Commission or other applicable independence criteria.

Rule 3523. Tax Services for Persons in Financial Reporting Oversight Roles

A registered public accounting firm is not independent of *an issuer* [its] audit client if the firm, or any affiliate of the firm, during the professional engagement period provides any tax service to a person in a financial reporting oversight role at the *issuer* audit client, or an immediate family member of such person, unless—

(a) the person is in a financial reporting oversight role at the *issuer* audit client only because he or she serves as a member of the board of directors or similar management or governing body of the audit client;

(b) the person is in a financial reporting oversight role at the *issuer* audit client only because of the person's relationship to an affiliate of the entity being audited—

(1) whose financial statements are not material to the consolidated financial statements of the entity being audited; or

(2) whose financial statements are audited by an auditor other than the firm or an associated person of the firm; or

(c) the person was not in a financial reporting oversight role at the issuer audit client before a hiring, promotion, or other change in employment event and the tax services are—

(1) provided pursuant to an engagement in process before the hiring, promotion, or other change in employment event; and

(2) completed on or before 180 days after the hiring or promotion event.

Note: In an engagement for an *issuer* audit client whose financial statements for the first time will be required to be audited pursuant to the standards of the PCAOB, the provision of tax services to a person covered by Rule 3523 before the earlier of the date that the firm: (1) signed an initial engagement letter or other agreement to perform an audit pursuant to the standards of the PCAOB, or (2) began procedures to do so, does not impair a registered public accounting firm's independence under Rule 3523.

Rule 3524. Audit Committee Pre-approval of Certain Tax Services

In connection with seeking audit committee pre-approval to perform for an *issuer* audit client any permissible tax service, a registered public accounting firm shall—

* * * * *

Rule 3525. Audit Committee Pre-approval of Non-audit Services Related to Internal Control Over Financial Reporting

In connection with seeking audit committee pre-approval to perform for an *issuer* audit client any permissible non-audit service related to internal control over financial reporting, a registered public accounting firm shall—

* * * * *

[Rule 3600T. Interim Independence Standards.]

[In connection with the preparation or issuance of any audit report, a registered

public accounting firm, and its associated persons, shall comply with independence standards]—

[(a) as described in the AICPA's Code of Professional Conduct Rule 101, and interpretations and rulings thereunder, as in existence on April 16, 2003 (AICPA Professional Standards, ET §§ 101 and 191 (AICPA 2002)), to the extent not superseded or amended by the Board; and]

[(b) Standards Nos. 1, 2, and 3, and Interpretations 99–1, 00–1, and 00–2, of the Independence Standards Board, to the extent not superseded or amended by the Board.]

[Note: The Board's Interim Independence Standards do not supersede the Commission's auditor independence rules. See, e.g., Rule 2–01 of Reg. S–X, 17 CFR 240.2–01. Therefore, to the extent that a provision of the Commission's rule is more restrictive—or less restrictive—than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.]

[Note: The Board intends that, during the period preceding the mandatory registration date, the Interim Independence Standards apply to public accounting firms that would be required to be registered after the mandatory registration date and to associated persons of those firms, as if those firms were registered public accounting firms.]

Part 7—Establishment of Professional Standards

Rule 3700. Advisory Groups

* * * * *

(c) Selection of Members of Advisory Groups.

Members of advisory groups will be selected by the Board, in its sole discretion, based upon nominations, including self-nominations, received from any person or organization.

Note: The Board will announce, from time to time, periods during which it will receive nominations to an advisory group. During those periods, nominations may be submitted by any person or organization, including, but not limited to, any investor, any accounting firm, any issuer, *broker, dealer,* and any institution of higher learning.

* * * * *

SECTION 4. INSPECTIONS

Rule 4009. Firm Response to Quality Control Defects

* * * * *

(d) The portions of the Board's inspection report that deal with criticisms of or potential defects in quality control systems that the firm has not addressed to the satisfaction of the Board shall be made public by the Board—

(1) upon the expiration of the 12-month period described in paragraph (a) of this rule if the firm fails to make any submission pursuant to paragraph (a); or

(2) upon the expiration of the period in which the firm may seek Commission review of any board determination made under paragraph (c) of this rule, if the firm does not seek Commission review of the Board determination; or

(3) *in the event the firm requests Commission review of the determination, upon completion of the Commission's processes related to that request unless otherwise directed by the Commission* [unless otherwise directed by Commission order or rule, 30 days after the firm formally requests Commission review pursuant to Section 104(h)(1)(B) of the Act].

Rule 4020T. Interim Inspection Program Related to Audits of Brokers and Dealers

* * * * *

(b) Definitions

When used in this rule, the term ''interim program,'' means the interim program of inspection described in paragraph (c). [When used in this rule, Rule 3502, Section 5 of the Rules of the Board, or the definition of ''disciplinary proceeding'' in Rule 1001(d)(i), the terms ''audit,'' ''audit report,'' and ''professional standards'' have the meaning provided in Section 110 of the Act.]

* * * * *

SECTION 5. INVESTIGATIONS AND ADJUDICATIONS

Part 1—Inquiries and Investigations

Rule 5102. Testimony of Registered Public Accounting Firms and Associated Persons in Investigations

* * * * *

(c) Conduct of Examination

* * * * *

(4) Examinations of Registered Public Accounting Firms

A registered public accounting firm subject to an accounting board demand shall designate one or more individuals who consent to testify on its behalf, and *shall* [may] set forth, for each individual designated, the matters on which the individual will testify. The individuals so designated shall testify as to matters known or reasonably available to the registered public accounting firm.

* * * * *

Rule 5105. Requests for Testimony or Production of Documents from Persons Not Associated With Registered Public Accounting Firms

(a) Testimony

The Board, and the staff of the Board designated in an order of formal investigation, may issue an accounting board request for the testimony of any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation.

(1) Requests for Testimony

An accounting board request for testimony pursuant to subparagraph (a) of this Rule shall—

* * * * *

(iii) if the person to be examined is an issuer*, broker, dealer, partnership,* [an] association, [a] governmental agency, or other organized entity, provide a description with reasonable particularity of the matters on which examination is requested.

(2) Conduct of Examination and Transcript

An examination requested pursuant to this Rule shall be conducted consistent with Rules 5102(c) and a transcript shall be prepared consistent with Rule 5102(d). If the person to be examined is an issuer, *broker, dealer,* [or a] partnership*,* [or] association*,* or governmental agency, the person to be examined shall designate one or more individuals who consent to testify on its behalf and [may] *shall* set forth, for each individual designated, the matters on which the individual will testify. The individuals so designated shall testify as to matters known or reasonably available to the organization.

(b) Documents

The Board, and the staff of the Board designated in an order of formal investigation, may issue an accounting board request to any person, including any issuer, *broker, or dealer* for the production of any document that is relevant or material to an investigation, with appropriate notice, subject to the needs of the investigation. A request issued pursuant to this Rule shall set forth a reasonable time and place for production, subject to the needs of the investigation.

* * * * *

Rule 5108. Confidentiality of Investigatory Records

(a) Informal inquiries and formal investigations, and any documents, testimony or other information prepared or received by or specifically for the Board or the staff of the Board in connection with such inquiries and investigations, shall be confidential in the hands of the Board, unless and until presented in connection with a public proceeding or released in accordance with Section 105(c) of the Act, and the Board's Rules thereunder; *provided, however,* that the Board may make such information available—

(1) to the Commission; and

(2) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of the Act or to protect investors, to the following—

(a) the Attorney General of the United States;

(b) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act), other than the Commission, *and the Director of the Federal Housing Finance Agency,* with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(c) State attorneys general in connection with any criminal investigation; [and]

(d) any appropriate State regulatory authority;

(e) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization; and

(f) any foreign auditor oversight authority, concerning a public accounting firm with respect to which it has been empowered by a foreign government to inspect or otherwise enforce laws, if:

(i) *the foreign auditor oversight authority provides:*

(A) such assurances of confidentiality as the Board may request;

(B) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

(C) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

(ii) the Board determines that it is appropriate to share such information.

* * * * *

Rule 5110. Noncooperation with an Investigation

* * * * *

(b) Special and Expedited Procedures

Disciplinary proceedings instituted *solely* pursuant to Rule 5200(a)(3) for noncooperation with an investigation shall be subject to special and expedited procedures as described in Rules 5201(b)(3), 5300(b), 5302(d), 5421(b), 5422(a)(2), 5422(d), 5445(b), and 5460(a)(2)(ii).

Rule 5112. Coordination and Referral of Investigations

* * * * *

(b) Board Referrals of Investigations

The Board may refer any investigation*:*

(1) to the Commission*;* [and,]

(2) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization; and

(3) in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act) *or the Director of the Federal Housing Finance Agency,* to such regulator.

* * * * *

Part 2—Disciplinary Proceedings

Rule 5200. Commencement of Disciplinary Proceedings

(a) Grounds for Commencement of Disciplinary Proceedings

The Board may commence a disciplinary proceeding when—

* * * * *

(2) it appears to the Board, as the result of an investigation or otherwise, that a hearing is warranted to determine whether a registered public accounting firm, *or any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm,* [the supervisory personnel of such a firm,] has failed reasonably to supervise an associated person, either as required by the Rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under the Act, or professional standards, and *that* such associated person *has* commit*ted*[s] a violation of the Act, or *of* any [of] such rules, laws, or standards;

* * * * *

Rule 5201. Notification of Commencement of Disciplinary Proceedings

* * * * *

(b) Content of Order Instituting Proceedings

An order instituting proceedings issued pursuant to subparagraph (a) shall include a short and plain statement of the matters of fact and law to be considered and determined with respect to each person charged, including—

* * * * *

(3) in the case of a proceeding instituted *solely* pursuant to Rule 5200(a)(3)*,* [(i)] the conduct alleged to constitute the failure to cooperate with an investigation[; and (ii) a hearing date].

* * * * *

Rule 5204. Determinations in Disciplinary Proceedings

(a) Burden of Proof

In any disciplinary proceeding instituted pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5200(a)(3), the interested division shall bear the burden of proving an alleged violation or failure to supervise by a preponderance of the evidence. *A respondent raising an affirmative defense shall bear the burden of proving that affirmative defense by a preponderance of the evidence.*

(b) Initial Decision of a Hearing Officer

* * * * *

Note: Unless the Board has directed otherwise, the Board expects hearing officers in proceedings instituted pursuant to Rule 5200(a)(1) or Rule 5200(a)(2) to prepare initial decisions within 60 days after the deadline for filing post-hearing briefs or other submissions; the Board expects hearing officers in proceedings instituted *solely* pursuant to Rule 5200(a)(3) to prepare initial decisions within 30 days after *the* deadline for filing post-hearing briefs; and the Board expects hearing officers in proceedings pursuant to Rule 5500 to prepare initial decisions within 45 days after the deadline for filing post-hearing briefs or other submissions.

* * * * *

Rule 5205. Settlement of Disciplinary Proceedings Without a Determination After Hearing

* * * * *

(c) Consideration of Offers of Settlement

* * * * *

Note: In a hearing on disapproval of registration, an offer of settlement will be considered and handled by the Director of Registration and Inspections in accordance with Rule 520*5*[6] as if the Director of Registration and Inspections were the Director of Enforcement and Investigations.

Part 3—Disciplinary Sanctions

Rule 5300. Sanctions

(a) Sanctions in Proceedings Instituted Pursuant to Rule 5200(a)(1) or Rule 5200(a)(2)

If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to the applicable limitations under Section 105(c)(5) of the Act, including—

* * * * *

(4) a civil money penalty for each such violation, in an amount *not to exceed the maximum amount authorized by Sections 105(c)(4)(D)(i) and 105(c)(4)(D)(ii) of the Act, including penalty inflation adjustments published in the Code of Federal Regulations at 17 CFR part 201, subpart E;* [equal to—]

[(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and]

[(ii) in any case to which Section 105(c)(5) of the Act applies, not more than $750,000 for a natural person or $15,000,000 for any other person;]

* * * * *

(b) Sanctions in Proceedings Instituted Pursuant to Rule 5200(a)(3)

* * * * *

Note *1:* Rule 5300 does not preclude the imposition of any sanction, on consent, in the context of a settlement, notwithstanding that the sanction is not listed in the Rule.

Note 2: The maximum penalty amounts authorized by the Act are periodically adjusted for inflation by the Commission, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and vary depending upon the date the violation occurs. The maximum penalty amounts are published at 17 CFR § 201 Subpart E.

Part 4—Rules of Board Procedure

General

Rule 5407. Filing of Papers: Signature Requirement and Effect

Following the issuance of an order instituting proceedings, [every filing of] a party who represents himself or herself shall sign his or her individual name and state the date and his or her address and telephone number on every filing. *Every filing of a*[A] party represented by counsel shall be signed by at least one counsel of record in his or her name and shall state that counsel's business address and telephone number.

* * * * *

Prehearing Rules

Rule 5420. Stay Requests

(a) Leave To Participate To Request a Stay

The Board or the hearing officer may grant leave to participate on a limited basis only to an authorized representative of the Commission, an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, an appropriate state regulatory authority, *an appropriate self-regulatory organization,* or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State for the purpose of requesting a stay during the pendency of a Commission investigation or proceeding, a criminal investigation or prosecution, *a self-regulatory organization,* or a state regulatory proceeding, arising out of the same or similar facts that are at issue in the pending Board or disciplinary proceeding. Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. A stay granted pursuant to this Rule may be granted for such a period and upon such conditions as the Board or the hearing officer deems appropriate.

(b) Stay to Protect Ongoing Commission Investigation

Upon a showing that a stay requested pursuant to this Rule is necessary to protect an ongoing Commission investigation, the motion for the stay shall be granted.

(c) Other Stays

Upon a showing that such a stay is in the public interest or for the protection of investors, the motion for the stay shall be favored.

Rule 5421. Answer to Allegations

* * * * *

(b) When to File

Unless additional time is granted by the hearing officer or the Board, a party filing an answer as provided in paragraph (a) of this Rule shall do so within 20 days after service upon the party of an order instituting proceedings pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, and within 5 days after service upon the party of an order instituting proceedings *solely* pursuant to Rule 5200(a)(3). If the order instituting proceedings is amended, the Board or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

* * * * *

Rule 5422. Availability of Documents for Inspection and Copying

(a) Documents to be Available for Inspection and Copying

* * * * *

(2) Proceedings Commenced *Solely* Pursuant to Rule 5200(a)(3)

* * * * *

(b) Documents That May Be Withheld

(1) The interested division may decline to make available for inspection and copying—

(i) any document prepared by, a member of the Board or of the Board's staff*, or persons retained by the Board or Board staff to provide services in connection with the investigation, disciplinary proceeding, or hearing on disapproval of registration, provided that the document* [that] has not been disclosed to any person other than Board members, Board staff, or persons retained by the Board or Board staff *as described above* [to provide services in connection with the investigation, disciplinary proceeding, or hearing on disapproval of registration];

(ii) any document accessed from generally available public sources, such as legal research or other subscription databases, databases of securities filings, databases of periodicals, and public Web sites, except to the extent that the interested division intends to introduce such documents as evidence;

(iii*i*) any other document that is privileged, including any other document protected by the attorney work product doctrine;

(iv[ii]) any document that would disclose the identity of a confidential source; and

([i]v) any other document that the staff identifies for the hearing officer's consideration as to whether the document may be withheld as not relevant to the subject matter of the proceeding or otherwise for good cause shown.

* * * * *

(c) Procedures Concerning Withheld Documents

(1) The interested division shall, at the time it makes documents available to a respondent under this rule, provide the respondent with a log of documents withheld pursuant to paragraph (b)(1)(ii*i*) of this Rule. The log shall provide the same information that a person would be required to supply to the Board under Rule 5106 in connection with a privilege assertion. On a motion by any respondent, a hearing officer may, in his or her discretion, require the interested division to submit any document listed on the log for inspection by the hearing officer in camera. A hearing officer may order that any such document be made available to a respondent for inspection and copying only if the hearing officer determines that the document is not a document described in paragraph (b)(1)(ii*i*).

(2) The interested division shall, at the time it makes documents available to a respondent under this rule, provide the hearing officer and each respondent with a list of documents withheld pursuant to paragraph (b)(1)(iv[ii]) or (b)(1)([i]v) of this Rule and a brief description of the reason for withholding each document. The list provided to the respondent may be redacted as necessary to protect interests related to the interested division's reason for withholding the document. The hearing officer may require the interested division to submit any such document for inspection by the hearing officer in camera. The hearing officer may order that any such document be made available to the respondent for inspection and copying only if the hearing officer determines that—

(i) with respect to any document withheld pursuant to paragraph (b)(1)(iv[ii])—

(A) producing the document would not have the effect of identifying a confidential source; or

(B) the document contains material, exculpatory evidence, provided, however, that to the extent such evidence can be disclosed without disclosing the identity of a confidential source, such identity shall not be disclosed.

(ii) with respect to any document withheld pursuant to paragraph (b)(1)([i]v)—

(A) the document is relevant to the subject matter of the proceeding and no good cause exists for withholding it; or

(B) the document contains material, exculpatory evidence.

(d) Timing of Inspection and Copying

Unless otherwise ordered by the Board or the hearing officer, the interested division shall make documents available for inspection and copying to any respondent who is not in default under Rule 5409 no later than 14 days after the institution of proceedings pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, and no later than 7 days after proceedings have been instituted *solely* pursuant to Rule 5200(a)(3).

* * * * *

Rule 5426. Prior Sworn Statements of Nonparty Witnesses in Lieu of Live Testimony

At a hearing, any person wishing to introduce a prior, sworn statement of a nonparty witness otherwise admissible in the proceeding, in lieu of live testimony may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement *of a nonparty witness* in lieu of live testimony may be granted if—

* * * * *

Rule 5427. Motion for Summary Disposition

(a) For Interested Division

After a party has filed an answer and documents have been made available to that respondent for inspection and copying pursuant to Rule 5422, or after service of a motion for summary disposition by the respondent, the interested division may make a motion for summary disposition *of any or all allegations of the order instituting proceedings* [the proceedings] with respect to that respondent.

(b) For Respondent

A respondent party may at any time make a motion for summary disposition of *any or all allegations of the order instituting proceedings* [the proceeding] with respect to that respondent.

(c) Pre-motion Conference Required

A party seeking summary disposition shall request and attend a pre-motion conference with the hearing officer before filing its motion for summary disposition.

(1) Due-date for Filing

At the pre-motion conference, the hearing officer will schedule a due-date for the submission of the motion for summary disposition and may, but is not required to, schedule a due-date for the submission of a response to the motion for summary *disposition* [judgment].

(2) Review and Decide Procedure

If the hearing officer has not scheduled a due-date for a response to the motion for summary *disposition* [judgment], upon review of the motion the hearing officer may decide to deny the motion or to require a response to the motion. A hearing officer shall not grant a motion for summary disposition until after the due-date for filing a response to the motion has passed.

* * * * *

Rule 5442. Evidence: Objections and Offers of Proof

(a) Objections

Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Board, however, unless raised—

(1) pursuant to interlocutory review in accordance with Rule 5461;

(2) in a proposed finding or conclusion filed *in a post-hearing brief or other submission filed* pursuant to Rule 5445; or

(3) in a petition for Board review of an initial decision filed in accordance with Rule 5460.

* * * * *

Rule 5445. Post-hearing Briefs and Other Submissions

* * * * *

(b) In any proceeding instituted *solely* pursuant to Rule 5200(a)(3), the hearing officer may, in his or her discretion, render an initial decision without allowing for post-hearing briefs or other

submissions, or may allow for such briefs or other submissions according to an expedited schedule.

Appeals to the Board

Rule 5460. Board Review of Determinations of Hearing Officers

(a) Petition for Review of Initial Decision by Hearing Officers

Any party to a hearing may obtain Board review of an initial decision by filing a petition for review that—

(1) sets forth specific findings and conclusions of the initial decision as to which exception is taken, together with the supporting reasons for each exception; and

(2) is filed—

(i) in a proceeding instituted pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, within 30 days after service of the initial decision on the petitioner or within 10 days after the filing of a petition for review by another party, whichever is later; or

(ii) in a proceeding instituted *solely* pursuant to Rule 5200(a)(3), within 10 days after service of the initial decision on the petitioner.

* * * * *

(e) Summary Affirmance

The Board may summarily affirm an initial decision based upon the petition for review [and any response thereto], without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Board.

Note: *For purposes of Rule 5460(a), with respect to any party that has entered an appearance and provided an electronic mail address as required by Rule 5401, service of the initial decision is deemed to occur on the date the Secretary transmits the initial decision to that electronic mail address.*

Rule 5462. Briefs Filed with the Board

(a) Briefing Schedule Order

Upon a timely and valid petition for review, or upon its own timely motion to review an initial decision, other than review ordered pursuant to Rule 5469, the Board shall issue a briefing schedule order directing the parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs may be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Board. The briefing schedule order shall be issued—

(1) at the time the Board orders review on its own initiative pursuant to Rule 5460(b), or orders interlocutory review on its own motion pursuant to Rule 546*1(a)*[0]; or

(2) within 21 days, or such longer time as provided by the Board, after—

(i) the last day permitted for filing a petition for review pursuant to Rule 5*460(a)*[204(d)];

(ii) certification of a ruling for interlocutory review pursuant to Rule 5461(b).

* * * * *

SECTION 7. FUNDING

Rule 7103. Assessment of Accounting Support Fees.

* * * * *

(c) Petition for Correction

Any issuer, broker, or dealer who disagrees with the class in which it has been placed, or with the calculation by which its share of the accounting support fee was determined, may petition the Board for a correction of the share of the accounting support fee it was allocated. Any such petition shall include an explanation of the nature of the claimed mistake in classification or calculation in writing and must be filed with the Board, on or before the 60th day after the invoice is sent, or within such longer period as the Board allows for good cause shown. After a review of such a petition, the Board will determine whether the allocation is consistent with Section 109 of the Act and the Board's rules thereunder and provide the issuer*, broker, or dealer* a written explanation of its decision. The provisions of Rule 7104 shall be suspended while such a petition is pending before the Board.

* * * * *

Rule 7104. Collection of Accounting Support Fees.

* * * * *

(b) Determination of Payment of Accounting Support Fees by Registered Accounting Firm

* * * * *

[Note 3: For purposes of Rule 7104, the term ''audit'' means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report. For purposes of Rule 7104, the term ''audit report'' means a document, report, notice, or other record (1) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and (2) in which a public accounting firm either (i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or (ii) asserts no such opinion can be expressed.]

* * * * *

Quality Control—Interim Standards

SEC Practice Section (SECPS)—Requirements of Membership

SECPS § 1000.08(m)—Notification of the Commission of Resignations and Dismissals from Audit Engagements for Commission Registrants

(1) When the member firm has been the auditor for an SEC registrant (as defined in Appendix D, SECPS § 1000.38) that is required to file current reports on Form 8–K and has resigned, declined to stand for re-election or been dismissed, report the fact that the client-auditor relationship has ceased directly in writing to the former SEC client, with a simultaneous copy to the Office of the Chief Accountant of the Securities and Exchange Commission, unless the former client reports the change in auditors in a timely filed Form 8–K.[fn4] *Such report shall be sent to the former SEC client and to the Office of the Chief Accountant by the end of the fifth business day following the member firm's determination that the client-auditor relationship has ended, if the issuer has not reported the change in auditors to the SEC in a timely filed Form 8–K.*

(2) When the member firm has been the auditor for an SEC registrant (as defined in Appendix D, SECPS § 1000.38) *that is not required to file current reports on Form 8–K* and has resigned, declined to stand for re-election or been dismissed, report the fact that the client-auditor relationship has ceased directly in writing to the former SEC client, with a simultaneous copy to the Office of the Chief Accountant of the Securities and Exchange Commission.[fn5] Such report shall be sent to the former SEC client and to the Office of the Chief Accountant by the end of the fifth business day following the member firm's determination that the client-auditor relationship has ended, irrespective of whether or not the registrant has reported the change in

auditors in a timely filed [Form 8–K] *report.*

Fn4 See Appendix I, SECPS § 1000.43, for standard form of such report.

Fn5 See Appendix I, SECPS § 1000.43, for standard form of such report.

.43 APPENDIX I—STANDARD FORM OF LETTER CONFIRMING THE CESSATION OF THE CLIENT-AUDITOR RELATIONSHIP

(Date)
Mr. John Doe
Chief Financial Officer
XYZ Corporation
Anytown, USA
Dear Mr. Doe:

This is to confirm that the client-auditor relationship between XYZ Corporation (Commission File Number X–XXXX) and Able Baker & Co. has ceased.

Sincerely,
Able Baker & Co.

CC: Office of the Chief Accountant, SECPS Letter File, Securities and Exchange Commission
SECPSletters@sec.gov
[Mail Stop 9–5]
100 F Street NE.,
[450 Fifth Street NW.,]
Washington, D.C. 20549

The SEC has indicated that member firms may satisfy the SECPS notification requirements by *e-mailing* [faxing] a copy of the SECPS letter to the SEC-Office of the Chief Accountant ([202–942–9656; Attn: SECPS Letter File/Mail Stop 9–5] *SECPSletters@sec.gov*). A copy of the [fax log] *e-mail* should be retained by the sender as documentation of timely filing [and a back-up copy of the letter should be sent by regular mail to the SEC]. The SEC strongly encourages sending the notification letter by [fax and will accept the date of the fax as the notification date] *e-mail* to *SECPSletters@sec.gov. The SEC staff will accept the date the e-mail is received as the notification date.* If [a fax] *e-mail* transmission is not available, alternatively, by order of preference, the SECPS notification letter may be sent to the SEC via (1) *fax to (202) 772–9252, (2)* U.S. Postal Service overnight delivery, ([2]*3*) commercial overnight courier, or ([3]*4*) certified mail, ''return receipt requested.''

The exact name of the registrant[,] *and* the Commission File Number as it appears on the cover page of the Form 10–K[, and the complete SEC address, as shown above,] should be used in the *e-mail* [letter and on the envelop]. If the cessation of the client-auditor relationship affects multiple SEC registrants (e.g., a parent with publicly-registered subsidiaries, series of mutual funds), the exact name of each registrant and each Commission File Number should be set forth in the SECPS [letter] *e-mail.*

* * * * *

Ethics Code

EC2. Definitions

* * * * *

(e) Honoraria

The term ''honoraria'' means anything with more than a nominal value, whether provided in cash or otherwise, and which is provided in exchange for a speech, panel participation, publication or lecture. Neither the waiver of conference fees nor acceptance of a modest speakers-only meal constitutes ''honoraria.'' [Note:] Items *and meals* which are provided to all conference participants[, including speakers,] are not [provided ''in exchange for'' a speech and thus not] considered to be ''honoraria.''

(f) Practice

The term ''practice'' means—

(1) knowingly acting as an agent or attorney for, or otherwise representing any other person in any formal or informal appearance before the Board or Commission with respect to Board-related matters; or

(2) making any oral or written communication on behalf of any other person to, and with the intent to influence, the Board or Commission with respect to Board-related matters.

Note: For purposes of this definition, participating in the financial reporting process as the officer or director of an issuer*, broker, or dealer* or participating in an audit of *the* financial statements *of an issuer, broker, or dealer* does not, in and of itself, constitute practice before the Board or the Commission.

* * * * *

EC5. Investments

* * * * *

(d) Board members and professional staff shall [annually] disclose their holdings, and the holdings of their spouses, spousal equivalents, and dependents, in securities of issuers (including exchange-traded options and futures) *to the Ethics Officer.*

(1) [For initial disclosures, statements shall be filed with the Ethics Officer w] *W*ithin the first 60 days of commencement of service with the Board*; and* [, or 60 days from the effective date of this Code, whichever is later.]

(2) *On an annual basis, on May 1 or another date that may be prescribed by the Ethics Officer.* [Subsequent disclosures shall be filed with the Ethics Officer on May 1, commencing the first year following the initial disclosure.]

(3) Disclosure statements by Board Members shall be made available to the public.

(4) Disclosure statements by professional staff shall remain confidential.

* * * * *

EC7. Gifts, Reimbursements, Honoraria and Other Things of Value

* * * * *

(b) No Board member or staff shall accept payment for or reimbursement of official travel-related expenses from any organization, except—

(1) for travel that is in direct connection with the employee's participation in an educational forum; and

(2) the educational forum is principally sponsored by and the travel-related expenses are paid or reimbursed by—

(A) a federal, state or local governmental body, or an association of such bodies,

(B) an accredited institution of higher learning,

(C) an organization exempt from taxation under 501(c)(3) of the Internal Revenue Code, provided such organization is not principally funded from one or more public accounting firms*,* [or] issuers, *brokers, or dealers,* or

(D) institutions equivalent to those in EC 7(b)(2)(A)–(C) outside the United States.

EC8. Disqualification

(a) If a Board member or professional staff becomes, or reasonably should become, aware of facts which would lead a reasonable person to believe that he or she, or his or her spouse, spousal equivalent, or dependents, may have a financial *or personal* interest [or other similar relationship] which might affect or reasonably create the appearance of affecting his or her independence or objectivity with respect to the Board's function or activities, then he or she shall, at the earliest possible date—

(1) disclose such circumstances and facts, as set forth in subsection (b); and

(2) recuse himself or herself from further Board functions or activities involving or affecting the financial [interest] or *personal interest* [relationship].

* * * * *

EC12. Post-Employment Restrictions

(a) Negotiating Prospective Employment

(1) Board members and professional staff may not negotiate prospective

employment with a public accounting firm, [or] issuer, *broker, or dealer,* without first disclosing (pursuant to the procedures in Section EC8(b)) the identity of the prospective employer and recusing himself or herself from all Board matters directly affecting that prospective employer.

(2) For purposes of this section, ''negotiating prospective employment'' means participating in an employment interview; discussing an offer of employment; or accepting an offer of employment, even if the precise terms are still to be developed. Submitting a resume or job application to a group of employers or receiving an unsolicited inquiry of interest that is rejected, do not alone constitute ''negotiating prospective employment.''

* * * * *

Amendments to Board Forms

The amended Form 1, Form 1–WD, Form 2, Form 3, and Form 4 are set forth below.

FORMS

Form 1—Application for Registration

General Instructions

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

2. Any public accounting firm applying to the Board for registration pursuant to Section 102 of the Act must file this form with the Board. See Rule 2101.

3. In addition to these instructions, the rules contained in Section 2 of the Board's rules govern applications for registration. Please read these rules and the instructions carefully before completing this form.

4. Unless otherwise directed by the Board, applicants must submit this form, and all exhibits to the form, to the Board electronically by completing the Web-based version of Form 1. Form 1 is available on the Board's Web site at: *http://www.pcaobus.org/Registration/index.aspx.* See Rule 2101.

5. This form must be accompanied by a registration fee in accordance with Section 102(f) of the Act. The amount of the required fee is available at *http://www.pcaobus.org/Registration/index.aspx.* An application for registration will not be deemed received by the Board until the registration fee has been paid. See Rule 2102.

6. An applicant may request confidential treatment of any portion of its application for registration that has not otherwise been publicly disclosed and that either contains information reasonably identified by the applicant as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. An applicant that requests confidential treatment must identify the portion of the application that it desires to keep confidential, and include, as Exhibit 99.1 to the application for registration, a representation that, to the applicant's knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed, and a detailed explanation of the grounds on which the information is considered proprietary or 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 applicant claims protects the information from public disclosure. 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. The Board will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings. The Board will determine whether or not to grant other confidential treatment requests on a case-by-case basis. See Rule 2300(c).

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

8. Where this form requires disclosure of a sum of money, such amount must be stated in U.S. dollars and rounded to the nearest thousand. If such amount was received or paid in a currency other than U.S. dollars, the amount must be converted to U.S. dollars.

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

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

PART I—Identity of the Applicant

Item 1.1 Name of Applicant

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

Item 1.2 Applicant Contact Information

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

Item 1.3 Primary Contact and Signatories

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

Item 1.4 Applicant's Form of Organization

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

Item 1.5 Applicant's Offices

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

Item 1.6 Associated Entities of Applicant

State the name and physical address (and, if different, mailing address) of all associated entities of the applicant that engage in the practice of public accounting or preparing or issuing audit reports, or comparable reports prepared

for clients that are not issuers. Do not include any person listed in Item 7.1.

Item 1.7 Applicant's Licenses

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

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

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

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

a. The issuer's business address (as shown on its most recent filing with the Commission), and CIK number.

b. The date of the audit report.

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

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

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

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

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

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

a. The issuer's business address (as shown on its most recent filing with the Commission), and CIK number.

b. The date of the audit report.

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

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

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

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

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

List the names of all issuers for which the applicant expects to prepare or issue any audit report dated during the calendar year in which this application is filed. In addition to the issuer's name, include, with respect to each issuer, the issuer's business address (as shown on its most recent filing with the Commission), and CIK number.

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

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

For applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report dated during the current calendar year, list the names of all issuers for which the applicant played, or expects to play, a substantial role in the preparation or furnishing of an audit report dated during the preceding or current calendar year. In addition to the issuer's name, this list must include, with respect to each issuer—

a. The issuer's business address (as shown on its most recent filing with the Commission), and CIK number.

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

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

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

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

Part III—Listing of Applicant's Broker or Dealer Audit Clients and Related Fees

Item 3.1 Brokers and Dealers for Which Applicant Prepared Audit Reports During the Preceding Calendar Year

List the names of all brokers and dealers for which the applicant prepared or issued any audit report dated during the calendar year preceding the calendar year in which this application is filed. In addition to the broker's or dealer's name, this list must include, with respect to each broker or dealer—

a. The broker's or dealer's business address, and the broker's or dealer's CRD number, and CIK number, if any.

b. The date of the audit report.

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

d. The total amount of fees billed for other accounting services for the

broker's or dealer's fiscal year for which the audit report was issued.

e. The total amount of fees billed for non-audit services for the broker's or dealer's fiscal year for which the audit report was issued.

Note: Only fees billed by the principal auditor (i.e., the public accounting firm that issued the audit report) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item.

Item 3.2 Brokers and Dealers for Which Applicant Prepared Audit Reports During the Current Calendar Year

List the names of all brokers or dealers for which the applicant prepared or issued any audit report dated during the current calendar year. (Do not include audit reports the applicant expects to prepare or issue during this calendar year, but that have not yet been issued. These are called for in Item 3.3 below.) In addition to the broker's or dealer's name, include, with respect to each broker or dealer—

a. The broker's or dealer's business address, and the broker's or dealer's CRD number, and CIK number, if any.

b. The date of the audit report.

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

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

e. The total amount of fees billed for non-audit services for the broker's or dealer's fiscal year for which the audit report was issued.

Note: Only fees billed by the principal auditor (i.e., the public accounting firm that issued the audit report) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item.

Item 3.3 Brokers and Dealers for Which Applicant Expects to Prepare Audit Reports During the Current Calendar Year

List the names of all brokers and dealers for which the applicant expects to prepare or issue any audit report dated during the calendar year in which this application is filed. In addition to the broker's or dealer's name, include, with respect to each broker or dealer, the broker's or dealer's business address, and the broker's or dealer's CRD number, and CIK number, if any.

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

Item 3.4 Brokers and Dealers for Which Applicant Played, or Expects to Play, a Substantial Role in Audit

For applicants that did not prepare or issue an audit report dated during the preceding or current calendar year, and that do not expect to prepare or issue an audit report dated during the current calendar year, list the names of all brokers and dealers for which the applicant played, or expects to play, a substantial role in the preparation or furnishing of an audit report dated during the preceding or current calendar year. In addition to the broker's or dealer's name, this list must include, with respect to each broker or dealer—

a. The broker's or dealer's business address, and the broker's or dealer's CRD number, and CIK number, if any.

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

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

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

Note: Applicants that disclosed the name of a broker or dealer in response to any of Items 3.1–3.3 need not respond to this Item. In responding to the part of this Item that asks about brokers and dealers for which the applicant expects to play a substantial role in the preparation or furnishing of an audit report, an applicant may conclude that it is expected to play a substantial role in the preparation or furnishing of an audit report for a broker or dealer (i) if it has been engaged to do so, or (ii) if it played a substantial role in the preparation and furnishing of an audit report during the preceding calendar year, absent an indication from the broker or dealer or principal accounting firm that it no longer intends to engage the applicant.

Part IV—Statement of Applicant's Quality Control Policies

Item 4.1 Applicant's Quality Control Policies

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

Part V—Listing of Certain Proceedings Involving the Applicant

Item 5.1 Certain Criminal, Civil and Administrative Proceedings

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

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

2. in any pending civil or alternative dispute resolution proceeding initiated by a governmental entity (including a non-U.S. jurisdiction) arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer, broker, or dealer, or was a defendant or respondent in any such proceeding in which a judgment or award was rendered against the applicant or such person, whether by consent or otherwise, during the previous five years;

3. in any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer, broker, or dealer or was a respondent in any such proceeding in which a finding of violation was rendered, or a sanction entered, against the applicant or such person, whether by consent or otherwise, during the previous five years. Administrative or disciplinary proceedings include those of the Commission; the Board; any other federal, state, or non-U.S. agency, board, or administrative or licensing authority; and any professional association or body. Investigations that have not resulted in the commencement of a proceeding need not be included;

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

b. In the event of an affirmative response to Item 5.1.a, furnish the following information with respect to each such proceeding:

1. The name, filing date, and case or docket number of the proceeding.

2. The name and address of the court, tribunal, or body in which such proceeding was filed.

3. The names of all defendants or respondents in such proceeding who are also the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred.

4. The name of the issuer, broker, or dealer, or other client that was the subject of the audit report or comparable report.

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

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

c. Indicate whether or not any employee, partner, shareholder, principal, member, or owner of the applicant, or any person or entity with which the applicant has a contractual or other arrangement to receive consulting or other professional services, is currently subject to a Board disciplinary sanction suspending or barring the person from being an associated person of a registered public accounting firm.

d. Indicate whether or not the applicant or any employee, partner, shareholder, principal, member, or owner of the applicant, or any person or entity with which the applicant has a contractual or other arrangement to receive consulting or other professional services, is currently subject to a (1) Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (2) court-ordered injunction prohibiting appearance or practice before the Commission.

e. In the event of an affirmative response to Item 5.1.c or Item 5.1.d, furnish the following with respect to each such person:

1. The name of the person (including the applicant) subject to the order or sanction.

2. If other than the applicant, a description of the person's job title and duties performed for the applicant.

3. The date of the relevant order and an indication whether it was a Board order, a Commission order, or a court order.

4. If a court order, the name of the court and the name and case or docket number of the proceeding.

Item 5.2 Pending Private Civil Actions

a. Indicate whether or not the applicant or any associated person of the applicant is a defendant or respondent in any pending civil proceeding or alternative dispute resolution proceeding initiated by a non-governmental entity involving conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer, broker, or dealer.

b. In the event of an affirmative response to Item 5.2.a, furnish the following information with respect to each such proceeding:

1. The name, filing date, and case or docket number of the proceeding.

2. The name and address of the court, tribunal or body in which such proceeding was filed.

3. The names of all defendants or respondents in such proceeding who are also the applicant, any person listed in Part VII, or any person associated with the applicant at the time that the events in question occurred.

4. The name of the issuer*, broker, or dealer,* or other client that was the subject of the audit report or comparable report.

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

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

Item 5.3 Applicant's Discretionary Statement Regarding Proceedings Involving the Applicant's Audit Practice

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

Part VI—Listing of Filings Disclosing Accounting Disagreements With Public Company Audit Clients and Issues With Broker or Dealer Audit Clients

Item 6.1 Existence of Disagreements With Issuers

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

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

Item 6.2 Listing of Disagreements With Issuers

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

a. The name of the issuer.

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

Item 6.3 Copies of Filings

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

Item 6.4 Existence of Issues With Brokers or Dealers

Indicate whether or not the applicant has been the former accountant with respect to a notice of any issues relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission made by a broker or dealer during the current or preceding calendar year in a filing with the Commission pursuant to Rule 17a-5(f)(3)(v)(B), 17 CFR § 240.17a-5(f)(3)(v)(B).

Item 6.5 Listing of Issues With Brokers or Dealers

In the event of an affirmative response to Item 6.4, furnish the following information with respect to each such filing:

a. The name of the broker or dealer, and the broker's or dealer's CRD number, and CIK number, if any.

b. The name and date of the filing containing the notice.

Item 6.6 Copies of Filings

Furnish, as Exhibit 6.6, a copy of every filing described in Item 6.5.

Part VII—Roster of Associated Accountants

Item 7.1 Listing of Accountants Associated With Applicants

List the names of all accountants associated with the applicant who participate in or contribute to the preparation of audit reports. For each such person, list every license or certification number (if any) authorizing him or her to engage in the business of auditing or accounting. For each such license or certification number, furnish the name of the issuing state, agency, board, or other authority.

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

Item 7.2 Number of Firm Personnel

State the—

a. Total number of accountants employed by the applicant.

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

c. Total number of personnel employed by the applicant.

Part VIII—Consents of Applicant

Item 8.1 Consent To Cooperate With the Board and Statement of Acceptance of Registration Condition

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

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

b. [Name of applicant] agrees to secure and enforce similar consents from each of its associated persons as a condition of their continued employment by or other association with the firm.

c. [Name of applicant] understands and agrees that cooperation and compliance, as described in the firm's consent in paragraph (a), and the securing and enforcement of such consents from its associated persons in accordance with paragraph (b), shall be a condition to the continuing effectiveness of the registration of the firm with the Public Company Accounting Oversight Board.

Note 1: Other than the insertion of the name of the applicant in paragraphs (a), (b), and (c) of this Item, Exhibit 8.1 must be in the exact words contained in this instruction. The consents required by paragraph (b) of this Item must be in the exact words of Note 2 below and must be secured by the applicant not later than 45 days after submitting this application or, for persons who become associated persons of the firm subsequent to the submission of this application, at the time of the person's association with the firm. Consents required by paragraph (b) of this Item are not required to be furnished as an exhibit to this form.

Note 2: Other than the insertion of the name of the associated person, the consents required by paragraph (b) of this Item must state: [Name of associated person] consents to cooperate in and comply with any request for testimony or the production of documents made by the Public Company Accounting Oversight Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002. [Name of associated person] understands and agrees that this consent is a condition of their continued employment by or other association with [name of applicant].

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

Part IX—Signature of Applicant

Item 9.1 Signature of Partner or Authorized Officer

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

Part X—Exhibits

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

Exhibit 1.5 Listing of Offices

Exhibit 4.1 Statement of Quality Control Policies

Exhibit 5.3 Discretionary Statements Regarding Proceedings Involving Audit Practice

Exhibit 6.3 Securities and Exchange Commission Filings Disclosing Accounting Disagreements With Public Company Audit Clients

Exhibit 6.6 Securities and Exchange Commission Filings Disclosing Issues With Brokers or Dealers

Exhibit 8.1 Consent of Applicant for Registration

Exhibit 99.1 Request for Confidential Treatment

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

Note: Where an exhibit consists of more than one document, each document must be numbered consecutively (e.g., Exhibit 4.1.1, Exhibit 4.1.2, Exhibit 4.1.3, etc.), and the applicant must provide a list of the title or description of each document comprising the exhibit.

* * * * *

Form 1–WD

Request for Leave To Withdraw From Registration

General Instructions

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

2. Any registered public accounting firm seeking to withdraw from registration with the Board must file this form with the Board.

3. In addition to these instructions, the Board's Rule 2107 governs applications for leave to withdraw from registration. Please read Rule 2107 and the instructions carefully before completing this form.

4. Unless otherwise directed by the Board, a registered public accounting firm seeking to withdraw from registration must submit this form to the Board electronically by completing the Web-based version of Form 1–WD. The

date of such submission shall be deemed the date of Board receipt of the Form.

5. Pursuant to Rule 2107, any Form 1–WD filed with the Board shall be non-public. A registered public accounting firm may submit with Form 1–WD a request for Board notification in the event that the Board is requested by subpoena or other legal process to disclose the Form 1–WD. The Board will make reasonable attempts to honor any such request, although the Board will make public the fact that the firm has requested to withdraw from registration.

6. Information submitted as part of this form must be in the English language.

Part I—Identity of the Registered Public Accounting Firm

Item 1.1 Name of the Firm Requesting Leave to Withdraw

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

Item 1.2 Firm Contact Information

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

Item 1.3 Primary Contact and Signatories

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

Part II—Description of Ongoing Regulatory or Law Enforcement Proceedings

Item 2.1 Description of Ongoing Regulatory or Law Enforcement Proceedings

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

a. The identity of the federal, state, or local authority conducting the proceeding;

b. The caption or other identifying information of the proceeding;

c. The date that the firm or a partner or officer of the firm first became aware of the proceeding;

d. The firm's understanding of the current status of the proceeding; and

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

Part III—Certification of Nonparticipation in Audits

Item 3.1 Statement of Nonparticipation in Audits

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

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

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

Part IV—Reasons for Seeking Leave To Withdraw (Optional)

Item 4.1 Description of Reasons for Seeking Leave To Withdraw

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

Part V—Signature of Firm Seeking Leave To Withdraw

Item 5.1 Signature of Authorized Partner or Officer

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

* * * * *

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 December 31, 2009. 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 firms 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, a representation that, to the Firm's knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed, and a detailed explanation of the grounds on which the information is considered proprietary or 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 Firm claims protects the information from public disclosure. 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 the failure. The Board will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings. The Board will determine whether or not to grant other confidential treatment requests on a case-by-case basis. See Rule 2300(c).

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

a. State the legal name of the Firm.

b. 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.

c. 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

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

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

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 2.2) 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

a. Indicate whether the Firm issued any audit report with respect to an issuer during the reporting period.

b. 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.

c. 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.

d. Indicate whether the Firm issued any audit report with respect to any

broker or dealer during the reporting period.

e. In the event of a negative response to Item 3.1.d, indicate whether the Firm played a substantial role in the preparation or furnishing of an audit report with respect to a broker or dealer during the reporting period.

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—

1. Audit services;
2. Other accounting services;
3. Tax services; and
4. 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.

Item 3.3 Foreign Registered Public Accounting Firm's Designation of U.S. Agent

a. If the Firm is a foreign registered public accounting firm that has designated to the Commission or Board an agent in the United States upon whom the Commission or the Board may serve any request to the Firm under Section 106 of the Act or any process, pleading, or other papers in any action against the Firm to enforce Section 106 of the Act, check here and enter the name and address of the designated agent.

b. If the Firm is a foreign registered public accounting firm and did not check the box for Item 3.3.a, indicate by checking ''yes'' or ''no'' whether the Firm has, since July 21, 2010, (1) performed material services upon which another registered public accounting firm relied in the conduct of an audit or interim review, (2) issued an audit report, (3) performed audit work, or (4) performed interim reviews.

Note: If the Firm checks ''yes'' for Item 3.3.b, the Firm must immediately provide to the Commission or the Board the designation required by Section 106(d)(2) of the Act.

Note: If the Firm checks ''no'' for Item 3.3.b, and the Firm later performs any of the activities identified in Section 106(d)(2) of the Act, the Firm must immediately provide to the Commission or the Board the designation required by Section 106(d)(2) of the Act.

Note: If the Firm has previously designated an agent for service to the Commission or Board, the Firm must immediately communicate any change in the name or address of the agent to the Commission or Board.

Part IV—Audit Clients and Audit Reports

Item 4.1 Audit Reports Issued by the Firm for Issuers

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, for an issuer, 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(a), careful attention should 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: 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 and indicate whether the dates provided correspond to the issuance of a consent to the use of a previously-issued audit report in Item 4.1.a.3.

Item 4.2 Issuer 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 for an issuer 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.

Item 4.3 Audit Reports Issued by the Firm for Brokers or Dealers

a. Provide the following information concerning each audit report issued for a broker or dealer during the reporting period—

1. The broker's or dealer's name;

2. The broker's or dealer's CRD number, and CIK number, if any; and

3. The date of the audit report(s).

b. If the Firm identified any brokers or dealers in response to Item 4.3.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, for a broker or dealer, 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: For each audit report provide in Item 4.3.a.3 the audit report dates (as described in AU 530, Dating of the Independent Auditor's Report) including each date of any dual-dated audit report.

Item 4.4 Broker or Dealer Audit Reports With Respect to Which the Firm Played a Substantial Role During the Reporting Period

If no brokers or dealers are identified in response to Item 4.3.a, but the Firm played a substantial role in the preparation or furnishing of an audit report for a broker or dealer that was issued during the reporting period, provide the following information concerning each broker or dealer with respect to which the Firm did so—

a. The broker's or dealer's name;

b. The broker's or dealer's CRD number, and CIK number, if any;

c. The name of the registered public accounting firm that issued the audit report(s);

d. The end date(s) of the fiscal period(s) covered by the financial statements that were the subject of the audit report(s); and

e. A description of the substantial role played by the Firm with respect to the audit report(s).

Note: If the Firm identifies any broker or dealer in response to Item 4.3, the Firm need not respond to Item 4.4.

Note: In responding to Item 4.4, do not list any broker or dealer 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—

Total number of the Firm's accountants;

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

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 5.1 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, broker, or dealer 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 5.2 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 5.3 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, broker, or dealer 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 December 31, 2009, 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 email 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 December 31, 2009, 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 December 31, 2009 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 December 31, 2009. A firm that becomes registered after December 31, 2009, 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 December 31, 2009, must, by January 30, 2010, file this Form to report certain additional information that is current as of December 31, 2009. 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 December 31, 2009. If the Firm is registered as of December 31, 2009, the Firm must file a special report on this Form no later than January 30, 2010, 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 December 31, 2009, 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 December 31, 2009, 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 December 31, 2009;

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 December 31, 2009;

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 December 31, 2009, and (3) the specified relationship continues to exist as of December 31, 2009;

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 December 31, 2009, 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 December 31, 2009; and

g. Information responsive to Items 2.17 and 2.18 and Part VII that is current as of December 31, 2009 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, a representation that, to the Firm's knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed, and a detailed explanation of the grounds on which the information is considered proprietary or 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 Firm claims protects the information from public disclosure. 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 the failure. The Board will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings. The Board will determine whether *or not* to grant *other* confidential treatment requests on a case-by-case basis. See Rule 2300(c).

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 an issuer's 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 2.1–C The Firm has resigned, declined to stand for re-appointment, or been dismissed from an audit engagement as principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary), and the issuer has failed to comply with a Commission requirement to make a report concerning the matter pursuant to Item 4.01 of Commission Form 8–K. (Complete Item 3.2 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, broker, dealer, 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, broker, or dealer 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, broker, dealer, 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, broker, or dealer 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, (b) a Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (c) a court-ordered injunction prohibiting appearance or practice 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, (b) a Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (c) a court-ordered injunction prohibiting appearance or practice 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 email 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 AND ISSUER AUDITOR CHANGES

Item 3.1 Withdrawn issuer audit reports and consents

If the Firm has withdrawn an audit report on an issuer's 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.

Item 3.2 Issuer auditor changes

If the Firm has resigned, declined to stand for re-appointment, or been dismissed from an audit engagement as principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary) and the issuer has failed to comply with a Commission requirement to make a report concerning the matter pursuant to Item 4.01 of Commission Form 8–K, provide—

a. The issuer's name and CIK number, if any; and

b. Whether the Firm resigned, declined to stand for re-election, or was dismissed and the date thereof.

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, broker, or dealer 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, (b) a Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (c) a court-ordered injunction prohibiting appearance or practice 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, (b) a Commission order suspending or denying the privilege of appearing or practicing before the Commission, or (c) a court-ordered injunction prohibiting appearance or practice 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—

a. the name of the state, agency, board or other authority that had issued the license or certification related to such authorization;

b. the number of the license or certification;

c. the date that the authorization ceased to be effective or became subject to conditions or contingencies, and

d. 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—

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

b. the number of the license or certification;

c. the date the license or certification took effect; and

d. 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—

a. State the new legal name of the Firm;

b. State the legal name of the Firm immediately preceding the new legal name;

c. State the effective date of the name change;

d. Provide a brief description of the reason(s) for the change; and

e. 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 email 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 email 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—

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

b. the signer has reviewed this Form;

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

d. either—

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

* * * * *

FORM 4—SUCCEEDING TO REGISTRATION STATUS OF PREDECESSOR

GENERAL INSTRUCTIONS

1. Purpose of this Form. Effective December 31, 2009, this Form must be used to submit information, representations, and affirmations to the Board, pursuant to Rule 2109, by a public accounting firm that seeks to succeed to the registration status of a predecessor firm in circumstances described in Rule 2108.

2. Defined Terms. The definitions in the Board's rules apply to this Form. Italicized terms in the instructions to this Form are defined in the Board's rules. In addition, as used in the instructions to this Form, the term ''the Firm'' means the public accounting firm that is submitting this Form to the Board, and the term ''the predecessor firm'' means the registered public accounting firm identified in Item 1.1.a of the Form.

3. Submission of this Form. Unless otherwise directed by the Board, the Firm must submit this Form, and all exhibits to this Form, to the Board electronically by completing the Web-based version of this Form available on the Board's Web site. The Firm must use the predecessor firm's user ID and password to access the system and submit the Form. In the event of a transaction involving the combination of multiple registered public accounting firms, the Firm must access the system using only the user ID and password of the firm specifically identified in Item 1.1.a, and not those of any other registered public accounting firm.

4. When this Form Should be Submitted and When It is Considered Filed. To succeed to the registration status of the predecessor firm pursuant to the provisions of Rule 2108(a) or (b), the Firm must provide the information and representations required by this Form, in accordance with the instructions to this Form, and must file the Form no later than the 14th day after the effective date of the change in form of organization, change in jurisdiction of organization, or business combination. Different timing requirements apply with respect to events that occurred before December 31, 2009. See Rule 2109(a)(2). Form 4 is considered filed when the Firm has submitted to the Board, through the Board's Web-based reporting system, a Form 4 that includes the signed certification required in Part V of Form 4, provided, however, that any Form 4 so submitted after the applicable filing deadline shall not be deemed filed unless and until the Board, pursuant to Rule 2108(d), grants leave to file the Form 4 out of time.

5. Seeking Leave To File this Form Out of Time. To request leave to file Form 4 out of time, pursuant to the provisions of Rule 2108(d), the Firm must file the request on Form 4 and must attach as Exhibit 99.5 a detailed statement describing why, despite the passage of time since the event described on the Form 4, the Board should permit the Firm to succeed to the registration status of the predecessor firm. Any Form 4 that has been submitted out of time, and as to which a Board decision on whether to allow the form to be filed is pending, may be withdrawn by accessing the pending submission in the Board's Web-based system and selecting the ''Withdraw'' option.

6. Completing the Form. The Firm must complete Parts I, II, IV and V of this Form. Part III should be completed to the extent applicable, as described more fully in the instructions to Part II of the Form.

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

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

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

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

9. Requests for Confidential Treatment. The Firm may, by marking the Form in accordance with the instructions provided, request confidential treatment of any information submitted in Exhibit 99.3 or Exhibit 99.5 of this Form that has not otherwise been publicly disclosed and that either contains information reasonably identified by the Firm as proprietary information or that is protected from public disclosure by applicable laws related to confidentiality of proprietary, personal, or other information. See Rule 2300. If the Firm requests confidential treatment, it must identify the information in Exhibit 99.3 or Exhibit 99.5 that it desires to keep confidential, and include, as Exhibit 99.1 to this Form, a representation that, to the Firm's knowledge, the information for which confidential treatment is requested has not otherwise been publicly disclosed, and a detailed explanation of the grounds on which the information is considered proprietary or 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 Firm claims protects the information from public disclosure. 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 the failure. The Board will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings. The Board will determine whether or not to grant other confidential treatment requests on a case-by-case basis. See Rule 2300(c).

10. Assertions of Conflicts with Non-U.S. Law. If the Firm is a foreign registered public accounting firm, the

Firm may, unless otherwise directed by the Board pursuant to Rule 2207(e), decline to provide the affirmation required by Item 4.1 of this Form and any answer required by Item 3.2.e of this Form if doing so would constitute a violation of non-U.S. law by the Firm and the Firm proceeds in accordance with Rule 2207. (Note that, pursuant to Rule 2109(d), the provisions of Rule 2207 apply to any submission on this Form as if the submission were a report on Form 3.) If the firm withholds the affirmation or answer, the Firm must indicate, in accordance with the instructions in the relevant Part of the Form, that it has done so.

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

PART I—IDENTITY OF THE FIRM AND CONTACT PERSONS

Item 1.1 Names of Firm and Predecessor Registered Public Accounting Firm

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

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

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

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

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

Item 1.2 Contact Information of the Firm

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

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

Item 1.3 Primary Contact and Signatory

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

PART II—GENERAL INFORMATION CONCERNING THE FILING OF THIS FORM

Item 2.1 Reason for Filing this Form

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

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

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

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

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

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

Item 2.3 Amendments

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

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

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

PART III—CHANGES IN THE FIRM

Item 3.1 Changes in Form of Organization or in Relevant Jurisdiction

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

a. State the Firm's current (i.e., after the change in legal form or jurisdiction) legal form of organization;

b. Identify the jurisdiction under the law of which the Firm is organized currently (i.e., after the change in legal form or jurisdiction); and

c. State the date that the change took effect.

d. Affirm that, after the change reported or described in this Item 3.1, the Firm is a public accounting firm under substantially the same ownership as the predecessor firm.

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

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

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

2. the number of the license or certification;

3. the date the license or certification took effect.

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

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

2. the number of the license or certification; and

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

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

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

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

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

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

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

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

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

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

On behalf of [name of the Firm], I certify that (1) I was an officer of, or held an equity ownership interest in, [name of predecessor firm] immediately before the transaction described in Item 3.2.a of the Form 4 to which this exhibit is attached; (2) immediately before that transaction [name of predecessor firm] was a registered public accounting firm; (3) as part of that transaction, a majority of the persons who held equity ownership interests in [name of predecessor firm] obtained equity ownership interests in, or became employed by, [name of the Firm]; (4) [name of predecessor firm] intended that [name of the Firm] succeed to the Board registration status of [name of predecessor firm] to the extent permitted by the Board's rules; and (5) [name of predecessor firm] is no longer a public accounting firm.

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

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

2. the number of the license or certification; and

3. the date the license or certification took effect.

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

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

2. the number of the license or certification; and

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

e. Provide a ''yes'' or ''no'' answer to each of the following questions—

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

Note: In considering whether an affirmative response would be required to Item 5.1.a of Form 1, the Firm should take into account the guidance provided by question number 33 in Frequently Asked Questions Regarding Registration with the Board, PCAOB Release No. 2003–011D (Apr. 28, 2010).

2. Is there identified in Item 3.2.a.2 any entity that (i) issued an audit report with respect to an issuer on or after October 22, 2003 (or, if the entity is a non-U.S. entity, July 19, 2004), while not registered with the Board, and (ii) did not thereafter have an application for registration on Form 1 approved by the Board?

3. Is there identified in Item 3.2.a.2 any entity that (i) issued an audit report with respect to a broker or dealer for financial statements with fiscal years ending after December 31, 2008, while not registered with the Board, and (ii) did not thereafter have an application for registration on Form 1 approved by the Board?

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

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

f. If the Firm answered ''yes'' to any question in Item 3.2.e or asserts as to any of those questions that non-U.S. law

prohibits it from providing an answer, affirm, by checking the box corresponding to the appropriate item, that one of the following statements is true—

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

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

PART IV—CONTINUING OBLIGATIONS

Item 4.1 Continuing Consent to Cooperate

Affirm that—

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

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

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

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

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

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

Item 4.2 Continuing Responsibility to the Board for Previous Conduct Affirm that, for purposes of the Board's authority with respect to registered public accounting firms, including but not limited to the authority to require reporting of information and the authority to impose disciplinary sanctions, the Firm either has retained or assumes responsibility for the conduct of any predecessor registered public accounting firm before the change or business combination reported on this Form took effect.

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

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

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

PART V—CERTIFICATION OF THE FIRM

Item 5.1 Signature of Partner or Authorized Officer

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

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

b. the signer has reviewed this Form;

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

d. either—

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

2. based on the signer's knowledge—

(A) the Firm is a foreign public accounting firm and has not failed to include in this Form any information or affirmation that is required by the instructions to this Form other than an affirmation required by Item 4.1 and/or an answer to Item 3.2.e.; and

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

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

PART VI—EXHIBITS

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

Exhibit 99.1 Request for Confidential Treatment

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

Exhibit 99.4 Acknowledgment Concerning Registration Status in Certain Transactions
Exhibit 99.5 Statement in Support of Request for Leave To File Form 4 Out of Time.

* * * * *

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

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, the Board is requesting that the Commission approve the proposed rules, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, for application to audits of emerging growth companies (''EGCs''), as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 (''Exchange Act''). The Board's request is set forth in section D.

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

(a) Purpose

Introduction

On July 21, 2010, the Dodd-Frank Act [1] amended various provisions of the Sarbanes-Oxley Act of 2002 (''the Dodd-Frank amendments'') and, among other things, gave the PCAOB oversight authority with respect to audits of brokers and dealers that are registered with the SEC.[2] The Dodd-Frank amendments provided the Board with authority to carry out the same types of oversight programs for audits of brokers and dealers that it has carried out with respect to audits of issuers.[3] The legislative history notes that this new authority ''permits [the Board] to write standards for, inspect, investigate, and bring disciplinary actions arising out of, any audit of a registered broker or dealer.'' [4]

On February 28, 2012, the PCAOB proposed to update its rules to conform them to the Dodd-Frank amendments and to make certain other updates and clarifications.[5] The Board received 13 comment letters: 10 from registered public accounting firms (representing a range of large, medium, and small-sized firms), two from accounting-auditing professional associations, and one from an actuary. Commenters generally supported the goal of amending the Board's rules to conform them to the Dodd-Frank Act and to make certain other amendments in light of the Board's administrative experience.[6] Commenters said the proposals were generally consistent with the ''goal of enhancing audit quality for the audits of brokers and dealers,'' [7] and would ''provide added clarity regarding the applicability of the Board's rules and standards to brokers and dealers.'' [8]

Commenters also raised a number of concerns, focusing especially on the Board's proposals to: Apply Rule 3523 (Tax Services for Persons in Financial Reporting Oversight Roles) to the audits of brokers and dealers; amend Rule 5109 (Rights of Witnesses in Inquiries and Investigations) and Rule 5422 (Availability of Documents for Inspection and Copying); and require Form 3 special reporting for withdrawn broker and dealer audit reports (proposed Form 3, Item 3.2) and issuer auditor changes (proposed Form 3, Item 3.3).

As described in more detail below, the Board, after considering comments, is adopting the proposed amendments with modifications to address certain of the commenters' concerns.

The amendments the PCAOB is adopting today include specific references to audits and auditors of brokers and dealers in the Board's rules. The amendments also conform the Board's rules to the Dodd-Frank amendments that (1) clarified the definition of ''person associated with a public accounting firm,'' [9] (2) permitted the Board to share certain information with foreign auditor oversight authorities,[10] and (3) clarified that the Board's sanctioning authority is not limited to persons who are supervisory personnel at the time a failure to supervise sanction is imposed.[11] Certain rules in each section of the Board's rules, except the funding rules,[12] and the rules related to assistance to non-U.S. authorities in inspections and investigations, are affected by these conforming amendments.[13] These sections are:

Section 1—General Provisions
Section 2—Registration and Reporting
Section 3—Professional Standards (including Auditor Independence)
Section 4—Inspections
Section 5—Investigations and Adjudications

---

[1] Public Law 111–203, 124 Stat. 1376.

[2] Section 110 of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'' or the ''Act''), which was added by the Dodd-Frank amendments, incorporates the definitions of ''broker'' in Section 3(a)(4) of the Securities Exchange Act of 1934 (''Exchange Act'') and ''dealer'' in Section 3(a)(5) of the Exchange Act, but includes only those brokers or dealers that are required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of the Exchange Act certified by a registered public accounting firm. *See* Section 110(3) and (4) of the Act.

[3] As defined in Section 2(a)(7) of the Act, ''issuer'' means an issuer (as defined in Section 3 of the Exchange Act) the securities of which are registered under Section 12 of the Exchange Act, or that is required to file reports under Section 15(d) of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 and that it has not withdrawn.

[4] S. Rep. No. 111–176, at 154 (2010). The Dodd-Frank amendments to Section 102(a) of the Act also expanded the Act's registration requirement by making it unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any broker or dealer. Even before the Dodd-Frank amendments, Section 17(e)(1)(A) of the Exchange Act, as amended by Sarbanes-Oxley in 2002, required that the balance sheets and income statements filed with the Commission by registered brokers or dealers be certified by a public accounting firm registered with the PCAOB. Before the Dodd-Frank amendments, however, the Sarbanes-Oxley Act did not give the PCAOB the authority to inspect, set standards for, or engage in investigation and enforcement actions with respect to registered firms that audit brokers and dealers. In July 2013, the SEC adopted amendments to SEC Rule 17a–5 to, among other things, require that broker and dealer audits be conducted in accordance with PCAOB standards and the PCAOB's attestation standards regarding broker and dealer examinations and reviews. *See* SEC, *Broker-Dealer Reports,* Exchange Act Release No. 70073 (July 30, 2013), 78 FR 51910 (Aug. 21, 2013).

[5] *See Proposed Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications,* PCAOB Release No. 2012–002 (Feb. 28, 2012). The comment period closed on April 30, 2012.

[6] *See* Letter of the Center for Audit Quality (Apr. 30, 2012) (''CAQ Comment Letter''); Letter of Deloitte & Touche LLP (Apr. 26, 2012) (''D&T Comment Letter''); Letter of Ernst & Young LLP (Apr. 30, 2012) (''EY Comment Letter''); Letter of KPMG LLP (Apr. 27, 2012) (''KPMG Comment Letter''); Letter of McGladrey & Pullen, LLP (Apr. 27, 2012) (''McGladrey Comment Letter''); Letter of PricewaterhouseCoopers LLP (Apr. 30, 2012) (''PWC Comment Letter'').

[7] Letter of Crowe Horwath LLP (Apr. 23, 2012) (''Crowe Horwath Comment Letter'').

[8] Letter of Grant Thornton LLP (Apr. 30, 2012) (''Grant Thornton Comment Letter'').

[9] *See* Section 2(a)(9)(C) of the Act.

[10] *See* Section 105(b)(5)(C) of the Act.

[11] *See* Section 105(c)(6)(A) of the Act.

[12] The Board's funding rules were addressed in a separate PCAOB rulemaking. *See Final Rules for Allocation of the Board's Accounting Support Fee Among Issuers, Brokers, and Dealers, and Other Amendments to the Board's Funding Rules,* PCAOB Release No. 2011–002 (June 14, 2011). While the Board is not substantively amending the funding rules, the Board is making technical amendments to Rules 7103 and 7104. *See infra* note 17.

[13] The Board is not amending the rules in Section 6, which state that the Board may provide assistance to non-U.S. authorities in an inspection or investigation of a registered public accounting firm, because these rules apply to registered firms that audit brokers and dealers without amendment.

Ethics Code

Beyond these conforming amendments, the PCAOB is adopting three additional categories of amendments that tailor certain of the Board's rules to the audits of brokers and dealers; call for relevant broker and dealer audit client information on the Board's forms; and amend a number of rules in light of the Board's experience administering and enforcing these rules.

First, the PCAOB is tailoring the Board's professional practice standards to the audits of brokers and dealers. As amended, Rule 3521 (Contingent Fees) and Rule 3522 (Tax Transactions) apply to the audits of brokers and dealers to the same extent that they previously applied to the audits of issuers. In contrast, Rule 3523 (Tax Services for Persons in Financial Reporting Oversight Roles), Rule 3524 (Audit Committee Pre-approval of Certain Tax Services), and Rule 3525 (Audit Committee Pre-approval of Non-audit Services Related to Internal Control Over Financial Reporting) will remain limited to services provided to issuer audit clients. The Board also is adding a definition of ''audit committee'' so that Rule 3526 (Communication with Audit Committees Concerning Independence) applies to brokers and dealers that may not have organizational structures that include audit committees.

Second, the Board is amending its registration, withdrawal, and reporting forms (Forms 1, 1–WD, 2, 3, and 4), and the general instructions to these forms, to call for relevant broker and dealer audit client information. This information includes, among other things, information identifying each audit report issued by registered firms for broker and dealer audit clients during their annual reporting periods.

Finally, the Board is amending a number of rule provisions and form items in light of administrative experience and to make a number of updates to address events that have occurred since the last time the rules were updated. These amendments, for example, conform Rule 4009 (Firm Response to Quality Control Defects) to a rule adopted by the Commission in July 2010, and eliminate a hard-copy submission requirement from Form 1–WD that the Board believes is unnecessary.

(b) Statutory Basis

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

B. Board's Statement on Burden on Competition

Not applicable.

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

The Board released the proposed rule amendment for public comment in PCAOB Release No. 2012–002 (February 28, 2012). A copy of Release No. 2012–002 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/Rules/Rulemaking/Pages/Docket039.aspx.* The Board received 13 written comment letters. The Board has carefully considered the comment letters, as discussed below.

Section 1—General Provisions

Rule 1001, in Section 1 of the Board's rules, contains definitions of terms used in the Board's rules. Today's amendments conform definitions in this section to the definitions of terms in the Dodd-Frank amendments, including by amending the terms ''audit services'' and ''other accounting services'' to implement Section 102(b)(2)(B) of the Act.[14] The amendments also add the new statutory term ''foreign auditor oversight authority'' to Rule 1001.[15] Although commenters did not generally address the proposed amendments to Rule 1001, one commenter indicated its general support for these proposals, saying they conform to the provisions of the Dodd-Frank Act.[16]

''Audit'' and ''Audit Report'' (Rule 1001(a)(v) and (a)(vi)). The PCAOB is amending the definitions of ''audit'' and ''audit report'' to conform these terms to the statutory definitions the Dodd-Frank amendments added to Section 110 of the Act.[17] The amended definitions expand the terms to include not only audits of financial statements under PCAOB auditing standards but also examinations of reports, notices, other documents, procedures or controls under PCAOB attestation standards. The Board did not receive comment on the proposed amendments to the definitions of ''audit'' or ''audit report,'' and the Board is adopting the amendments to these definitions as proposed. The amended definitions recognize that brokers and dealers are required under SEC rules to file reports prepared and issued by auditors based on an examination of, among other things, broker and dealer financial statements and supporting schedules that provide information regarding a broker-dealer's net capital, reserves, and other items.[18] The terms ''audit'' and ''audit report'' in the context of SEC Rule 17a–5 apply to reports prepared on a broker's or dealer's financial statements and supporting schedules, compliance report, and exemption report, as well as a supplemental report regarding Securities Investor Protection Corporation (''SIPC'') annual general assessment reconciliation or exclusion from SIPC membership, as applicable.[19]

''Audit Services'' and ''Other Accounting Services'' (Rule 1001(a)(vii) and (o)(i)). To implement the Dodd-Frank amendments to Section 102(b)(2)(B) of the Act, the Board is amending the terms ''audit services'' and ''other accounting services'' to include services provided by auditors to broker and dealer audit clients. Commenters did not address the proposed amendments to the definitions of ''audit services'' or ''other accounting services'' and the PCAOB is adopting these definitions as proposed. Because firms provide different services to broker and dealer audit clients than they provide to issuer audit clients, the Board's definitions are tailored to each category of audit client. As discussed in more detail in Section VII below, these amendments will be used in the context

[14] As part of a separate rulemaking related to the Board's funding rules, the Board adopted amendments to Rule 1001 that added definitions of, among other Rule 1001 terms, ''broker,'' ''dealer,'' and ''self-regulatory organization,'' which are consistent with the definitions in the Dodd-Frank amendments. *See* PCAOB Release No. 2011–002.

[15] In addition, the Board is reserving Rule 1001(n)(i), and renumbering the definitions of ''party'' in Rule 1001(p)(iii) and ''secretary'' in Rule 1001(s)(iii) to correct technical errors in Rule 1001's numbering. In 2011, the Board removed the term ''notice'' from Rule 1001 without reserving subparagraph (n)(i). *See* PCAOB Release No. 2011–002, at n.22. Also, prior rule amendments inadvertently resulted in several unrelated definitions being assigned the same subparagraph numbers.

[16] *See* Grant Thornton Comment Letter.

[17] The Board is also removing the notes accompanying the definitions of ''audit'' and ''audit report.'' The Board added these notes in 2011 to make clear that the Board's enforcement rules encompass the obligations of auditors with respect to the audits of brokers and dealers. *See Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers,* PCAOB Release No. 2011–001, at n.32 (June 14, 2011); *Proposed Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers,* PCAOB Release No. 2010–008, at n.19 (Dec. 14, 2010). Today's amendments make these notes unnecessary. Similarly, the amendments to the definitions of ''audit'' and ''audit report'' make note three accompanying Rule 7104(b) unnecessary, and the Board is removing this note. The Board is also making a technical correction to Rule 7103(c), which should have consistently referred to brokers and dealers, as well as issuers.

[18] *See generally,* SEC Rule 17a–5 under the Exchange Act (17 CFR 240.17a–5).

[19] *See* SEC Rule 17a–5(e)(4) and (g). In July 2013, the SEC adopted amendments to SEC Rule 17a–5 to, among other things, strengthen and clarify broker and dealer audit and reporting requirements and require that broker and dealer audits be conducted in accordance with PCAOB standards. *See Broker-Dealer Reports,* Exchange Act Release No. 70073.

of collecting certain fee information on broker and dealer audit clients on Form 1.[20] In the event that a firm has both issuer and broker and dealer audit clients, the fee information will be collected separately for issuer and for broker and dealer audit clients. (The Board, as discussed below, is not imposing an annual reporting requirement with respect to fees for services provided to broker and dealer audit clients on Form 2.)[21]

The Rule 1001 term ''audit services,'' in the context of broker or dealer audit clients, includes professional services related to the audit of a broker's or dealer's financial statements and supporting schedules, as described in SEC Rule 17a–5(d)(2),[22] as well as the report on a broker's or dealer's compliance report, as described in SEC Rule 17a–5(d)(3), a report on a broker's or dealer's exemption report, as described in SEC Rule 17a–5(d)(4), and a report on the broker's or dealer's supplemental report on SIPC annual general assessment reconciliation or exclusion from SIPC membership, as described in SEC Rule 17a–5(e)(4).

To the extent a firm's services and particular fees may overlap these fee categories, the firm must attribute the fees it billed to just one of the fee categories. Applicants must include such fees within the most appropriate category under the circumstances. As discussed in more detail below, the Board understands that firms with broker and dealer audit clients have not necessarily maintained billing records in a way that would make precise reporting according to the fee categories always possible. For this reason, the Board expects that estimates will be required to attribute particular billed fees to one of the fee categories on Form 1.[23]

''Foreign Auditor Oversight Authority'' (Rule 1001(f)(iii)). As proposed, the Board is amending Rule 1001 to include the definition of ''foreign auditor oversight authority'' to track the definition in Section 2(a)(17) of the Act. The Board did not receive comment on the proposed definition of foreign auditor oversight authority. This definition supports the Board's authority to share confidential information with its counterparts in other countries.

''Person Associated with a Public Accounting Firm (and Related Terms)'' (Rule 1001(p)(i)). The PCAOB, as proposed, is amending Rule 1001(p)(i), which defines ''person associated with a public accounting firm'' (and related terms), consistent with amended Section 2(a)(9) of the Act. The Board is also adding a note to Rule 1001(p)(i) highlighting a related amendment to Section 2(a)(9). The note explains that Section 2(a)(9) has been amended to make clear that, for purposes of the Board's investigations and disciplinary proceedings, the defined terms include any person associated, seeking to become associated, or formerly associated with a public accounting firm. The note also explains that Section 2(a)(9) makes clear that the Board's authority to conduct an investigation of any such person applies only with respect to conduct or omissions that occurred while the person was associated or seeking to become associated with a firm, and that the Board's authority to commence disciplinary proceedings or impose sanctions against any such person applies only with respect to conduct or omissions occurring during such a period or failures to cooperate with investigative demands for testimony, documents, or other information relating to such a period. The legislative history of the Dodd-Frank amendments explains that Congress enacted the revised definition of associated person ''to make it clear that [the Board] may sanction or discipline persons who engage in misconduct while associated with a regulated or supervised entity even if they are no longer associated with that entity.''[24]

Commenters asked for guidance regarding the meaning of ''seeking to become associated'' (as added by the Dodd-Frank Act).[25] The Board believes that inclusion of the phrase ''seeking to become associated'' in the Act provides the Board with investigative and disciplinary authority over, for example, conduct connected with the preparation and filing with the Board of Form 1 (including the form's contents and all attachments, exhibits, and correspondence related to the form) and other applications for registration with the Board.

The PCAOB is also amending a provision that the Board included in the definition in its rules but is not included in the statutory definition. Before the Board adopted Rule 1001(p)(i) in 2003, a number of commenters suggested that the definition should be limited to only a public accounting firm's employees. In response, the Board adopted a provision providing that the persons associated with a particular public accounting firm do not include those persons the firm reasonably believes are persons primarily associated with another registered public accounting firm.[26] Experience in administering the rule after its adoption has shown that, in contexts other than registration and reporting, this provision, which is not a part of the statutory definition, may create uncertainty and lead to results inconsistent with the statutory definition. By its terms, the statutory definition has application without regard to the belief of a firm. Accordingly, the Board is adding language to Rule 1001(p)(i) to limit the reasonable belief provision to the context of registration and reporting forms that are completed on behalf of a firm pursuant to Section 2 of the Board's rules, thus making clear that this provision does not otherwise operate to amend the statutory definition. The Board did not receive comment on this aspect of the proposed amendments to the associated person definition and is adopting it as proposed.

The Board also is amending Rule 1001(p)(i) by inserting the words ''or entity'' after the words ''independent contractor,'' and ''or otherwise'' after ''participates as agent.'' The phrases ''or entity'' and ''or otherwise'' are included in the definition of ''Person Associated with a Public Accounting Firm'' in Section 2(a)(9) of the Act. Two commenters suggested that these amendments may raise interpretive and implementation questions.[27] The primary purpose of many definitions adopted in 2003 was to narrow terms to allow auditing firms to complete initial registration forms with some certainty and in a relatively short period of time. These rules, however, did not limit or contract the Board's authority under the Act. Now that most firms are registered, it is appropriate for the definition in the Board's rules to reflect the full statutory

[20] *See infra* notes 151–155 and accompanying text.

[21] *See infra* note 177 and accompanying text.

[22] ''Audit services'' covers professional services rendered for the audit of a broker's or dealer's financial statements and supporting schedules regarding computation and information required under SEC Rules 15c3–1 and 15c3–3. The definition of ''non-audit services'' remains unchanged. *See* Rule 1001(n)(ii).

[23] *See infra* text accompanying note 156.

[24] H.R. Rep. No. 111–687, at 79 (Dec. 16, 2010) (accompanying H.R. 3817, the Investor Protection Act of 2009).

[25] *See* CAQ Comment Letter; D&T Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter.

[26] *See Registration System for Public Accounting Firms,* PCAOB Release No. 2003–007, at A–3–xii (May 6, 2003). *See also Frequently Asked Questions Regarding Registration with the Board,* PCAOB Release No. 2003–011D, Question and Answer No. 21, available at *http://pcaobus.org/Registration/Pages/SampleForms.aspx. See generally,* comment letters available at *http://pcaobus.org/Rules/Rulemaking/Pages/Docket001Comments.aspx.*

[27] *See* D&T Comment Letter and EY Comment Letter.

meaning of the term. As with other provisions of the Act, the Board's interpretation of this defined term will be determined based on specific facts and circumstances.

''Play a Substantial Role in the Preparation or Furnishing of an Audit Report'' (Rule 1001(p)(ii)). As proposed, the PCAOB is inserting ''broker or dealer'' throughout this definition to make it clear that the definition extends to audit reports prepared for brokers or dealers, as well as issuers. The Board is also amending this definition to correct an error, by replacing the word ''accountant'' with ''auditor,'' which is the more appropriate term.[28] The Board did not receive comment on the proposed amendments to the substantial role definition.

''Professional Standards'' (Rule 1001(p)(vi)). The Board is amending the definition of ''professional standards'' to conform to the definition of this term in Section 110 of the Act.[29] Under the amended rule, the definition of professional standards is extended to include accounting principles, auditing standards, attestation standards, quality control standards, ethics standards and independence standards relating to the audit reports for brokers and dealers, as well as issuers. The Board did not receive comment on the proposed amendments to the definition of professional standards and is adopting the definition as proposed.

''Suspension'' (Rule 1001(s)(iv)). As proposed, the PCAOB is amending the definition of ''suspension'' to make it clear that when the Board imposes a suspension on a registered public accounting firm, the firm is prohibited from preparing or issuing, or participating in the preparation or issuance of, any audit report, including audit reports issued for brokers or dealers. The Board did not receive comment on the proposed amendments to the definition of suspension.

Section 2—Registration and Reporting Rules

This section of the PCAOB's rules sets out the requirements for public accounting firms to register with the Board. It also contains provisions for annual and special reporting, the payment of annual fees, and procedures to withdraw from registration with the Board. In addition, Section 2 contains rules governing a firm's request for confidential treatment of information submitted in registration and reporting forms, as well as requests to omit certain information on grounds that providing the information would violate certain non-U.S. laws.

Most of the amendments the Board is making to this section are to add ''broker'' and ''dealer'' to those rules that formerly applied only to auditors of issuers. Commenters did not address the Board's proposed amendments to the rules in Section 2, and the Board is adopting the amendments, which are briefly described below, as proposed.

Application for Registration (Rule 2100). Section 102(a) of the Act and Rule 2100 require the registration of all public accounting firms that prepare or issue audit reports, or play a substantial role in preparing or furnishing an audit report, with respect to issuers. The Dodd-Frank amendments extended this requirement to auditors of brokers and dealers.[30] The Board is revising Rule 2100 to implement these amendments with respect to registration.

Standard for Approval (Rule 2106(a)). Rule 2106(a) sets out the standard for the Board to consider in determining whether to approve a firm's application for registration. The rule is based on Section 101(a) of the Act. The Dodd-Frank amendments broadened Section 101(a) to cover broker and dealer audits, as well as issuer audits. To ensure that Rule 2106(a) continues to track Section 101(a) of the Act, as amended by the Dodd-Frank Act, the Board is revising this rule to remove its last clause.

Board Action (Rule 2107(d)). The Board may order that withdrawal of a firm's registration be delayed for a period of up to eighteen months under Rule 2107(d), if it determines that withdrawal is inconsistent with the Board's responsibilities to conduct inspections or investigations. Specifically, Rule 2107(d)(1) refers to ''inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with . . . related matters involving issuers.'' The Board is amending this provision to encompass brokers and dealers to reflect the Board's expanded authority under the Dodd-Frank amendments.

Section 3—Professional Standards

Section 3 of the PCAOB's rules establish auditing and related professional practice standards, including attestation, quality control, ethics, and independence standards applicable to registered public accounting firms and their associated persons. In light of the enactment of the Dodd-Frank Act, the Board proposed specific amendments to make Section 3 applicable to audits of brokers and dealers.

Under Section 17 of the Exchange Act and SEC Rule 17a–5 thereunder, brokers or dealers are generally required, among other things, to file with the Commission and with the broker's or dealer's designated examining authority (''DEA'') an annual report containing audited financial statements, supporting schedules, supplemental reports, and independent public accountant reports, as applicable.[31] Under the amendments to SEC Rule 17a–5, effective for fiscal years ending on or after June 1, 2014, ''independent public accountant'' reports must be prepared in accordance with the standards of the PCAOB.[32]

As discussed above, in July 2010, the Dodd-Frank amendments gave the Board authority to establish, subject to Commission approval, auditing and related attestation, quality control, ethics, and independence standards to be used by registered public accounting firms in the preparation and issuance of the audit reports included in broker and dealer filings with the Commission. In September 2010, the Commission issued interpretive guidance clarifying that the ''references in Commission rules and staff guidance and in the federal securities laws to generally accepted auditing standards (''GAAS'') or to specific standards under GAAS, as they relate to non-issuer brokers or dealers, should continue to be understood to mean'' the auditing and attestation standards established by the American Institute of Certified Public Accountants (the ''AICPA''), but noted that it intended to revisit this interpretation in connection with a Commission rulemaking project to update the audit and attestation requirements for brokers and dealers in light of the Dodd-Frank Act.[33] In June 2011, the Commission proposed to amend SEC Rule 17a–5 to mandate that the rule's required reports be prepared in accordance with the

[28] ''Accountant'' is defined in Rule 1001(a)(ii) as a natural person who is a CPA, or who holds an accounting degree, or who holds a license or certification authorizing him or her to engage in auditing or accounting, or who holds a degree other than accounting and participates in audits. ''Auditor'' is defined in Rule 1001(a)(xii) to mean both public accounting firms registered with the Board and associated persons thereof. The Board is also correcting this error in the notes accompanying Form 1, Items 2.1 and 2.2.

[29] The amendments also remove, as unnecessary, the note accompanying the definition of ''professional standards.''

[30] Section 17(e)(1)(A) of the Exchange Act requires every registered broker and dealer to file with the Commission a balance sheet and income statement certified by a registered public accounting firm.

[31] *See* Section 17(a) and (e) of the Exchange Act and SEC Rule 17a–5(d).

[32] *See* SEC Rule 17a–5(g), as amended.

[33] SEC, *Commission Guidance Regarding Auditing, Attestation, and Related Professional Practice Standards Related to Brokers and Dealers,* Exchange Act Release No. 62991 (Sep. 24, 2010).

standards of the PCAOB.[34] Finally, in July 2013, the SEC adopted amendments to SEC Rule 17a–5, directing that auditors of brokers and dealers are to comply with PCAOB standards effective for fiscal years ending on or after June 1, 2014.[35] As a result, the Board's auditing, attestation, quality control, and independence standards apply to audit, attest, and other engagements for brokers and dealers required by Section 17 of the Exchange Act and SEC Rule 17a–5.[36]

General Requirements

Rule 3100 requires registered firms and their associated persons to comply with all applicable auditing and related professional practice standards and Rule 3101 explains the meaning of certain terms used in those standards (such as ''must'' and ''should'') that describe the responsibility a PCAOB standard imposes on auditors. Rules 3100 and 3101 are applicable to audits of brokers and dealers required by Section 17 of the Exchange Act and SEC Rule 17a–5.

Rules 3200T, 3300T and 3400T generally require registered firms and their associated persons to comply with the AICPA's auditing, attestation, and quality control standards as in existence on April 16, 2003, to the extent not superseded or amended by the Board. Rules 3200T and 3300T, as well as standards adopted by the Board and approved by the Commission, apply to audit, attest, and other engagements for brokers and dealers required under Section 17 of the Exchange Act and SEC Rule 17a–5.

To clarify that Rule 3300T regarding interim attestation standards applies to broker or dealer engagements, the Board is removing the words ''for issuers'' from the phrase in the rule ''audit reports for issuers.'' [37] As a result, Rule 3300T applies, and the interim standards, as applicable and to the extent not superseded or amended by the Board, must be followed in connection with engagements related to the preparation or issuance of audit reports for brokers and dealers.[38]

Rule 3400T requires, among other things, that certain registered firms—firms that were members of the former SEC Practice Section (''SECPS'') of the AICPA—must comply with certain of the SECPS membership requirements that existed as of April 16, 2003, to the extent not superseded or amended by the Board.[39] Under the amendments, the SECPS membership requirements apply to the auditors of brokers and dealers that were members of the SECPS in 2003. This approach is consistent with the previous rule (which applied the SECPS membership requirements only to those registered firms that are former members of the SECPS).

One commenter suggested that Rule 3400T itself should state that the SECPS membership requirements apply to auditors of brokers and dealers that were members of the SECPS in 2003.[40] In response to this comment, the Board has added a note to Rule 3400T to clarify that the SECPS membership requirements only apply to those firms that were members of the SECPS in 2003.

Another commenter expressed concern that applying the former SECPS membership requirements only to firms that were SECPS members in 2003 could result in an unbalanced and disparate application of the Board's requirements.[41] Prior to the Act's enactment, public accounting firms that were members of the SECPS voluntarily committed to satisfying a number of quality control-related requirements, including the quality control requirements the Board is adopting today. The Board notes that only two of the five SECPS membership requirements adopted by the Board apply to audits of brokers or dealers. These two requirements relate to continuing professional education requirements for audit firm personnel and the firm communicating through a written statement to its professional personnel the firm's broad policies and procedures related to accounting principles, client relationships, and services provided.[42] The Board notes that all firms (including those that were members of the SECPS in 2003) are required to comply with state and professionally mandated continuing professional education requirements that satisfy most, if not all, of these education requirements, and expects that firms distribute such information to their professional personnel to effectively manage their firms. Application of these requirements to audits of brokers and dealers is therefore not expected to result in a significant burden on auditors of brokers or dealers that were members of the SECPS in 2003. The Board intends to address the quality control standards more generally in the future, and to consider whether the substance of any or all of the SECPS membership requirements should be applied to all registered firms.[43]

Although some commenters supported the proposals to amend the Board's general requirements governing the applicability of the Board's auditing and related professional practice standards to apply to audits of brokers and dealers,[44] others believed that the

[34] SEC, *Broker-Dealer Reports,* Exchange Act Release No. 64676 (June 15, 2011), 76 FR 57572 (June 27, 2011).

[35] *Broker-Dealer Reports,* Exchange Act Release No. 70073.

[36] In related releases issued recently, the PCAOB adopted standards that are tailored to the SEC's requirements under SEC Rule 17a–5. *See Standards for Attestation Engagements Related to Broker and Dealer Compliance and Exemption Report Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards,* PCAOB Release No. 2013–007 (Oct. 10, 2013), and *Auditing Standard on Auditing Supplemental Information Accompanying Audited Financial Statements,* PCAOB Release No. 2013–008 (Oct. 10, 2013). These standards must be approved by the SEC.

[37] As noted above, the Board is amending the definition of ''audit reports'' in Rule 1001 to include auditor examinations of and reports concerning not only financial statements but also reports, notices, other documents, procedures or controls, such as the auditor reports provided in connection with audits of brokers and dealers pursuant to SEC Rule 17a–5. *See supra* notes 17–19 and accompanying text.

[38] In related releases issued recently, the PCAOB adopted standards to align its standards more closely with auditor responsibilities under SEC Rule 17a–5. AT 1 and AT 2 apply specifically to the examination of a broker's or dealer's compliance report and review of a broker's or dealer's exemption report, as required by SEC Rule 17a–5. *See supra* note 36.

[39] *See* Rule 3400T(b); *Establishment of Interim Professional Auditing Standards,* PCAOB Release No. 2003–006, at n.15 and accompanying text (Apr. 18, 2003). These standards address, among other topics, training and education, internal communication of broad principles that influence the firm's quality control policies and procedures, notifications to regulators of dismissals and resignations from audit engagements, obligations with respect to foreign correspondent firms or other members of an international firm, and compliance with auditor independence requirements. Some of these membership requirements do not apply to broker or dealer audit clients. *See infra* note 42.

[40] *See* EY Comment Letter.

[41] *See* Grant Thornton Comment Letter (suggesting that the Board defer the application of the SECPS membership requirements to auditors of brokers and dealers until the Board has fully considered the application of those requirements to all firms).

[42] *See AICPA SEC Practice Section Reference Manual,* § 1000.08(d) and § 1000.08(l). In addition, three SECPS membership requirements adopted by the Board do not apply to audits of non-public brokers or dealers because they depend in part on the definition of ''SEC registrant'' in SECPS Membership Section 1000.38, which specifically excludes brokers or dealers that are registered with the Commission ''only because of section 15 paragraph a of the [Securities Exchange Act of 1934].'' *See* SECPS Member Section 1000.46 Appendix L, at n.3. These three requirements include notification to the Commission of resignations and dismissals from engagements with SEC registrants, audit obligations with respect to correspondent firms or other members of an international association of firms, and certain quality control procedures regarding compliance with auditor independence rules. *See AICPA SEC Practice Section Reference Manual,* § 1000.08(m), § 1000.08(n)(1), and § 1000.08(o).

[43] *See* Office of the Chief Auditor, Standard-Setting Agenda, at 6 (Sep. 30, 2013).

[44] *See* Grant Thornton Comment Letter; Rothstein Kass Comment Letter.

Board's quality control, ethics, and independence rules should not apply to the audit and attestation engagements of ''introducing'' or ''non-carrying'' brokers and dealers, asserting that these brokers and dealers are usually smaller entities that present little if any investment risk to investors or the capital markets.[45] Other commenters said that requiring auditors of brokers and dealers to follow PCAOB quality control, ethics, and independence standards is not warranted until decisions with respect to a final, permanent inspection program's scope are reached.[46]

As noted elsewhere, the SEC in July 2013 determined that all audit reports filed with the SEC and DEAs by brokers and dealers must be prepared in accordance with PCAOB standards.[47] A final decision regarding the scope of the Board's inspection program will be made at a later date. The Board believes postponing the adoption of amendments to its rules would not be consistent with the SEC's determination under Section 17(e)(2) of the Exchange Act to require that audits and attestations of broker and dealer reports filed under SEC Rule 17a–5 be made in accordance with standards of the PCAOB. The Board is not persuaded that removing doubt about which rules and standards apply to these audits should be delayed pending determinations on the scope of the Board's final inspection program.

The Board also is amending the rules in Section 3 to remove outdated and currently irrelevant provisions. For example, the Board is deleting the notes to Rules 3200T, 3300T and 3400T that addressed the application of standards during the period from the adoption of the Act to the date in 2003 when firms initially were required to register with the Board. The Board also is deleting Rule 3101(c), which provided relief from certain documentation requirements before November 2004. The Board is deleting Rule 3201T, which was a temporary and transitional rule regarding the application of Auditing Standard No. (''AS'') 2 and by its terms expired on July 15, 2005. The Board is amending Rule 3400T to remove the note that addressed application of the SECPS membership requirement for concurring partner reviews, which was superseded by Auditing Standard No. 7, Engagement Quality Review.[48] Finally, the Board is amending the note to Rule 3700(c) to clarify that nominations to Board advisory groups may be submitted by any person or organization, including a broker or dealer.

Section 1000.08(m) of the SECPS Membership Requirements. After soliciting comment, the PCAOB is adopting an amendment to the SECPS membership requirement addressing circumstances where a former SECPS member firm has been the auditor for an SEC Registrant (as defined in Appendix D, SECPS § 1000.38) that is required to file current reports on Form 8–K and has resigned, declined to stand for re-election, or been dismissed.[49] To make firm notices of these events more meaningful, the Board is requiring that registered firms (that are former members of the SECPS) notify the Commission's Office of the Chief Accountant of the cessation of an auditor's relationship with an issuer audit client only if the issuer has not reported the end of the relationship to the SEC in a timely filed Form 8–K.[50] Previously, these firm notices were required irrespective of whether or not the registrant reported the fact that the relationship ceased in a timely filed Form 8–K. As amended, if, by the end of the fifth business day after an issuer client-auditor relationship has ended the issuer has not reported the cessation of the relationship to the SEC in a timely filed Form 8–K, then a former SECPS member firm must simultaneously send a written report of this fact to the former client and email the report to the SEC's Office of the Chief Accountant.[51]

The amendment to Section 1000.08(m) of the SECPS Membership Requirements only applies to SEC Registrants that are required to file current reports on Form 8–K. For SEC Registrants that do not file current reports on Form 8–K—including foreign private issuers required to make reports on Form 6–K and investment companies required to file reports under Rule 30b1–1 of the Investment Company Act (other than business development companies)—the SECPS reporting requirement remains unchanged.[52] Notices for former clients that do not file current reports on Form 8–K are due by the end of the fifth business day following the end of the firm's determination that the client-auditor relationship has ended, irrespective of whether or not the registrant has reported the change in auditors in a timely filed report. The PCAOB is also updating Appendix I of SECPS Section 1000.43 to reflect the SEC's updated contact information and preference for email notifications.[53]

Commenters generally supported reporting circumstances where a former SECPS member firm has resigned, declined to stand for re-election, or been dismissed from an issuer engagement under Section 1000.08(m) only if the issuer has not reported the end of the relationship in a timely filed report (exception reporting).[54] But one commenter suggested that Section 1000.08(m) should be eliminated entirely,[55] and one other commenter said Section 1000.08(m) reporting is ''working, helpful, and appropriate'' and should not be amended.[56] After considering these comments, the PCAOB has determined that more focused Section 1000.08(m) reporting

[45] *See* Letter of the AICPA (Apr. 30, 2012) (''AICPA Comment Letter''); Crowe Horwath Comment Letter; KPMG Comment Letter.

[46] *See* AICPA Comment Letter; Letter of WeiserMazars LLP (Apr. 30, 2012) (''WeiserMazars Comment Letter'').

[47] *See* SEC Rule 17a–5(g); *see also Broker-Dealer Reports,* Exchange Act Release No. 70073, at nn.330–347 and accompanying text.

[48] A number of commenters pointed out that the proposal to remove subparagraph (1) from Rule 3400T(b)'s reference to § 1000.08(n) would have broadened the applicability of that requirement. *See* CAQ Comment Letter; Crowe Horwath Comment Letter; Grant Thornton Comment Letter; and KPMG Comment Letter. This consequence was not intended, and the Board is not adopting this proposal. *See* Rule 3400T(b).

[49] *See AICPA SEC Practice Section Reference Manual,* § 1000.08(m)(1). If an issuer audit client has a change in its principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary), within the last two fiscal years or any subsequent interim period up to and including the date of change, the issuer must provide the required information in Item 4.01 of Form 8–K within four business days of the change. *See* Item 304(a) of Regulation S–K; Item 4.01 of Form 8–K.

[50] *See* SECPS § 1000.08(m)(1). SECPS § 1000.08(m) does not apply to the termination of engagements with broker or dealer audit clients. *See* Appendix D, SECPS § 1000.38(1)(b). Also, under Rule 3400T, the former SECPS membership requirements, including SECPS § 1000.08(m), only apply to firms that were SECPS members in 2003.

[51] SECPS § 1000.08(m) also applies to situations where a firm (that is a former member of the SECPS) believes it no longer has a relationship with a former issuer audit client. In situations where a former issuer audit client has ''gone dark'' or declared bankruptcy, for example, and therefore the firm believes that the client-auditor relationship has ceased, SECPS § 1000.08(m) requires the firm to notify the former client and the SEC's Office of the Chief Accountant of the end of the issuer client-auditor relationship.

[52] *See* SECPS § 1000.08(m)(2). Foreign private issuers are required to report issuer auditor changes on Item 16F of Form 20–F and investment companies (other than business development companies) are required to report auditor changes on item 77K of Form N–SAR.

[53] The SEC staff strongly encourages emailing the SECPS report notification to *SECPSletters@sec.gov. See* Appendix I, SECPS § 1000.43. *See also http://www.sec.gov/about/offices/oca/10a1notices.htm* (''The Office of the Chief Accountant strongly encourages sending the SECPS report notification to *SECPSletters@sec.gov*. The staff will accept the date the email is received as the notification date.'').

[54] Crowe Horwath Comment Letter; EY Comment Letter; Grant Thornton Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[55] KPMG Comment Letter.

[56] D&T Comment Letter.

will enhance the SEC's ability to monitor the cessation of auditors' relationships with issuers that are required to file reports on Form 8–K. The Board, as discussed in more detail below, has also determined to adopt amendments requiring all registered firms to report the cessation of issuer relationships with Form 8–K filers on Form 3.[57]

Auditor Independence

Registered public accounting firms must follow not only the Commission's auditor independence requirements [58] but also, to the extent applicable, the ethics and auditor independence requirements in Rules 3520 through 3526.[59]

In 2003, the Board adopted Rules 3500T and 3600T, which require registered public accounting firms to adhere to ethics and independence standards described in the AICPA's Code of Professional Conduct Rules 102 and 101 and the interpretations and rulings thereunder, as in existence on April 16, 2003 to the extent not superseded or amended by the Board, and to certain standards and interpretations of the Independence Standards Board.

To simplify the Board's rules, and to conform to Section 103(a)(1) of the Act as revised by the Dodd-Frank amendments, the Board is merging Rule 3600T into Rule 3500T. The merger of these rules results in the specific auditor independence rules following the incorporation of the interim independence rules without having to renumber the existing PCAOB auditor independence rules.[60] The Board also is making a technical amendment to Rule 3600T(b) to delete a reference to Independence Standards Board Standard No. 1, which was superseded by Rule 3526.[61]

Subsequent to the adoption of Rules 3500T and 3600T, the Board added definitions and general rules related to ethics and auditor independence, rules that prohibit contingent fee arrangements for any services a registered public accounting firm may provide to its audit clients, rules that restrict certain types of tax services that may be provided to audit clients and to persons in a ''financial reporting oversight role'' at an issuer audit client, rules related to issuer audit committee pre-approval of tax services and services related to internal control over financial reporting, and rules related to communications with issuers' audit committees concerning auditor independence.[62] The areas covered by these rules, and the Board's application of each rule to audits of brokers and dealers, are discussed below.[63]

Definitions (Rule 3501). This rule contains definitions of nine terms used in the Board's auditor independence rules.

The Board is adding a definition of ''audit committee'' to Rule 3501 in order to facilitate the application of Rule 3526, *Communications with Audit Committees Concerning Independence,* to brokers and dealers.[64] The definition generally tracks the definition of ''audit committees'' in section 2(a)(3) of the Act. The Act essentially defines the ''audit committee'' to be the committee of the board of directors established to oversee the accounting and financial reporting processes of the issuer, and if there is no such committee then the full board of directors. Because the Board recognizes that some brokers and dealers may not have governance structures that include boards of directors or audit committees, the amended definition includes a provision indicating that for non-issuers, if no audit committee or board of directors (or equivalent body) exists, the term means those persons who oversee the accounting and financial reporting processes of the entity and the audits of the entity's financial statements.[65] As a result, if a broker or dealer audit client (or potential client) does not have an audit committee or a board of directors, the auditor must provide Rule 3526 communications to persons overseeing the broker's or dealer's accounting and financial reporting processes and its audits.

The amended definition does not mean that the broker or dealer audit client or potential client has to formally designate persons who oversee the client's accounting and financial reporting processes and audits. Instead, auditors are expected to use their judgment to identify senior persons at the client or potential client that have decision-making authority and responsibility for these functions. For an owner-managed entity, for example, the person overseeing the accounting and financial reporting processes, and audits, could be the owner. Under a limited partnership, that person could be the managing or general partner responsible for preparation of the financial statements and oversight of the partnership's audits.

One commenter supported amending the definition of ''audit committee'' to accommodate those brokers and dealers who do not have a formal audit committee in place.[66] Another commenter said the definition should be aligned with the definition of audit committee in ISA 260 and AICPA AU Section 260, which refers to ''the person(s) with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity.'' [67] A third commenter recommended adding the words ''and controlling'' to the accounting and financial reporting processes identified in the proposed

[57] *See infra* notes 183–195 and accompanying text.

[58] *See* SEC Regulation S–X, Rule 2–01.

[59] Among other things, the Dodd-Frank amendments clarified the Board's authority under Section 103 of the Act to establish auditor independence standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by the Act, SEC rules, or ''as may be necessary or appropriate in the public interest or for the protection of investors.'' *See* Section 103(a)(1) of the Act.

[60] Regarding the note following proposed Rule 3500T, one commenter indicated that it would be better for the Board to say that the Board's independence rules ''supplement'' the SEC's standards, rather than the proposed formulation (that the Board's rules ''do not supersede'' the SEC's independence rules). *See* EY Comment Letter. The proposed note, however, was substantially the same as a note that had followed Rule 3600T. In the proposed note, following the statement that the Board's rules ''do not supersede'' the SEC's auditor independence rule, the statement was made that ''to the extent that a provision of the Commission's rule is more restrictive—or less restrictive—than the Board's Interim Independence Standards, a registered public accounting firm must comply with the more restrictive rule.'' The note means that the less restrictive rule still applies but satisfying the more restrictive rule is deemed to satisfy the less restrictive rule. Changing ''do not supersede'' to ''supplement'' would not enhance this understanding of the note. Accordingly, the Board has determined not to make the change suggested by the commenter, and is adopting the note as proposed.

[61] PCAOB Release No. 2008–003, at 4.

[62] *See, e.g.,* PCAOB Release Nos. 2003–011; 2005–014; 2005–20; 2007–005A; and 2008–003.

[63] Regardless of the application of the Board's independence rules, auditors of brokers and dealers must follow the Commission's auditor independence rules as stated in SEC Rule 17a–5(f)(1).

[64] *See* Rule 3501(a)(v).

[65] The Board adopted essentially the same definition of ''audit committee'' in its audit committee communications standard. *See Auditing Standard No. 16, Communications with Audit Committees,* PCAOB Release No. 2012–004 (Aug. 15, 2012). Instead of adopting ''essentially the same'' definition of audit committees as the audit committee communication standard, KPMG stated that the Board should consider using the same definition. The difference between the definitions is that audit committee communication definition uses the term ''company'' and the definition in Rule 3501 uses the word ''entity.'' In both instances, the defined term is intended to encompass the audit committee of the audit client, regardless of the client's legal form of organization.

[66] *See* Rothstein Kass Comment Letter.

[67] *See* EY Comment Letter. Under that definition, EY said communication would likely be made to the CEO or another officer of the broker or dealer.

audit committee definition to more fully relate to brokers and dealers.[68]

After consideration of the comments, the Board, as proposed, is adopting essentially the same ''audit committee'' definition used in its standard on communications with audit committees (AS 16). One of the purposes of defining ''audit committee'' in Rule 3501 is to facilitate auditor communications with audit committees regarding auditor independence issues and having consistent definitions of the term ''audit committee'' should promote the efficient implementation of the Board's two standards. In light of the AS 16 audit committee definition, adding the concept of ''controlling'' to the definition, or conforming the definition to international standards, would add unnecessary complexity to the Board's rules.

Although the Board is not amending the other definitions in Rule 3501, the meaning of certain definitions is altered because the Board's rules and standards are now applicable to the audits of brokers and dealers. For example, Rule 3501(a)(iv) defines ''audit client'' to mean ''the entity whose financial statements or other information is being audited, reviewed, or attested and affiliates of the audit client.'' The ''entity'' referenced in this definition includes a broker or dealer, as well as an issuer.[69] No comments were received regarding how changes in the definitions in the Board's rules may alter the applicability of the definitions in Rule 3501 to audits of brokers or dealers.

Overall Framework (Rules 3502 and 3520). Rule 3502 establishes a standard of ethical behavior for the conduct of persons associated with registered public accounting firms, indicating that these persons shall not take or omit to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation by the firm of the Act, the rules of the Board, or provisions of the securities laws or professional standards. This basic ethics rule applies, without amendment, to all associated persons in all registered public accounting firms.

Rule 3520 sets forth the fundamental ethical obligation for the accounting firm and its associated persons to be independent of the firm's audit client throughout the audit and professional engagement period. With the change in the definition of ''audit client'' described above, this rule applies to auditors of brokers and dealers as well as to auditors of issuers. To remove any doubt that this rule applies to auditors of brokers and dealers as well as to auditors of issuers, and to make other technical changes, the Board, as proposed, is removing the reference to ''an issuer'' from note 1 of this rule. The Board did not receive comment on the proposed amendments to Rule 3520.

Contingent Fees (Rule 3521). This rule, which is consistent with the SEC's auditor independence rules,[70] states that a registered public accounting firm is not independent if it provides any service or product to the audit client for a contingent fee or a commission, or receives from the audit client, directly or indirectly, a contingent fee or commission. With the expanded interpretation of ''audit client'' as noted above, this rule applies to audits of brokers and dealers as well as to audits of issuers. Because the SEC rule on contingent fees currently is applicable to audits of brokers and dealers, making the PCAOB rule similarly applicable to those audits should not affect practice in this area.

One commenter supported the proposed amendments to Rule 3521, stating that expanding Rule 3521 to include broker and dealer audit clients to make the rule consistent with current SEC auditor independence rules should have no effect in the broker-dealer practice area and is appropriate.[71] No commenters opposed the proposed application of Rule 3521. The Board has determined to have this rule apply to audits of brokers and dealers.

Tax Transactions (Rule 3522). Under this rule, registered public accounting firms are prohibited from providing any non-audit service to their audit clients related to the marketing, planning, or opining in favor of the tax treatment of transactions that are ''confidential transactions'' [72] under the Internal Revenue Service's regulations or transactions that would be considered ''aggressive tax position transactions.'' [73]

The Board adopted Rule 3522 in 2005 following a report by the Permanent Sub-committee on Investigations of the Senate Committee on Governmental Affairs (the ''Subcommittee'') which noted that some of the nation's largest accounting firms in the past had sold generic tax products to multiple corporate and individual clients despite evidence that some of those products were potentially abusive or illegal.[74] In addition, the Internal Revenue Service (''IRS'') and the U.S. Department of Justice brought a number of cases against accounting firms in connection with those firms' marketing of tax shelter products and, specifically, those firms' alleged failures to register, or comply with list maintenance requirements relating to, their tax shelter products. In addition, the IRS proposed a settlement initiative for executives and companies that participated in certain abusive tax avoidance transactions, at times with the assistance of the companies' auditors.[75] At the time the initiative was announced, the IRS Commissioner said that ''[t]hese transactions raise[d] questions not only about compliance with the tax laws, but also, in some instances, about corporate governance and auditor independence.'' [76]

The Government Accountability Office (''GAO'') also noted concerns about auditors' involvement in marketing abusive tax shelters to public companies. The GAO reported that 61 Fortune 500 companies obtained tax shelter services from their external auditors during the period 1998 through 2003.[77] The GAO also noted that the IRS considered some of these ''transactions abusive, with tax benefits subject to

[68] *See* Letter of Chris Barnard, Actuary (Apr. 26, 2012).

[69] Auditors of brokers and dealers must generally comply with the independence requirements of SEC Rule 2–01 of Regulation S–X. *See* SEC Rule 17a–5(f)(1); *see also Broker-Dealer Reports,* Exchange Act Release No. 70073, at nn.383–391 and accompanying text.

[70] *See* SEC Rule 2–01(c)(5) of Regulation S–X.

[71] *See* WeiserMazars Comment Letter.

[72] Rule 3501(c)(i) defines a ''confidential transaction'' to be a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a fee.

[73] Rule 3522(b) describes an ''aggressive tax position transaction'' as a transaction initially recommended, directly or indirectly, by the registered public accounting firm with a significant purpose of tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

[74] *See* Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, *The Role of Professional Firms in the U.S. Tax Shelter Industry,* S. Rep. No. 109–54, at 6 (2005). This report was based on a Subcommittee investigation that included hearings, in November 2003, in which the Subcommittee elicited testimony that described certain potentially abusive tax shelter products marketed through cold-call selling techniques by accounting firms and others. *See also U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals: Hearings Before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs,* 108th Cong. (2003).

[75] Announcement 2005–19, 2005–11 I.R.B.1.

[76] IRS News Release, Settlement Offer Extended for Executive Stock Option Scheme, IR 2005–17 (Feb. 22, 2005), available at *http://www.irs.gov/uac/Settlement-Offer-Extended-for-Executive-Stock-Option-Scheme.* The Commissioner also said, ''We believe a new climate under Sarbanes-Oxley, together with the tougher independence standards for auditors recently proposed by the Public Company Accounting Oversight Board make this sort of thing less likely going forward.'' *Id.*

[77] See GAO, Tax Shelters: Provided by External Auditors, GAO–05–171 (2005).

disallowance under existing law, and other transactions possibly to have some traits of abuse.'' [78]

With the change in meaning of the term ''audit client,'' as described above, Rule 3522 applies to audits of brokers and dealers. The Board did not receive comment on the proposed application of Rule 3522 to audits of brokers and dealers. Accordingly, the amendments the Board is making today result in a prohibition on a registered public accounting firm providing any non-audit service related to the marketing, planning or opining in favor of a tax treatment of a ''confidential transaction'' or an ''aggressive tax position transaction'' to a broker or dealer audit client.

Tax Services for Persons in Financial Reporting Oversight Roles (Rule 3523). The Board is amending Rule 3523 to apply only to issuer audit clients. Rule 3523 does not apply in audits of brokers or dealers unless the broker or dealer is an issuer or an affiliate of an issuer under Rule 3501(a)(ii).[79]

Rule 3523 prohibits auditors from providing any tax service to any person who performs a financial reporting oversight role at an issuer audit client, or an immediate family member of such an individual, unless the person is in that role solely because (a) he or she is a member of the board of directors or a similar management or governing body, (b) the person has a relationship with an affiliated entity that is immaterial to the audit client's consolidated financial statements or that has its financial statements audited by another auditor, or (c) the person was hired or promoted into the financial reporting oversight role and the tax engagement was in process before the hiring or promotion and will be completed within 180 days after the hiring or promotion.[80] The rule addresses the concern that performing tax services for certain individuals involved in the financial reporting processes of an issuer audit client creates an appearance of a mutuality of interest between the auditor and those individuals.[81]

Although the Board proposed that Rule 3523 similarly apply to the audits of non-issuer brokers and dealers, it noted that the auditor independence implications of an auditor providing such tax services to an officer of a broker or dealer may not be the same as those associated with an auditor providing tax services to an officer of a public company, and it solicited comment on whether Rule 3523 should continue to be limited to issuer audit clients.

Commenters generally stated that Rule 3523 should be limited to issuers or subsidiaries of issuers,[82] saying the investing public does not trade on the financial results of brokers and dealers and that the SEC staff has recognized this difference by noting that non-issuer brokers and dealers are not required to comply with certain provisions of SEC Rule 2–01 of Regulation S–X.[83] Commenters also said the threat that these services would create the appearance of a mutuality of interests between the auditor and the individuals in a financial reporting oversight role is significantly greater for a public company, where the interests of investors and management's interests typically diverge to a greater degree than in a private company.[84] Finally, commenters said that applying Rule 3523 to audits of brokers and dealers could unnecessarily increase costs for brokers and dealers, many of which are small businesses, where the owner, manager, and person providing financial reporting oversight is the same person.[85] Similarly, some commenters indicated that compliance with the proposal might require some brokers or dealers, that may be organized as limited partnerships or sole proprietorships, to hire a second audit firm to provide personal tax services, creating inefficiencies.[86]

In response to these comments, the PCAOB has further considered the proposed application of Rule 3523 to audits of non-issuer brokers and dealers. The Board is not at this time extending the requirements of Rule 3523 (and the costs associated with these requirements) to audits of non-issuer brokers and dealers. Rule 3523's prohibition on providing tax services to a person in a financial reporting oversight role is therefore limited to issuer audit clients. As more information is gathered on broker and dealer audits through the PCAOB's inspections and other oversight functions, the Board will continue to consider whether providing such tax services for persons in financial reporting oversight roles could impair independence and could revisit its decision to limit Rule 3523's application to issuer audits.

Audit Committee Pre-approval of Certain Tax Services (Rule 3524). The Board adopted Rule 3524 to implement and strengthen the requirement in Sections 10A(h) and 10A(i) of the Exchange Act, as amended by Section 202 of Sarbanes-Oxley, that all non-audit services for an issuer audit client ''shall be preapproved by the audit committee of the issuer.'' [87] The Dodd-Frank amendments, however, did not extend the Exchange Act's issuer-audit committee preapproval requirements to non-audit services provided to non-issuer brokers and dealers. In addition, the SEC's independence rules over audit committee administration are applicable only to issuers. As a result, the Board is not extending the preapproval requirements in Rule 3524 to broker or dealer audit clients.[88] Commenters agreed that Rule 3524 should not be extended to the audits of brokers and dealers.[89]

Audit Committee Pre-approval of Non-audit Services Related to Internal Control Over Financial Reporting (Rule 3525). The Board adopted Rule 3525 in connection with the adoption of Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting That is Integrated with An Audit of Financial Statements,* in 2007.[90] The prior auditing standard, Auditing Standard No. 2, had required audit committee pre-approval of internal control related non-audit

[78] Id.

[79] If a non-issuer broker or dealer is an affiliate of an issuer audit client, then the broker or dealer will be treated in the same manner that any other affiliate of the issuer would be treated when analyzing the auditor's independence from the issuer.

[80] PCAOB Release No. 2005–014, at 34–39.

[81] *Id.* at 34–35. In 2008, the Board amended this rule to limit its application to the ''professional engagement period,'' which begins when the auditor either signs the initial engagement letter or begins audit procedures, whichever is earlier, and ends when either the company or the auditor notifies the Commission that the company is no longer that auditor's audit client. *See* PCAOB Release No. 2008–003, at 15. The rule previously had applied not only to the professional engagement period but also during the ''audit period,'' which is the period covered by any financial statements being audited or reviewed. *See* PCAOB Release No. 2005–14, at 14–15.

[82] *See* CAQ Comment Letter; Grant Thornton Comment Letter; McGladrey Comment Letter; KPMG Comment Letter; Letter of Peterson Sullivan LLP (Apr. 30, 2012); Rothstein Kass Comment Letter.

[83] *See* Crowe Horwath Comment Letter.

[84] *See* McGladrey Comment Letter; Rothstein Kass Comment Letter.

[85] *See* CAQ Comment Letter; KPMG Comment Letter; Rothstein Kass Comment Letter; WeiserMazars Comment Letter.

[86] *See* Crowe Horwath Comment Letter; Rothstein Kass Comment Letter; WeiserMazars Comment Letter.

[87] PCAOB Release No. 2005–014, at 40, *quoting* Section 10A(i)(1)(A) of the Exchange Act.

[88] Audits of SEC registered brokers and dealers, however, remain subject to the SEC auditor independence rules, including prohibitions on the auditor providing certain non-audit services to audit clients. *See* SEC Rule 2–01(c)(4) of Regulation S–X.

[89] *See* Grant Thornton Comment Letter; McGladrey Comment Letter; Rothstein Kass Comment Letter.

[90] *See* PCAOB Release No. 2007–005A, at 14–15 and Appendix 2.

services.[91] With the adoption of Auditing Standard No. 5, this requirement was moved to Rule 3525.

Rule 3525 was adopted to facilitate implementation of the audit committee pre-approval requirements in Section 10A of the Exchange Act and the internal control reporting requirements in Section 404 Sarbanes-Oxley. As noted above, the Dodd-Frank amendments did not extend the audit committee pre-approval requirements in Exchange Act Sections 10A(h) and 10A(i) to brokers or dealers. Similarly, the Dodd-Frank amendments did not extend the Sarbanes-Oxley Act Section 404 internal control reporting requirements to brokers or dealers, and the Commission has not extended similar requirements to brokers or dealers. Accordingly, the Board has determined that the application of Rule 3525 should remain limited to services provided to issuer audit clients. Commenters agreed that Rule 3525 should not be extended to audits of non-issuer brokers and dealers.[92]

Communication with Audit Committees Concerning Independence (Rule 3526). The Board adopted Rule 3526 to ensure that those making the decisions to hire, compensate, and oversee the work of the auditor have information about the auditor's independence that could assist them in performing those responsibilities.[93] This rule requires that prior to being engaged and at least annually thereafter, an auditor describe in writing to the audit committee all relationships between the registered public accounting firm and audit client that may reasonably be thought to bear on the firm's independence from the audit client, discuss with the audit committee the potential effects of those relationships on independence, affirm annually that the public accounting firm is in compliance with Rule 3520, and document the substance of the discussion with the audit committee.[94]

SEC Rule 17a–5 generally requires that brokers or dealers registered with the Commission pursuant to Section 15 of the Exchange Act file with the Commission annual reports consisting of a financial report and either a compliance report or an exemption report that are prepared by the broker or dealer, as well as certain reports that are prepared by an independent public accountant covering the financial report and the compliance report or the exemption report.[95] The accountant must be independent in accordance with the Commission's independence rules in Regulation S–X.[96] It is as important that those persons discharging the responsibilities to engage, compensate and oversee an independent auditor at a broker or dealer, as it is for an issuer's audit committee, to be advised by the auditor of any relationships that reasonably may be thought to bear on the auditor's independence. The Board, therefore, is making Rule 3526 applicable to audits of brokers and dealers.

The Board recognizes, however, that brokers and dealers may have organizational structures that do not include audit committees. The Board is therefore adding a definition of ''audit committee'' to Rule 3501 that makes Rule 3526 applicable to broker and dealer audit clients.[97] This definition, as discussed above, provides that if a broker or dealer does not have an audit committee or board of directors (or equivalent body) then the required communications should be made to the individuals overseeing the accounting and financial reporting processes of the broker or dealer and audits of the financial statements of the broker or dealer.[98]

One commenter recommended that in a situation in which those charged with governance and management are the same individuals, the Board should consider providing some flexibility by allowing auditor judgment in determining the nature of the communications that should occur in these circumstances.[99] Under Rule 3526, an auditor of a non-issuer broker or dealer with no existing audit committee or board of directors (or equivalent body) is expected to identify senior persons at the broker or dealer who have decision-making authority and responsibility to oversee the accounting and financial reporting processes of the broker or dealer and audits of the financial statements, and make the required communications to those persons. For example, in an owner-managed broker, the person with oversight of financial reporting within the broker could be the owner, and the Rule 3526 communications, therefore, would be made to the owner. When making Rule 3526 communications to the owner, the auditor need not repeat written communications provided to the owner throughout the audit process as long as the auditor has met all of the requirements of Rule 3526, including describing in writing all relationships that reasonably may be thought to bear on independence, discussing the potential effects of those relationships on the auditor's independence, and providing a written affirmation of the firm's independence. In addition, the auditor may identify others in charge of the broker's or dealer's operations and performance who may benefit from the Rule 3526 communications and make the communications to those individuals as well as the owner.

Compliance dates for Rules 3521 through 3526. Commenters indicated that certain of the proposed amendments, if adopted, would benefit from transition periods. For example, one commenter suggested that certain services should be allowed to continue provided that the services are completed on or before the later of October 31 of the calendar year in which the SEC approves the Board's rules, or 10 days after the date the SEC approves the rules.[100] The requests from commenters for a prolonged transition period for the Board's independence rules focused on the time needed for brokers and dealers to change either auditors or tax consultants in the event of the application of Rule 3523 to broker and dealer audit engagements. Because the Board has determined not to apply Rules 3523, 3524, or 3525 to audits of non-issuer brokers and dealers, an extended transition period should not be necessary. These amendments will take effect on June 1, 2014.

Section 4—Inspections

The rules in this section set out the procedures for the Board's inspections of registered public accounting firms. The Board has adopted a temporary rule, Rule 4020T, which sets out an interim inspection program for auditors

[91] AS 2.33.

[92] *See* Grant Thornton Comment Letter; McGladrey Comment Letter; Rothstein Kass Comment Letter.

[93] PCAOB Release No. 2008–003, at 3–4.

[94] Rule 3526 requires that the registered public accounting firm describe, in writing, all relationships between the registered public accounting firm, or any affiliates of the firm, and the existing or potential audit client or persons at the audit client in a ''financial reporting oversight role'' that reasonably may be thought to bear on the auditor's independence.

[95] SEC Rule 17a–5(d).

[96] SEC Rule 17a–5(f)(1). The Commission's independence requirements include SEC Rule 2–01 and related interpretations.

[97] One commenter indicated that although auditors currently document their independence under GAAS, including brokers and dealers in Rule 3526 would be beneficial as it would require more documented evidence of auditor independence. *See* WeiserMazars Comment Letter.

[98] *See generally,* Section 301 of Sarbanes-Oxley, directing the Commission to adopt rules requiring listed companies' audit committees to ''be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer. . . .'' *See also* Exchange Act Section 10A(m)(2) and SEC Rule 10A–3(b)(2).

[99] *See* Grant Thornton Comment Letter.

[100] *See* D&T Comment Letter.

of brokers and dealers.[101] After it has gained knowledge and experience through the interim program and other sources, the Board in a subsequent rulemaking proceeding will propose rules for a permanent inspection program for these firms.

The Board is making two technical amendments to the rules in this section. The first is to revise Rule 4009 to conform to Rule 140 of the Commission's Regulation P (''Rule 140''),[102] which went into effect on September 7, 2010, and the second is to revise Rule 4020T(b) to conform to the amendments that the Board is making to the definitions of ''audit,'' ''audit report,'' and ''professional standards'' in Rule 1001.

Firm Response to Quality Control Defects (Rule 4009). Rule 4009 sets out the procedures relating to a firm's submission to the Board to demonstrate how the firm has addressed criticisms of, or potential defects in, the firm's system of quality control that are described in an inspection report. If the Board determines that the firm has satisfactorily addressed a criticism or defect, the portion of the inspection report discussing that issue remains nonpublic. If the Board determines that the firm has not addressed a criticism or defect to the Board's satisfaction, however, the portion of the report discussing that issue will be made public. Section 104(h) of the Act allows the firm to request interim Commission review if the firm disagrees with the Board's determination that the firm has not satisfactorily addressed a quality control criticism or defect.

When a firm seeks Commission review of a negative remediation determination by the Board, Rule 4009(d)(3) provides that ''unless otherwise directed by Commission order or *rule,''* (emphasis added) the quality control findings shall be made public by the Board 30 days after the firm formally requests Commission review. In July 2010, the Commission adopted Rule 140, which provides that a firm's timely request for Commission review of a negative remediation determination operates as a stay of publication by the Board of the portions of the report at issue unless and until the Commission either denies the review request or otherwise determines.[103] The Board is making an amendment to Rule 4009(d)(3) to conform to Rule 140's stay of publication provision. Commenters did not address the Board's proposed amendments to Rule 4009, and the Board is adopting the amendments as proposed.

Interim Inspection Program Related to Audits of Brokers and Dealers (Rule 4020T). On June 14, 2011, the Board adopted Rule 4020T, establishing an interim inspection program relating to audits of brokers and dealers.[104] Rule 4020T(b) provided that the definitions of ''audit,'' ''audit report,'' and ''professional standards'' contained in the Dodd-Frank Amendments applied to Rule 4020T, Rule 3502, Section 5 of the rules, and to the definition of ''disciplinary proceeding'' in Rule 1001(d)(i). Because this rulemaking makes these definitions permanently applicable to all of the Board's rules, the Board is deleting the second sentence of Rule 4020T(b).[105] Commenters did not address the Board's proposed amendments to Rule 4020T and the Board is adopting the amendments as proposed.

Section 5—Investigations and Adjudications

Section 5 of the Board's rules governs the process of PCAOB investigations and disciplinary proceedings. The Board is amending certain rules in this section to conform to the Dodd-Frank amendments. For many of these rules, this is simply a matter of adding ''broker'' and ''dealer'' to rules in addition to ''issuer,'' to reflect the Board's jurisdiction over auditors of brokers and dealers pursuant to the Dodd-Frank amendments. The Board is also amending a number of the rules in this section in light of its experience administering and enforcing these rules.[106]

Many of the rules in this section are affected by the amendments the Board is making to the definitions in Rule 1001. In particular, the changes to the definitions of ''audit,'' ''audit report,'' and ''professional standards'' make clear that the Board's enforcement rules—which encompass, among other things, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto—encompass the obligations of auditors with respect to audit reports for brokers and dealers, such as those obligations set out in Rule 17a–5. The Board's Temporary Rule for an Interim Inspection Program for the Audits of Brokers and Dealers extended the definition of these three terms to the rules in this section. This rulemaking makes these changes part of the Board's permanent rules.

In addition, the revisions to the definition of ''Person Associated With a Public Accounting Firm'' in Rule 1001 apply to all uses of the term in this section, making it clear that the term ''associated persons'' includes formerly associated persons concerning conduct that occurred while they were associated with a registered public accounting firm, as well as persons seeking to become associated with a registered public accounting firm. As stated above, this amendment reflects the Dodd-Frank amendments' clarification of the Board's jurisdiction over these individuals.

Some commenters said the proposed amendments regarding investigations and adjudications were not clear, and because in some cases they are unrelated to the Dodd-Frank amendments, the Board should consider a separate rulemaking effort to consider these amendments, which could also include suggestions for changes to the rules in Section 5 based on the experience of persons that have been the subject of inquiries and investigations, and better explain the rationales and potential impacts of these proposed amendments.[107] The Board does not agree that a separate rulemaking is necessary to address the proposed amendments to Section 5 that are not related to the Dodd-Frank amendments. Many of the proposed amendments to the rules in Section 5 were technical and the Board did not receive specific comment on them from any commenter. Commenters have had an opportunity through this rulemaking to comment on all aspects of the proposed rules. After considering the comments, including some suggestions for making amendments to the rules in Section 5 based on commenters' experiences, the Board is adopting the proposed amendments with modifications to address commenters' concerns, as discussed below.

Inquiries and Investigations

Testimony of Registered Public Accounting Firms and Associated Persons in Investigations (Rule 5102). Adopted pursuant to Section 105(b)(2)(A) of the Act, Rule 5102 establishes Board procedures related to obtaining and recording the testimony of any registered public accounting firm or any associated person of such a firm

[101] PCAOB Release No. 2011–001.

[102] 17 CFR 202.140.

[103] *See* SEC Rule 140(c)(5), (d), and (e)(4).

[104] *See* PCAOB Release No. 2011–001.

[105] As discussed above, the Board is also removing the notes accompanying the definitions of ''audit,'' ''audit report,'' and ''professional standards'' in Rule 1001. *See supra* notes 17, 29.

[106] The Board is also making a number of technical amendments, such as updating cross-references, to Rules 5205, 5407, and 5462.

[107] *See* CAQ Comment Letter; KPMG Comment Letter; PWC Comment Letter.

with respect to any matter that the Board considers relevant or material to an investigation. Rule 5102(c)(4) provides that a registered firm that is required to provide testimony in a Board examination shall designate one or more persons to testify on its behalf and ''may set forth, for each individual designated, the matters on which the individual will testify.'' As proposed, the Board is changing the phrase ''may set forth'' to ''shall set forth'' to ensure that, when a firm designates more than one individual to testify on its behalf, the firm provides appropriate notice as to the subject matter of each individual's testimony. The Board did not receive comment on the proposed amendments to Rule 5102.

Requests for Testimony or Production of Documents from Persons Not Associated With Registered Public Accounting Firms (Rule 5105). Rule 5105, adopted under Section 105(b)(2)(C) of the Act, provides that the Board, and the staff of the Board designated in a formal order, may issue an accounting board request for the testimony of any person, including any client of a registered public accounting firm, provided certain procedural requirements are satisfied. If not a natural person, the person to be examined must designate a representative or representatives to testify on the person's behalf.[108] The Board is amending Rule 5105, as proposed, to make the rule's provisions applicable to brokers and dealers. The amendments to Rule 5105 also require that entities set forth the matters on which their designated representatives will testify.[109] This amendment tracks the amendment to Rule 5102(c)(4), discussed above, and ensures that the Board receives appropriate notice of the subject matter of each designee's testimony. The Board did not receive comment on the proposed amendments to Rule 5105.

Confidentiality of Investigatory Records (Rule 5108). Rule 5108(a) reflects the Board's authority, under Section 105(b)(5) of the Act, to make confidential materials relating to informal inquiries and formal investigations available to the Commission and, ''when determined by the Board to be necessary to accomplish the purposes of the Act or to protect investors,'' to certain other regulatory authorities. The specified regulatory authorities include the Attorney General of the United States; the appropriate Federal functional regulator and the Director of the Federal Housing Finance Agency,[110] with respect to an audit report for an institution subject to the jurisdiction of such regulator; State attorneys general in connection with any criminal investigation; and any appropriate State regulatory authority. The Dodd-Frank amendments added two more categories of regulatory authorities to the list in Section 105(b)(5): self-regulatory organizations and foreign auditor oversight authorities. As proposed, the Board is making conforming amendments to Rule 5108. The Board's authority to disclose confidential information (either from investigations or inspections) to self-regulatory organizations and foreign audit oversight authorities is provided by the Act and does not depend upon these rule amendments taking effect.[111]

Self-regulatory organization. The Board is adopting Rule 5108(e) to conform to the Dodd-Frank amendments that permit the Board to share confidential information with ''a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization.'' [112]

Foreign auditor oversight authority. The Board is adopting Rule 5108(f) to conform to the Dodd-Frank amendments that allow greater Board cooperation with certain foreign regulators. The Dodd-Frank amendments allow the Board to share confidential information with ''foreign auditor oversight authorities,'' as the Board defined in Rule 1001.[113] Rule 5108(f) tracks the Dodd-Frank amendments that allow the Board to share documents with a foreign auditor oversight authority concerning a public accounting firm with respect to which it has been empowered by a foreign government to inspect or otherwise enforce laws, under certain circumstances. Specifically, the foreign auditor oversight authority must provide (1) assurances of confidentiality requested by the Board; (2) a description of its applicable information systems and controls; and (3) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access. In addition to making a determination under Rule 5108(a)(2) that sharing the information with the foreign auditor oversight authority is necessary to accomplish the purposes of the Act or to protect investors, the Board must also determine that it is appropriate to share such information.[114]

One commenter suggested that because SROs are private entities the Board should take additional steps to ensure that SROs preserve the confidentiality and privilege of any information that is transmitted to SROs, for example by requiring, by rule, that SROs enter into a memorandum of understanding with the Board before receiving confidential and privileged information from the Board.[115] Unlike foreign auditor oversight authorities, Congress did not impose a requirement that the Board seek assurances of confidentiality from SROs or take other steps to determine that it is appropriate to share confidential information with SROs.[116] Instead, the Act itself instructs SROs to ''maintain such information as confidential and privileged.'' [117] The Board does not believe amending Rule 5108 is necessary to maintain the confidential and privileged status of this information. The Board takes steps to ensure that recipients of this information are aware of the statutory restrictions on information sharing. In the event that the Board discovers that an SRO makes disclosures that the Board believes are inconsistent with the Act, the Act and Rule 5108 allow the Board the flexibility to decline to supply information to that SRO or to require appropriate assurances of confidentiality.[118]

---

[108] *See* Rule 5105(a)(2).

[109] *See* Rule 5105(a)(2). The Board is changing the phrase ''may set forth'' in Rule 5105(a)(2) to ''shall set forth.''

[110] Section 1161(h) of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654, 2781 (2008), amended Sarbanes-Oxley to authorize the PCAOB to share information gathered in Board inspections and investigations with the Director of the Federal Housing Finance Agency (with respect to audits of institutions within the Federal Housing Finance Agency's jurisdiction). The PCAOB is adopting amendments to conform to Section 1161(h) of the Housing and Economic Recovery Act. *See* Rule 5108(a)(2)(b).

[111] *See* Section 105(b)(5)(B) and (C) of the Act. The PCAOB is adopting these rule amendments to maintain consistency between Sections 105(b)(5) of the Act and Rule 5108(a), which the Board originally adopted ''principally for purposes of notice concerning how the Board will comply with the requirements of Section 105(b)(5) (*e.g.,* by keeping the relevant documents confidential) and that the Board will make appropriate use of its authority to share confidential materials with certain other regulatory authorities.'' *See Rules on Investigations and Adjudications,* PCAOB Release No. 2003–015, at A2–40 (Sep. 29, 2003).

[112] The term ''self-regulatory organization'' (''SRO'') was adopted as a part of the Board's funding rules release. *See* PCAOB Release No. 2011–002.

[113] *See* Rule 1001(f)(iii).

[114] *See* Section 105(b)(5)(C) of the Act.

[115] *See* D&T Comment Letter. With respect to foreign auditor oversight authorities, D&T supported inclusion of the statutory safeguards to protect against a breach of confidentiality by the foreign authority.

[116] *Compare* Section 105(b)(5)(C)(ii) of the Act, *with* Section 105(b)(5)(B)(ii) of the Act.

[117] *See* Section 105(b)(5)(B) of the Act.

[118] For these same reasons, the Board does not believe this commenter's similar suggested revisions to Rule 5112 or Rule 5420 are necessary and declines to make them.

Statements of Position (Rule 5109). Rule 5109(d) allows a registered firm or associated person that has become involved in an informal inquiry or formal investigation to submit a written statement to the Board setting forth their position on the subject matter of the investigation. The Board proposed to add an explanatory note to Rule 5109(d), that would have indicated that, in considering factual assertions in a statement of position, the Board will consider whether those factual assertions are supported by evidence, such as evidence in the investigative record, or by an affidavit or declaration by an individual with knowledge of the asserted facts. The proposed note was designed to encourage associated persons and registered firms to provide the Board with appropriate information that would further assist the Board in evaluating statements of position.

Several commenters said the proposed explanatory note could suggest that arguments made in statements of position that were not supported by formal affidavits or declarations would be discounted by the Board, which they said would place disproportionate weight on formal evidentiary submissions at an early stage of an inquiry or investigation and potentially harm the Board's process of obtaining evidence.[119] Two commenters said that the proposing release did not provide a clear rationale for this proposed amendment.[120]

In light of the concerns expressed by commenters, the Board is not adopting the proposed explanatory note. The Board did not intend to suggest that formal evidentiary submissions would be required, or that the Division of Enforcement and Investigation's (''DEI'' or ''Division'') burden of proof would shift as a result of the proposal. The purpose of the Rule 5109(d) process is to assist the Board in its decision-making by providing prospective respondents with a meaningful opportunity to focus the Board's attention on significant issues concerning prospective respondents' characterization of their own conduct, and on the legal and policy issues implicated by the staff's recommendation.[121] Submissions made under Rule 5109(d) also help the Board's Enforcement staff in determining whether to pursue a recommendation that the Board institute disciplinary proceedings against a prospective respondent. The process is not designed to become a miniature adjudication that is subject to formal evidentiary submission requirements.

Practice today varies across Rule 5109(d) submissions and sometimes within a submission. Some submissions are amply supported; others are unsupported or only partially supported. Additionally, in some instances, assertions in a submission appear to contradict evidence in the investigative record. The Board's goal in proposing the explanatory note was simply to make prospective respondents aware (or remind them) that if their statements of position assert new facts, or make factual assertions that contradict evidence already in the investigative record, those assertions are likely to be given more weight by the Division and the Board if they are supported by evidence. Supportive evidence could include evidence that is already in the investigative record. A proposed respondent could also, for example, submit an affidavit, declaration, or similar statement signed by an individual who claims to have knowledge of the asserted facts.

Board Referrals of Investigations (Rule 5112). Rule 5112(b) provides that the Board may refer any investigation to the Commission, and to any other Federal functional regulator. The Dodd-Frank amendments gave the Board authority to refer any investigation to a self-regulatory organization when the investigation concerns an audit report for a broker or dealer that is under the jurisdiction of such organization. The Board is adding subparagraph (2) to Rule 5112(b) to conform to these amendments.[122] Other than the comment discussed above in connection with Rule 5108(a), the Board did not receive comment on the proposed amendment to Rule 5112 and is adopting it as proposed.[123]

Disciplinary Proceedings

Commencement of Disciplinary Proceedings (Rule 5200(a)(2)). The Board is amending Rule 5200(a)(2) to replace the phrase ''the supervisory personnel of such a firm,'' with ''any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm.'' This amendment conforms the rule to the Dodd-Frank amendments to Section 105(c)(6) of the Act concerning the imposition of sanctions for failure to supervise. The Board did not receive comment on the proposed amendments to Rule 5200(a)(2) and the Board is adopting the amendments as proposed.

Proceedings Instituted Solely Pursuant to Rule 5200(a)(3). Under Rule 5200(a)(3), the Board may institute disciplinary proceedings when ''it appears to the Board that a hearing is warranted pursuant to Rule 5110.'' Rule 5110 states that the Board may institute a proceeding pursuant to Rule 5200(a)(3) for noncooperation with a Board investigation. A number of provisions in the Board rules are intended to expedite disciplinary proceedings of this type. Based on its experience with these rules in practice, the Board is making amendments so that these special procedures do not automatically apply in cases involving both non-cooperation and other charges.

First, the Board is eliminating the Rule 5201(b)(3)(ii) requirement that the Board specify a hearing date in every order instituting proceedings (''OIP'') for alleged noncooperation with an investigation. Rule 5200(b)(12) requires a hearing officer to obtain Board approval before changing any hearing date set by Board order. These two rules combine to restrict the hearing officer's discretion in a way that is not necessary in every noncooperation case. The Board retains the discretion to include hearing dates or deadlines in any OIP.

Second, the Board is amending the following rules by adding the word ''solely'' to make it clear that certain shorter deadlines and more abbreviated procedural requirements apply only to proceedings brought exclusively for alleged noncooperation: Rules 5110(b); 5201(b)(3) (and deleting 5201(b)(3)(ii)); 5204(b)(Note), 5421(b), 5422(a)(2), 5422(d), 5445(b), and 5460(a)(2)(ii). Rule 5421(b), for example, prescribes the time frame in which parties must answer allegations contained in Board OIPs. The rule requires parties to file answers to Board allegations within 20 days for proceedings brought pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500, and within five days for proceedings brought under Rule 5200(a)(3). Rule 5421(b) does not expressly address, however, which time frame applies to proceedings brought under both Rule 5200(a)(1) and Rule 5200(a)(3), for example. The amendments clarify that the rule's shorter time frame applies only to proceedings brought under, and only under, Rule 5200(a)(3). Put another way, the amendments clarify that Rule 5421(b)'s expedited time frame does not apply to a proceeding brought under both Rule 5200(a)(1) and Rule 5200(a)(3).

[119] *See* D&T Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter; PWC Comment Letter.

[120] *See* KPMG Comment Letter; PWC Comment Letter.

[121] *See* PCAOB Release No. 2003–015, at A2–47 through A2–49.

[122] The PCAOB is also adopting amendments to conform to Section 1161(h) of the Housing and Economic Recovery Act. *See* Rule 5112(b)(3).

[123] *See supra* note 118.

One commenter expressed concern that the proposed amendments that would clarify that special expedited procedures only apply to non-cooperation charges could have the effect of allowing a disagreement over what conduct constitutes non-cooperation to take too long to resolve, creating uncertainty.[124] The Board's amendments clarify the circumstances under which the Board's special and expedited non-cooperation procedures apply,[125] but do not amend the grounds under which non-cooperation proceedings may be instituted [126] or the substance of the expedited procedures.[127] The time involved in resolving disagreements over what conduct constitutes non-cooperation should therefore not be affected by these amendments.

Burden of Proof (Rule 5204). Rule 5204(a) provides that in any disciplinary proceeding instituted pursuant to Rule 5200(a), the interested division ''shall bear the burden of proving an alleged violation or failure to supervise by a preponderance of the evidence.'' As proposed, the Board is adding a second sentence to Rule 5204 that makes it clear that respondents who raise affirmative defenses bear the burden of proving those affirmative defenses, also by a preponderance of the evidence. The addition is consistent with the general rule that the burden of proving an affirmative defense rests with the party asserting the defense. *See, e.g., Taylor* v. *Sturgell,* 553 U.S. 880, 907 (2008).

The amendments to Rule 5204 only become relevant if the interested division has met its burden of proving an alleged violation by a preponderance of the evidence. Thus, the amendments clarify that once the interested division has proved an alleged violation by a preponderance of the evidence, if the respondent raises an affirmative defense to the violation, the respondent bears the burden of proving the affirmative defense by a preponderance of the evidence. The Board did not receive comment on the proposed amendments to Rule 5204 and is adopting these amendments as proposed.

Civil Money Penalties (Rule 5300). Rule 5300(a) lists the sanctions the Board may impose if it finds a registered firm or associated person has committed a violation of the Act, rules of the Board, the relevant securities laws, or professional standards. Under Rule 5300(a)(4), the Board may impose civil money penalties for each such violation. This rule, which became effective in 2004, listed specific maximum amounts for penalties against natural persons and entities. As required by the Debt Collection Improvement Act of 1996,[128] the SEC adjusts the maximum amounts of certain penalties under the Act for inflation at least once every four years.[129] As proposed, the Board is revising Rule 5300(a)(4) to recognize the penalty inflation adjustments, as published in the Code of Federal Regulations at 17 CFR Part 201 Subpart E. In addition, the Board is adding an explanatory note at the end of Rule 5300, indicating that the maximum penalty amounts vary depending on the date that the violation occurs, per 17 CFR Part 201 Subpart E.[130]

Leave to Participate to Request a Stay (Rule 5420). Under Rule 5420, an authorized representative of the SEC, the United States Department of Justice or any United States Attorney's Office, an appropriate state regulatory authority, or any criminal prosecutorial authority of a state or political subdivision of a state may seek leave to participate in a pending Board or disciplinary proceeding to request a stay to protect an ongoing investigation or proceeding. Consistent with the Dodd-Frank amendments, the Board is expanding the list of entities that may seek a stay pursuant to Rule 5420 to include self-regulatory organizations, as defined by Rule 1001(s)(v). This amendment permits a self-regulatory organization to seek a stay of a hearing that is in the public interest or for the protection of investors. Other than the comment discussed above in connection with Rule 5108(a), the Board did not receive comment on the proposed amendments to Rule 5420 and is adopting these amendments as proposed.[131]

Documents That May Be Withheld From Production (Rule 5422). After disciplinary proceedings have been instituted, Rule 5422(a) provides that DEI generally must make available for inspection and copying various documents prepared or obtained by the Division ''in connection with the investigation prior to the institution of the proceedings.'' Rule 5422(b) lists categories of documents that the Division may decline to make available for inspection and copying, subject to an overriding obligation not to withhold material exculpatory evidence. The PCAOB has determined to amend Rule 5422(b) in two respects.

First, under amended Rule 5422(b)(1)(i), DEI need not make available for inspection and copying any document prepared by a person retained by the PCAOB or the PCAOB's staff to provide services in connection with a PCAOB investigation, disciplinary proceeding, or hearing on disapproval of registration. Documents may be withheld under Rule 5422(b)(1)(i) only if the document has not been disclosed to any person other than Board members, Board staff, or persons retained by the Board or Board staff to provide services in connection with a PCAOB investigation, disciplinary proceeding, or hearing on disapproval of registration. Withholding such documents does not trigger any procedural requirements under Rule 5422(c).

Commenters generally expressed concern that there is no parallel provision in the SEC's comparable rule, which sets forth when the SEC's Division of Enforcement may withhold a document including when a document ''is an internal memorandum, note or writing prepared by a Commission employee'' or ''is otherwise attorney work product and will not be offered in evidence.'' [132] Commenters also contended that this change is not warranted without a more thorough explanation.[133] The PCAOB further considered this proposal in light of the comments and determined to adopt it as proposed in most respects.[134]

[124] *See* PWC Comment Letter.

[125] *See* Rule 5110(b).

[126] *See* Rule 5110(a).

[127] *See* Rules 5201(b)(3), 5300(b), 5302(d), 5421(b), 5422(a)(2), 5422(d), 5445(b), and 5460(a)(2)(ii).

[128] Public Law 104–134, 110 Stat. 1321–373 (codified at 28 U.S.C. 2461 note).

[129] See SEC, Adjustments to Civil Monetary Penalty Amounts, Securities Act Release No. 8530 (Feb. 4, 2005); SEC, Adjustments to Civil Monetary Penalty Amounts, Securities Act Release No. 9009 (Feb. 25, 2009); SEC, Adjustments to Civil Monetary Penalty Amounts, Securities Act Release No. 9387 (Feb. 27, 2013).

[130] One commenter said that while it did not have a particular objection to the proposed amendment to Rule 5300, it was not apparent how the SEC can amend the civil penalties established by Congress in the Act for the PCAOB, because the Federal Civil Penalties Inflation Adjustment Act of 1990 (''FCPIAA'') applies only to ''agencies'' of the federal government, and the PCAOB is not a federal agency. *See* EY Comment Letter. The FCPIAA encompasses the civil monetary penalties that may be imposed by the Board because penalties assessed by the PCAOB are ''enforced'' by the SEC for purposes of the FCPIAA. *See* Securities Act Release No. 9009, at n.5.

[131] *See supra* note 118.

[132] *See* CAQ Comment Letter; D&T Comment Letter; EY Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter.

[133] *See* CAQ Comment Letter; EY Comment Letter; KPMG Comment Letter; PWC Comment Letter.

[134] Commenters also generally asserted that the addition of the words ''obtained from'' in proposed Rule 5422(b)(1)(i) was ambiguous and could have implications on the efficiency and fairness of PCAOB proceedings. *See* CAQ Comment Letter; D&T Comment Letter; EY Comment Letter; and

This amendment corrects an anomaly in the prior version of Rule 5422(b)(1)(i), under which a document prepared by the Board or its staff and provided to a retained person would not be subject to disclosure under this subsection, but a document prepared by a retained person and provided to the Board or its staff was not covered by this subsection. The Board believes the applicability of Rule 5422(b)(1)(i) should not turn on whether a document was initially prepared by the Board, its staff, or a person retained by the Board or its staff. Retained persons are required to execute confidentiality agreements as a condition of their retention. Additionally, revising Rule 5422(b)(1)(i) to encompass documents prepared by a retained person is consistent with the general rule that firms and associated persons are not required to produce to the Division documents prepared by consultants they have retained to provide services in connection with an investigation or disciplinary proceeding.

The Board is also not persuaded that the lack of a similar specific provision in the SEC Rules of Practice counsels against amending Rule 5422(b)(1)(i), since the analogous SEC Rule, Rule 230, *Enforcement and Disciplinary Proceedings: Availability of Documents for Inspection and Copying,* is structured differently from PCAOB Rule 5422. For example, under PCAOB Rule 5422(b), as currently written, the Division may withhold from production, pursuant to the ''work product doctrine,'' certain documents prepared by persons retained by the Board or the Board's staff in connection with an investigation. DEI, however, is required under Rule 5422(c) to provide a respondent with a log of such documents withheld. In contrast, under SEC Rule 230(c), the Commission's Division of Enforcement is not required to prepare a log of documents that it has withheld from production, including documents withheld pursuant to the work product doctrine (and work product documents prepared by retained persons), unless a hearing officer so requires. Thus, in certain respects, the amendment to Rule 5422(b)(1)(i), which effectively removes the logging requirement for documents prepared by persons retained by the Board or the Board's staff in connection with an investigation, brings the Board's rules more in line with the Commission's rules.

The PCAOB's second amendment, to Rule 5422(b)(1)(ii), allows DEI to not make available for inspection and copying any document ''accessed from generally available public sources, such as legal research or other subscription databases, databases of securities filings, databases of periodicals, and public Web sites, except to the extent that DEI intends to introduce such documents as evidence.'' Documents may be withheld under Rule 5422(b)(1)(ii) only if DEI does not intend to introduce them as evidence. Withholding such documents does not trigger any procedural requirements under Rule 5422(c).

Some commenters asserted that documents ''accessed from generally available public sources'' could result in relevant materials not being produced, including documents DEI may consider supportive of its claims or that are exculpatory of a respondent.[135] The Board does not agree that exculpatory materials can be withheld under this new subsection and is adopting this amendment as proposed. Rule 5422(b)(2) makes clear that material exculpatory evidence must always be produced even if it could otherwise be withheld under Rule 5422(b)(1).[136] The PCAOB is adopting this amendment as proposed because it is concerned that the previous version of Rule 5422 could be misread to require DEI to log any legal research or general background research done during the investigation. This amendment is not intended to relieve DEI of the obligation to make available any document DEI knows of and intends to introduce as evidence, and it does not allow DEI to withhold a document that contains material exculpatory evidence.

Prior Sworn Statements of Nonparty Witnesses in Lieu of Live Testimony (Rule 5426). Rule 5426 allows a party to make a motion with the Hearing Officer to introduce ''a prior, sworn statement of a nonparty witness otherwise admissible in the proceeding, in lieu of live testimony.'' The title and subsequent provisions of the rule do not, however, repeat the rule's limitation to nonparty witnesses. The Board is adding ''nonparty'' before ''witnesses'' in the title of Rule 5426, and before ''witness'' in the fourth sentence of the rule, in order to make it clear that the rule does not apply to prior sworn statements of parties to the proceeding. The Board did not receive comment on the proposed amendments to Rule 5426 and is adopting these amendments as proposed.

Motions for Summary Disposition (Rule 5427). Rule 5427 provides that the interested division or respondent may file motions for summary disposition of the proceedings. The Board is adding ''any or all allegations of the order instituting proceedings with'' to both Rules 5427(a) and (b) to make it clear that a motion for partial summary disposition may be made by the interested division and the respondents to disciplinary proceedings. This language tracks Rule 250 of the Commission's Rules of Practice. The Board did not receive comment on the proposed amendments to Rule 5427 and is adopting these amendments as proposed.

Evidence: Objections and Offers of Proof (Rule 5442). Rule 5442 addresses objections to the admission or exclusion of evidence in a disciplinary proceeding. The Board is making a technical amendment to Rule 5442(a)(2) to clarify that exceptions to the hearing officer's admission or exclusion of evidence will not be deemed waived on appeal to the Board, if they are raised in proposed findings and conclusions filed in a post-hearing brief or other submission pursuant to Rule 5445. The Board did not receive comment on the proposed amendments to Rule 5442 and is adopting these amendments as proposed.

Board Review of Determinations of Hearing Officers (Rule 5460). Rule 5460 sets out the procedures for the Board's review of hearing officer initial decisions, either on appeal of a party to a hearing or on the Board's own initiative. Under Rule 5460(a)(2), a party may obtain Board review of an initial decision by filing a timely petition for review. To be timely, a petition must be filed within 10 days of an initial decision in a proceeding commenced under Rule 5200(a)(3) for noncooperation, and within 30 days of an initial decision in other proceedings. To conform with the clarification to Rule 5200(a)(3) discussed above, the Board is adding the word ''solely'' to Rule 5460(a)(2)(ii), to make it clear that the 10-day time period applies only to proceedings instituted exclusively pursuant to Rule 5200(a)(3).

The Board is also adding a note to Rule 5460(a) that sets out how the Board will determine when service of an initial decision has occurred, and by extension, when petitions for review are due. For any party that has entered a

KPMG Comment Letter. After considering these comments, the Board has determined that this proposed amendment is not necessary and is not revising Rule 5422(b)(1)(i) to add the ''obtained from'' language.

[135] *See* CAQ Comment Letter; D&T Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter.

[136] The Board also is not persuaded that there is a risk that DEI would withhold evidence supportive of its claim under Rule 5422(b)(1)(ii), since that subsection requires DEI to produce documents it intends to introduce as evidence even if the documents were obtained from a generally available public source.

notice of appearance and filed an electronic mailing address with the Board, pursuant to Rule 5401(c), the Board deems service to have occurred on the date that the Secretary has transmitted the initial decision by electronic mail to the email address on file.

Finally, Rule 5460(e) provides that the Board may summarily affirm an initial decision, based upon a petition for review. The Board is deleting the phrase ''and any response thereto'' from this provision because no Board rule permits a response to a petition for review. The Board did not receive comment on the proposed amendments to Rule 5460 and is adopting these amendments as proposed.

Presence of accounting experts during investigative testimony. In response to a general request for comments about other potential changes to the rules in Section 5, several commenters said accounting experts should be allowed to assist counsel during testimony in appropriate circumstances under Rule 5102(c)(3).[137] These commenters asserted that the SEC has permitted this form of assistance since 1985, ''with no apparent interference in the SEC's fact-finding process,'' [138] and said that DEI's ''functional ban'' on technical assistance results in: possible prejudice to counsel and witnesses during questioning, an inhibiting effect on DEI's fullest exposition and consideration of the issues, and the appearance that DEI has an unfair tactical advantage over the witness in the investigative process.[139]

One commenter said that the Board should think of firm monitoring as a good idea that facilitates supervisors' ability to determine whether the firm should adjust the witness's work assignments, provide training, or take other steps to address shortcomings.[140] And commenters suggested that the Board should amend its rules to expressly provide that witnesses' counsel be permitted the assistance of a technical consultant during the taking of testimony, except in circumstances in which DEI staff determines that it would obstruct the investigation.[141]

The existing Rule 5102 gives the Board and the Board's staff discretion to allow an accounting expert to be present during investigative testimony in appropriate circumstances. The Board will consider the comments on this issue, as well as all other relevant factors, in determining how the staff should continue to exercise that discretion going forward.

Registration and Reporting Forms

The Board is amending PCAOB Forms 1, 1–WD, 2, 3, and 4, the Board's registration, withdrawal, and reporting forms. The amendments revise the forms to call for relevant information relating to a firm's audits of brokers and dealers. That information includes, among other things, information about audit reports issued by registered firms for broker and dealer audit clients. The amendments also make a number of changes to the forms in light of administrative experience. Commenters generally supported the proposed form amendments,[142] and the Board is largely adopting the amendments as proposed.

Form 1: Application for Registration. Under Section 102(b) of the Act and Rule 2101, public accounting firms applying to the Board for registration must complete and file Form 1.[143] The Board is amending Form 1 to conform with the Dodd-Frank amendments by adding ''broker'' and ''dealer'' to the Form in appropriate places.[144] In addition, the amendments require that applicants disclose identifying information concerning all brokers or dealers for which the applicant has prepared or issued audit reports during the previous calendar year,[145] and for which the applicant prepared, or expects to prepare or issue, audit reports during the current calendar year.[146] The amendments also require applicants to disclose the fees they billed to broker and dealer audit clients.[147] The amendments also require applicants to provide information about any limitations currently in effect, whether Board-ordered, Commission-ordered, or court-ordered, on association with a registered public accounting firm or on appearing or practicing before the Commission.[148] The Board did not receive comment on the proposed amendments to Form 1 and is adopting these amendments as proposed.

Part III amendments. As required by Section 102(b)(2)(A) and (B) of the Act, and consistent with the issuer client information currently required in Part II of Form 1, Part III of Form 1 requires disclosures about the applicant's broker or dealer audit clients, including the client's name, business address, CRD number,[149] CIK number,[150] the date of the audit report, and disclosures about the fees billed to broker or dealer audit clients by the applicant. The disclosures are divided into four items that closely track the items in Part II of Form 1 relating to issuer audit clients. Item 3.1 covers broker and dealer clients for which the applicant prepared an audit report during the previous year. Item 3.2 covers broker and dealer clients for which the applicant prepared an audit report during the current year. Item 3.3 covers broker and dealer clients for which the applicant expects to prepare an audit report during the current year. Item 3.4 covers broker and dealer clients for which the applicant played or expects to play a substantial role in the audit during the preceding or current calendar year if the applicant did not prepare or issue and does not expect to prepare or issue audit reports.

Items 3.1 and 3.2 require the same information: the broker's or dealer's name, business address, CRD number, CIK number, the date of the audit report, and the total amount of fees billed for audit services, other accounting services, and non-audit services.[151] Because Item 3.3 refers to a future period, it only requires the broker's or dealer's name, business address, and CRD and CIK numbers.[152] Item 3.4 requires disclosure of the broker's or dealer's name, business address, CRD

[137] *See* CAQ Comment Letter; EY Comment Letter; KPMG Comment Letter.

[138] *See* CAQ Comment Letter; EY Comment Letter; KPMG Comment Letter.

[139] *See* CAQ Comment Letter; KPMG Comment Letter.

[140] *See* EY Comment Letter.

[141] *See* CAQ Comment Letter; EY Comment Letter; KPMG Comment Letter.

[142] *See* EY Comment Letter; KPMG Comment Letter; PWC Comment Letter.

[143] *See* Registration System for Public Accounting Firms, PCAOB Release No. 2003–007 (May 6, 2003).

[144] *See, e.g.,* amended Form 1, Items 5.1, 5.2, 7.1, and 8.1. The amendments also make a technical change to General Instruction 6 of Form 1, to more closely conform the instruction to Rule 2300, as adopted in 2008. *See Rules on Periodic Reporting by Registered Public Accounting Firms,* PCAOB Release No. 2008–004, at n.27 and accompanying text (June 10, 2008).

[145] Form 1, Item 3.1.

[146] Form 1, Item 3.2 and Item 3.3.

[147] Form 1, Item 3.1.c–e and Item 3.2.c–e.

[148] Form 1, Item 5.1.c–d.

[149] A broker's or dealer's Central Registration Depository (''CRD'') number is a number assigned by FINRA's CRD system, a computer system that maintains registration information regarding brokers and dealers and their registered personnel.

[150] The Commission issues Central Index Key (''CIK'') numbers as unique publicly available identifiers and Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') access codes. For consistency, and to more easily identify issuers, the Board is also amending Form 1, Items 2.1 through 2.4 to require issuers' CIK numbers.

[151] As discussed above, the Board is amending the terms ''audit services'' and ''other accounting services'' to apply to broker and dealer audit clients. *See supra* note 20 and accompanying text.

[152] As proposed, the note to Item 3.3 stated that an applicant may ''presume'' it is expected to prepare or issue an audit report for a broker or dealer in certain circumstances, while the notes to proposed Items 2.4 and 3.4(d) used the term ''conclude'' in the same context. The Board agrees with two commenters that using the term ''conclude'' consistently is preferable, and has adopted this change. *See* CAQ Comment Letter; KPMG Comment Letter.

number, CIK number, the name of the public accounting firm that issued or is expected to issue the audit report, the date or expected date of the audit report, and the type of substantial role played by the applicant with respect to the audit report.

The Board understands that the fee information in Items 3.1 and 3.2 may not have been collected historically, and that public accounting firms may have to put systems in place to track information in these categories. While the Board understands that many, if not all, broker or dealer clients are not subject to the Commission's existing requirements for issuers to disclose fee information, or Items 2.1 and 2.2 of Form 1, where similar fee disclosure is currently required for issuer audit clients, the Dodd-Frank amendments to Section 102(b)(2)(B) of the Act specifically require applicants to include disclosure of the annual fees received by the firm for ''audit services, other accounting services, and non-audit services'' for each broker or dealer audit client.[153]

The Board expects that the Form 1 fee disclosure requirements for broker and dealer audit clients will not affect most registered public accounting firms. First, all current auditors of broker and dealer clients should already be registered with the Board,[154] and so will already have filed Form 1. Also, going forward the Board expects that most new firms will not have prepared audit reports for broker or dealer clients during the preceding or current calendar year, without having been previously registered with the Board, and therefore Items 3.1 and 3.2 will generally not apply to them.[155] Finally, because the Board recognizes that firms with broker and dealer audit clients have not necessarily been maintaining billing records in a way that readily facilitates precise reporting according to the fee categories in the Act (as the Board has defined them), the Board is adopting a note to these items that provides that estimated amounts may be used in responding to these Items in Form 1, to the extent that these fees have not previously been disclosed or otherwise known to an applicant.[156]

Part V amendments. Item 5.1 of Form 1 requires applicants to disclose information about certain types of criminal, civil, administrative, or disciplinary proceedings pending against, or resolved in the preceding five years against, the applicant or any associated person of the applicant. At the time that the PCAOB adopted Form 1, there was no history of disciplinary sanctions imposed by the Board. Now that there is a history of Board-imposed bars and suspensions dating back to 2005, the Board is adding to Form 1 a requirement that the applicant disclose whether individuals in the firm, or contractors of the firm, are subject to any currently effective Board-imposed bar or suspension on being an associated person of a registered public accounting firm. The implication of collecting this information on Form 1 is not that a firm's relationship with such a person would, in and of itself, result in rejection of the firm's application, but in some circumstances it may be relevant information that would cause the Board to evaluate whether approving the application is consistent with the Board's responsibility to protect investors and further the public interest.[157] In the same vein, the Board also is requiring information about currently effective prohibitions on appearing or practicing before the Commission, whether resulting from a Commission order denying or suspending that privilege or from a court-ordered injunction against such appearance or practice.[158] The amendments add new Items 5.1.c, 5.1.d, and 5.1.e to Form 1.

Part VI amendments. The Board is also amending Part VI of Form 1, which requires an applicant to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in Commission filings. As required by Section 102(b)(2)(G) of the Act,[159] the Board is requiring that an applicant also disclose whether, in the preceding or current calendar year, a broker or dealer audit client disclosed issues with the applicant relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission in a notice filed with the Commission pursuant to SEC Rule 17a–5(f)(3)(v)(B).[160] For each such instance in the preceding or current calendar year, an applicant is required to disclose the name of the broker or dealer client, the broker's or dealer's CRD and CIK numbers, the date of the filing containing the notice, and to submit, as exhibits, copies of identified filings.[161]

Form 1–WD: Request to Withdraw from Registration. Under Rule 2107, a registered public accounting firm may at any time submit to the Board a request for leave to withdraw its registration. A request to withdraw must be submitted on Form 1–WD. The general instructions to Form 1–WD require registered public accounting firms seeking to withdraw from Board registration to submit an original hard copy of Form 1–WD to the Board, in addition to submitting the form to the Board electronically.[162] To facilitate the

[153] As noted below, the Board is not imposing an annual reporting requirement with respect to fees for services provided for broker and dealer audit clients. *See* text accompanying and following note 177.

[154] The Dodd-Frank amendments to Section 102(a) of the Act expanded the Act's registration requirement by making it unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any broker or dealer. Even before the Dodd-Frank amendments, however, Section 17(e)(1)(A) of the Exchange Act, as amended in 2002, required that the balance sheets and income statements filed with the Commission by registered brokers or dealers be certified by a public accounting firm registered with the PCAOB. *See supra* note 4.

[155] While Items 3.1 and 3.2 will generally not affect new applicants, some applicants may expect to issue an audit report for a broker or dealer in the current calendar year and may have provided tax services or other non-audit services to a broker or dealer client prior to providing audit services to the broker or dealer client. These applicants are required to comply with the amended fee disclosure requirements in Items 3.1 and 3.2 as to these previously provided tax and other accounting services.

[156] This means, for example, that if a firm has not tracked fees billed to broker and dealer audit clients according to the fee categories as defined by the Board's rules, estimated amounts may be used in responding to these items.

[157] Among other factors, the PCAOB will consider the nature of the allegations underlying the proceeding, and the position at the firm of the associated person. Form 1 permits firms to address these factors, as well as any other relevant points, in any discussion it provides concerning the disclosure.

[158] Because currently effective denials or suspensions may have been ordered at any time, not just within the five years preceding an application, the amended language refers to Commission orders without limiting them to orders issued pursuant to current Rule 102(e) of the Commission's Rules of Practice. The amended language also encompasses court-ordered injunctions against appearing or practicing before the SEC, some of which have been issued in the past and remain in effect. Although the vast majority of SEC practice denials or suspensions are administrative, some are court-ordered. A corresponding language change is also being made for Form 3, as described below.

[159] Section 102(b)(2)(G) of the Act specifically requires that an applicant submit as part of its application for registration ''copies of any periodic or annual disclosure filed by an issuer, broker, or dealer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer, broker, or dealer and the firm in connection with an audit report furnished or prepared by the firm for such issuer, broker, or dealer.''

[160] Form 1, Item 6.4. *See* SEC Rule 17a–5(f)(3)(v)(B).

[161] Form 1, Items 6.5 and 6.6. The amendments require an applicant to identify instances in which the applicant's broker or dealer audit clients disclosed issues with the applicant in such broker's or dealer's SEC Rule 17a–5 filings with the Commission. Therefore, if a broker or dealer did not disclose an issue in a SEC Rule 17a–5 filing with the Commission, the applicant does not need to disclose such issue in Form 1.

[162] *See* Form 1–WD, General Instruction 4.

process of withdrawal for firms that no longer wish to be registered with the Board, and permit the withdrawal of a number of firms that have submitted the form electronically (but have not submitted original hard copies of the form), the Board is amending Form 1–WD's general instructions to eliminate the requirement that the form's original hard copy be submitted to the Board. Under the amended instructions, firms are only required to submit Form 1–WD to the Board electronically.[163] The Board did not receive comment on the proposed amendments to Form 1–WD and is adopting these amendments as proposed.

Form 2: Annual Report. Under Section 102(d) of the Act and Rule 2200, registered public accounting firms must file annual reports with the Board on Form 2.[164] The Board is amending Form 2 to call for relevant information concerning a firm's audits of brokers and dealers.[165]

Part III amendments. Part III of Form 2 requires registered firms to annually disclose information about their issuer-related practice. The amendments require that registered firms indicate whether they issued any audit reports with respect to any broker or dealer during the annual reporting period;[166] and, if they did not issue any such audit reports, to indicate whether they played a substantial role in the preparation or furnishing of an audit report with respect to a broker or dealer.[167]

The Board is also revising Part III of Form 2 to reflect the Dodd-Frank amendment to the Act requiring certain foreign public accounting firms to designate to the Commission or the Board an agent in the United States upon whom may be served any request by the Commission or the Board under Section 106 of the Act or upon whom may be served any process, pleading, or other papers in any action to enforce Section 106 of the Act.[168] This statutory provision applies to any foreign public accounting firm that (i) performs material services upon which another registered public accounting firm relies in the conduct of an audit or interim review, (ii) issues an audit report, (iii) performs audit work, or (iv) performs interim reviews. Under the amendments, a foreign registered firm that has already made this designation to the Commission or Board is required to check a box annually indicating that the firm has done so and identify the name and address of the designated agent.[169] A foreign registered firm that has not already made a Section 106(d)(2) designation is required to indicate annually whether or not it has performed any of the activities specified by Section 106(d)(2) since enactment of the Dodd-Frank Act.[170] Any foreign public accounting firm that has not already made a required Section 106(d)(2) designation to the Commission or Board must do so immediately.[171]

One commenter said that the proposed identification of the name and address of the designated agent did not fairly reflect the Dodd-Frank amendments to Section 106 of the Act and would serve no legitimate purpose of the Commission, the Board, or the public readers of Form 2, because Section 106 confers no rights on persons beyond the SEC and PCAOB.[172] The Board expects that these amendments will facilitate the Board's and SEC's ability to track foreign firm designations and will remind firms that their Section 106(d)(2) designations should be kept current. The Act only addresses requests by the Commission or the Board, and these form amendments are intended only to impose a new reporting requirement, not to confer rights on anyone.

Another commenter said proposed Item 3.3 would only be appropriate if the Board permitted foreign firms to decline to provide such information if such firms were unable to do so without violating non-U.S. law, asserting conflicts with non-U.S. law.[173] The Board declines to accept this argument, as it would defeat the purpose of the Dodd-Frank amendment to Section 106(d)(2) of the Act.

Part IV amendments. Part IV of Form 2 requires firms to disclose information relating to the audit reports the firm issued for each issuer during the reporting period, as well as audit reports issued during the period that the firm did not issue, but played a substantial role in preparing or furnishing. The amendments require that public accounting firms disclose in their annual reports certain information concerning each audit report the firm issued for a broker or dealer during the reporting period.[174] Also, if the firm did not issue any broker or dealer audit reports during the reporting period, the amendments require the firm to disclose the names and identifying information for each broker or dealer audit report the firm played a substantial role in preparing or furnishing in the reporting period.[175]

Item 4.3 requires a public accounting firm to disclose in its annual report each audit report the firm issued for a broker or dealer during the reporting period. This amendment requires that the firm provide the broker's or dealer's name, CRD number, CIK number, and the date of the audit report(s).[176] In response to the Board's comment request on this issue, commenters generally said that firms should not be required to report audit fee information for broker and dealer audit clients on an ongoing basis on Form 2, saying the PCAOB currently has access to fee information for registered firms and the public interest would not be served by making this information publicly available.[177] The Board agrees and is not imposing an annual reporting requirement with respect to fees for services provided to broker and dealer audit clients under Form 2.

If a registered public accounting firm did not issue any broker or dealer audit reports during the reporting period, but played a substantial role in the preparation or furnishing of an audit report for a broker or dealer, Item 4.4 requires that registered public accounting firm to disclose, with respect to each such broker or dealer, the broker's or dealer's name, CRD number, CIK number, the name of the registered public accounting firm that issued the audit report(s), and a description of the role played by the firm with respect to the audit report(s). This information conforms to the information previously

[163] These amendments apply to firms that previously submitted an original hard copy of Form 1–WD without submitting the form electronically.

[164] *See Rules on Periodic Reporting by Registered Public Accounting Firms,* PCAOB Release No. 2008–004 (June 10, 2008).

[165] *See, e.g.,* Form 2, Items 3.1, 7.1, and 7.3. The amendments also make a technical change to General Instruction 7 of Form 2, to more closely conform the instruction to Rule 2300, as adopted in 2008. *See supra* note 144.

[166] Form 2, Item 3.1.d.

[167] Form 2, Item 3.1.e.

[168] *See* Section 106(d)(2) of the Act.

[169] Form 2, Item 3.3.a.

[170] Form 2, Item 3.3.b.

[171] To make a Section 106(d)(2) designation to the Board, firms should submit their designations by email to the PCAOB's Office of the Secretary (*Secretary@pcaobus.org*) and to note ''106(d)(2) Designation'' in the subject line of the email.

[172] *See* KPMG Comment Letter.

[173] *See* Grant Thornton Comment Letter.

[174] Form 2, Item 4.3.a.

[175] Form 2, Item 4.4. The Board is also amending Form 2, Item 4.1, so that in those circumstances in which the firm must report the date of the firm's issuance of a consent to a previously-issued report (i.e., when a firm's reports for a particular issuer during the reporting period are limited to such consents), the firm must indicate that the date corresponds to such a consent.

[176] Under the amendments, if a firm were to issue more than one audit report for a broker or dealer audit client during a reporting period, each audit report for that broker or dealer would be reported separately.

[177] *See* CAQ Comment Letter; Crowe Horwath Comment Letter; EY Comment Letter; KPMG Comment Letter; McGladrey Comment Letter.

required for issuer clients in Item 4.2.a.[178]

Part VII amendments. Part VII of Form 2 requires firms to report information about certain types of relationships with individuals and entities that have specified disciplinary and other histories. Under the amendments, firms have to report new relationships with individuals and 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, and who provided at least ten hours of audit services for any broker or dealer during the reporting period.[179] Finally, the Board is amending Items 7.1, 7.2, and 7.3 to correct certain cross-references.

Form 3: Special Report Form. Under Rule 2203, registered public accounting firms must report certain information to the Board as a special report filed on Form 3. The amendments revise Form 3 to call for relevant information concerning firms' audits of brokers and dealers.[180] The amendments also revise Form 3 to require firms to report circumstances where a former issuer audit client does not comply with Item 4.01 of Commission Form 8–K.[181]

Withdrawn broker and dealer audit reports. Among other events that trigger an obligation to file a special report, firms are required to file Form 3 if they have withdrawn an audit report on an issuer's financial statements, and the issuer failed to comply with Commission reporting requirements (Item 4.02 of SEC Form 8–K) concerning the matter.[182] The proposed amendments would have extended the obligation to report withdrawn audit reports on Form 3 to firms' broker and dealer audit clients.[183]

Commenters generally agreed that it is important for the PCAOB and financial statement users to be aware of instances in which an audit report has been withdrawn, but said that the Board should coordinate with the SEC (or FINRA) in this area, and suggested that the SEC establish a process, comparable to the one in place for issuers, that would require a broker or dealer to report to the SEC when an auditor has withdrawn an audit report or consent for a broker or dealer, and the Board would require auditor reporting only where the broker or dealer has not notified the SEC in accordance with its obligations.[184] One commenter argued that unlike the requirements for issuers, the proposal would require that withdrawn audit reports be disclosed directly by the auditor potentially causing the auditor to disclose the company's private information while jeopardizing the auditor's ethical responsibilities related to confidentiality.[185] Until a coordinated reporting process is developed, some commenters suggested that AU 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report,* provides a framework for registered public accounting firms to notify users if an audit report is withdrawn.[186]

The Board does not believe it is necessary at this time to require Form 3 reporting of withdrawn broker and dealer audit reports because the requirement would go beyond current SEC notification requirements. The Board may revisit such a proposal in the future once more information is gathered through its inspections and other oversight functions. Firms should note that AU 561 applies to broker and dealer audits. Consistent with that standard, under certain circumstances the auditor should, among other things, notify the regulatory agencies having jurisdiction over the broker and dealer audit client that the auditor's report should no longer be relied upon.[187]

Issuer auditor changes. The Board is adopting amendments to address circumstances where an issuer audit client encounters a change in its principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary) and the issuer does not comply with the Commission's four business day reporting requirement concerning the change in auditors pursuant to Item 4.01 of Form 8–K.[188]

Two commenters supported this proposed reporting requirement.[189] Two commenters suggested that the proposed Form 3 reporting requirement appeared redundant to Section 1000.08(m) of the SECPS membership requirements and encouraged the Board to develop a single solution for reporting auditor changes.[190] Commenters were also concerned about the scope of the proposed Form 3 reporting, some of which commenters suggested would be difficult for the auditor to know or would not be relevant in circumstances where the auditor resigns or does not stand for reappointment.[191] Finally, one commenter said requiring auditors to make a Form 3 filing in these circumstances would inappropriately put auditors in the position of publicly reporting information that has not yet been reported by the issuer.[192]

The PCAOB has further considered this proposal in light of the comments and determined to adopt these proposed amendments largely as proposed. To ensure that the Board and public are made aware of these events, the Board is amending the instructions to Form 3 to require firms to file a special report with the Board if a client-auditor relationship has ended and the issuer has not reported the change in auditors on a Form 8–K.[193] Specifically, if a firm resigns, declines to stand for re-appointment, or is dismissed from an issuer audit engagement, and the issuer does not comply with Item 4.01 of Form 8–K, the firm within 30 days must report on Form 3 the issuer's name and

[178] Note 1 to Form 2, Item 4.4 clarifies that if a firm identifies a broker or dealer in response to 4.3, the firm does not have to respond to Item 4.4.

[179] Form 2, Items 7.1.a and 7.3.a. Consistent with the previous Form 2 reporting requirements, the amendments capture only relationships that (i) exist as of the end of the reporting period, (ii) 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 (iii) have not previously been reported on Forms 1, 2, or 3. Other than the comment discussed *supra* in note 148, the Board did not receive comment on these proposed amendments and is adopting them as proposed.

[180] *See, e.g.,* Form 3, Items 2.5, 2.6, 2.8, 2.9, and 4.1. The amendments also make a technical change to General Instruction 8 of Form 3 to more closely conform the instruction to Rule 2300. *See supra* note 144.

[181] Form 3, Items 2.1–C and 3.2.

[182] Form 3, Items 2.1 and 3.1.

[183] Proposed Form 3, Items 2.1–BD and 3.2.

[184] *See* CAQ Comment Letter; D&T Comment Letter; Grant Thornton Comment Letter; KPMG Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[185] *See* Grant Thornton Comment Letter.

[186] *See* CAQ Comment Letter; KPMG Comment Letter; PWC Comment Letter.

[187] *See* AU § 561.08(b).

[188] If an issuer audit client has a change in its principal auditor (or an auditor upon whom the issuer's principal auditor expressed reliance in its report regarding a significant subsidiary) within 24 months prior to or in any period subsequent to the date of the most recent financial statements, the issuer must provide the required information in Item 4.01 of Form 8–K within four business days of the change. *See* Item 304(a) of Regulation S–K; Item 4.01 of Form 8–K.

[189] *See* EY Comment Letter; KPMG Comment Letter.

[190] *See* CAQ Comment Letter; KPMG Comment Letter (recommending that the SECPS requirement be eliminated).

[191] *See* CAQ Comment Letter; Crowe Horwath Comment Letter; KPMG Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[192] *See* D&T Comment Letter (suggesting, as an alternative, that the PCAOB be copied, on a confidential basis, on the five-day SECPS letter so that the Board could be timely informed of issuer auditor changes).

[193] Form 3, Item 3.2 is only triggered by an issuer's failure to comply with Item 4.01 of SEC Form 8–K. This reporting requirement does not apply to foreign private issuers (that are required to report issuer auditor changes on Item 16F of Form 20–F) or investment companies other than business development companies (that are required to report auditor changes on Item 77K of Form N–SAR).

CIK number, if any, whether the firm resigned, declined to stand for re-election or was dismissed, and the date thereof.[194]

Together, the amendments to the SECPS membership requirements and Form 3 establish a reporting system that begins, for firms that are former members of the SECPS, with a required non-public filing with the SEC's Office of the Chief Accountant within five business days,[195] and, if the former audit client is still not in compliance within 30 days, requires auditors to make an abbreviated public filing on Form 3 with the PCAOB.[196] The Board sees value both in streamlining the SECPS membership requirement for Form 8–K filers and also, after a period of time, requiring that the Board and the public receive notice of these changes if the issuer still has not satisfied its reporting obligations under Item 4.01 of Form 8–K.

Because Form 3 filings are public, and the Board does not anticipate needing as much information as was proposed, the Board is requiring that a Form 3 filing only report the issuer's name and CIK number, whether the firm resigned, declined to stand for re-election or was dismissed, and the date thereof.[197] The PCAOB is not persuaded that requiring auditors to report information in these circumstances ahead of their former clients poses a serious problem. This Form 3 reporting requirement is only triggered in circumstances where a former audit client is delinquent in publicly reporting the information mandated by Item 4.01 of Form 8–K.

Relationships with persons subject to a bar or suspension. Form 3 also requires firms to disclose information about new relationships with persons or entities that are effectively restricted from providing auditing services. Specifically, a firm is required to file a Form 3 special report if it enters into certain specified relationships with individuals or entities that are currently subject to (1) a Board disciplinary sanction suspending or barring an individual from being an associated person or a registered public accounting firm, or (2) 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.[198] Consistent with the changes to Item 5.1 of Form 1, the Board is revising this reporting criteria to encompass persons currently subject to any Commission order denying the privilege of, or any court-ordered injunction prohibiting, appearance or practice before the Commission.[199]

Form 4: Succeeding to Registration Status of Predecessor. Under Rules 2108 and 2109, a registered public accounting firm can, in certain circumstances, succeed to the registration status of a predecessor registered firm by filing Form 4. As proposed, the Board is amending Form 4 to conform with the Dodd-Frank amendments by adding a new ''yes'' or ''no'' question to Item 3.2 of Form 4. The amendments require a firm seeking to succeed to the registration status of a predecessor firm to indicate whether any firm involved in the transaction underlying the succession issued an audit report with respect to a broker or dealer audit client for financial statements with years ending after December 31, 2008 while not registered with the Board, and did not thereafter have an application for registration approved by the Board.[200] The Board did not receive comment on the proposed amendments to Form 4.

Effective date. One firm suggested that the effective date of the Form 2 amendments should provide sufficient time for firms to collect the necessary information related to brokers and dealers prior to the June 30 annual report filing deadline.[201] The Board's staff is reprogramming the Board's Web-based Registration, Reporting, and Special Reporting system. The amendments to Form 2 will take effect April 1, 2015. The Board expects that this will provide firms with sufficient time to collect necessary information. The amendments to Forms 1, 1–WD, 3, and 4 will take effect July 1, 2014.

Ethics Code

The Board is amending six of the Ethics Code's provisions: EC2, ''Definitions;'' EC4, ''Financial and Employment Interests;'' EC5, ''Investments;'' EC7, ''Gifts, Reimbursements, Honoraria and Other Things of Value;'' EC8, ''Disqualification;'' and EC12, ''Post-Employment Restrictions.'' Several of these amendments conform the Ethics Code with the Board's authority under the Dodd-Frank amendments by adding the words ''broker'' and ''dealer'' to the Ethics Code in appropriate places. Other amendments are more technical in nature, reflecting the Board's experience in applying the Ethics Code. The Board did not receive comment on its proposed amendments to the Ethics Code and is adopting these amendments as proposed.

The Board is amending the note accompanying the definition of ''practice'' in EC2(f).[202] As part of its ''revolving-door restrictions,'' the Ethics Code restricts Board members and professional staff from ''practicing'' before the Board, and the Commission with respect to Board-related matters, for one year following termination of employment or Board membership.[203] The note accompanying the definition of ''practice'' clarifies that participating in the financial reporting process as the officer or director of an issuer, or participating in an audit of an issuer's financial statements does not, in and of itself, constitute practice before the Board or the Commission. The amendments extend the note to former Board members and professional staff participating in the financial reporting

[194] *See* Form 3, Item 2.1–C and Item 3.3. If the issuer comes into compliance with an SEC requirement to make a report concerning the matter pursuant to Item 4.01 of Form 8–K during this 30-day period, the firm would not be required to report the change in auditors on Form 3.

[195] *See supra* notes 49–57 and accompanying text.

[196] Firms that are not former members of the SECPS are only required to report these events on Form 3.

[197] As proposed, the Form 3 reporting would have also included whether: (i) The firm's audit report(s) for either of the past two years contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles; (ii) the former audit client's audit committee (or equivalent body), or board of directors (or equivalent body) recommended or approved the change; and (iii) there were any disagreements with the former client in the two most recent fiscal years and any subsequent interim period on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved, would have caused the firm to make reference to the subject matter of the disagreements in connection with its audit report(s). Because the Board will be able to assess these additional categories of information, if necessary, through the inspections process or other means, the Board is not adopting these proposals.

[198] Form 3, Items 2.12 and 2.13, and Items 5.1 and 5.2.

[199] Form 3, Items 2.12 and 2.13, and Items 5.1 and 5.2. Other than the comment discussed *supra* in note 148, the Board did not receive comment on these proposed amendments and is adopting them as proposed.

[200] *See* Form 4, Item 3.2.e.3. The amendments clarify that succession is allowed where a firm was sanctioned for a registration violation but subsequently was allowed to register with the PCAOB. A conforming change is also being made to Form 4, Item 3.2.e.2. Separately, the amendments also make a technical change to General Instruction 8 of Form 4 to more closely conform the instruction to Rule 2300. *See supra* note 144.

[201] *See* Grant Thornton Comment Letter.

[202] EC2(f) defines the term ''practice'' to mean knowingly acting as an agent or attorney for, or otherwise representing any other person in any formal or informal appearance before the Board or Commission, or making any oral or written communication on behalf of any other person to, and with an intent to influence, the Board or Commission.

[203] EC12(b)(1). Additionally, former Board members and professional staff may not ''switch sides'' and work on a particular matter after leaving the Board that they personally and substantially participated in while at the Board. EC12(b)(2).

process for, or in an audit of, a broker or dealer.[204]

EC5(d) requires that Board members and professional staff annually disclose their holdings in securities of issuers, including exchange-traded options and futures. The Board is making technical amendments to EC5(d) to clarify that disclosure should be made to the Ethics Officer, and, to permit flexibility, the amendments allow the Ethics Officer to prescribe a different date for annual disclosure.

Under EC7(b), Board members and professional staff are generally prohibited from accepting payment for or reimbursement of official travel-related expenses from any organization. This prohibition is subject to an exception for travel-related expenses that are in direct connection with an employee's participation in an educational forum that is principally sponsored by certain tax-exempt entities.[205] These tax-exempt entities, however, may not be principally funded from one or more public accounting firms or issuers. The Board's amendments include brokers and dealers among the categories of entities that may not principally fund these tax-exempt entities.

EC8(a) provides that if a Board member or professional staff becomes, or reasonably should become, aware of facts which would lead a reasonable person to believe that he or she (or his or her spouse, spousal equivalent, and dependents) may have ''a financial interest or other similar relationship'' which might affect (or reasonably create the appearance of affecting) his or her independence or objectivity, then he or she must, at the earliest possible date, disclose such circumstances and facts and recuse himself or herself from further Board functions or activities involving or affecting the financial interest or relationship. Because the phrase ''or other similar relationship'' has not provided sufficient clarity, the Board is replacing it with ''or personal interest.'' Thus, under the amendments, EC8's disclosure and recusal provisions apply to ''a financial or personal interest'' a reasonable person would believe might affect (or reasonably create the appearance of affecting) his or her independence or objectivity.

Under EC12(a), Board members and professional staff may not negotiate prospective employment with a registered public accounting firm or issuer without first disclosing the identity of the prospective employer and recusing himself or herself from all matters directly affecting that prospective employer. Because the Dodd-Frank amendments gave the Board oversight over auditors of brokers and dealers, the Board is amending EC12(a) to require Board members and professional staff to disclose employment negotiations with brokers or dealers, in addition to registered accounting firms and issuers.

D. Request to Apply Conforming Amendments to Audits of Emerging Growth Companies

The PCAOB is sensitive to the compliance burden incurred by auditors and other market participants due to its regulatory requirements and has attempted in a variety of ways to minimize burdens on affected entities while also satisfying the objectives of Congress and the SEC. These include the Board's efforts to tailor its ethics and auditor independence requirements, in Rules 3520 through 3526, to the organizational structure of brokers and dealers, and, in particular, not at this time extending to broker and dealer audits Rule 3523's prohibition on providing tax services to persons in financial reporting oversight roles. A number of other cost-minimization measures are discussed below.

In its proposal, the PCAOB invited commenters to submit comment on all aspects of the proposed amendments. Several commenters addressed the economic consequences of the proposed amendments in qualitative terms. These comments are addressed below.

As discussed in the release, the PCAOB's objective in adopting today's amendments is to conform its rules, forms, and ethics code to the Dodd-Frank amendments to Sarbanes-Oxley and the SEC's amendments to Rule 17a–5. In amending the PCAOB's rules, forms, and ethics code the PCAOB has endeavored to achieve Congress's and the SEC's objectives in a cost-effective manner.

To the extent that these amendments reflect the statutory requirements of Dodd-Frank, the PCAOB's action is technical and non-substantive. It will not result in economic consequences beyond those resulting from Congress's determinations. Similarly, to the extent that these amendments reflect the SEC's Rule 17a–5 determinations, the PCAOB's action is housekeeping that will not result in separate economic consequences. However, to the extent that the amendments reflect the PCAOB's own determinations regarding implementation of Dodd-Frank's provisions or the SEC's Rule 17a–5 determinations, these determinations may result in additional economic consequences. These additional economic consequences (resulting from the PCAOB's own determinations) are separately considered below.

The baseline the Board uses to analyze the economic consequences of these amendments is the determinations made by Congress in 2010 to amend Sarbanes-Oxley and by the SEC in July 2013 to require that audits of brokers and dealers are to be conducted in accordance with the standards of the PCAOB. To conform to the determinations made by Congress and the SEC, the PCAOB's rules, forms, and ethics code are being amended to reflect the amendments to Sarbanes-Oxley and Rule 17a–5.[206]

Amendments Involving no PCAOB Discretion

Because Congress amended Sarbanes-Oxley and the SEC amended Rule 17a–5, the PCAOB's action to amend its rules, forms, and ethics code to conform to these amendments is technical and non-substantive. They do not reflect an exercise of PCAOB discretion. Instead, the PCAOB is adopting these amendments to implement statutory directives and the regulatory directives of the SEC. The PCAOB does not expect that these conforming amendments will result in any economic consequences, beyond reflecting the actions of Congress and the SEC.

To reflect the Dodd-Frank amendments, the Board is making technical conforming revisions, and including references to audits and auditors of brokers and dealers, in rules, ethics code provisions, and Form 1 parts that formerly applied only to issuers. These amendments include the revisions to: (1) The Rule 1001 definitions of ''audit,'' ''audit report,'' ''foreign auditor oversight authority,'' ''other accounting services,'' ''person associated with a public accounting firm,'' ''play a substantial role in the preparation or furnishing of an audit report,'' ''professional standards,'' and ''suspension;'' (2) the Board's registration and reporting rules (Rule 2100, Rule 2106, and Rule 2107); (3) certain of the Board's rules governing investigations and adjudications (Rule

[204] The Board is also making a technical amendment to the note accompanying the definition of ''honoraria'' in EC2(e) to clarify that meals provided to all conference participants are not considered ''honoraria'' that Board members and professional staff are prohibited from accepting under EC7(a).

[205] *See* EC7(b)(2)(C).

[206] The SEC included an economic analysis of its amendments to Rule 17a-5 in the release issued in July 2013. *See Broker-Dealer Reports,* Exchange Act Release No. 70073, at nn. 724–870 and accompanying text.

5105, Rule 5108,[207] Rule 5112, Rule 5200, Rule 5204, and Rule 5420); (4) certain provisions of the Board's ethics code (EC2(f), EC7(b), and EC12(a)); and (5) Parts III, V, VI, VII, and X of Form 1. These amendments simply reflect the amended statutory and regulatory provisions. They are not expected to result in any economic consequences, beyond reflecting the actions of Congress and the SEC.

Other technical amendments and non-substantive updates include the revisions to: (1) The Rule 1001 definitions of ''party'' and ''secretary;'' (2) Rules 3101, 3201T, and 3600T, (3) the Board's inspections rules (Rule 4009, Rule 4020T); (4) certain of the Board's rules governing investigations and adjudications (Rule 5102, Rule 5105, Rule 5110, Rule 5201, Rule 5205, Rule 5300, Rule 5407, Rule 5421, Rule 5426, Rule 5427, Rule 5442, Rule 5445, Rule 5460, and Rule 5462); (5) Rules 7103 and 7104 of the Board's funding rules; (6) certain provisions of the Board's ethics code (EC2(e), EC5(d), EC8(a)); and (7) certain Form 1 items (general instruction 6, Item 2.1(e), Item 2.2(e)), a Form 1–WD item (general instruction 7), certain Form 3 items (general instruction 8, Item 2.12, Item 2.13, Item 5.1, Item 5.2), and certain Form 4 items (general instruction 9, Item 3.2.e.1–2). To the extent these amendments are being made to conform to the determinations of Congress and the SEC, they will reflect the actions of Congress and the SEC; the other amendments are not expected to result in separate economic consequences.

Amendments Involving Some PCAOB Discretion

In certain respects Congress and the SEC left to the PCAOB the determination of which Board rules, forms, and ethics code provisions should apply to broker and dealer audits and how the Board should implement other Dodd-Frank provisions. These amendments in part reflect the PCAOB's own determinations and, to some extent, entail economic consequences beyond those resulting from Congress's statutory directives or the SEC's Rule 17a–5 determinations.

These amendments: (1) Make the Rule 1001 definitions of ''audit services'' and ''other accounting services'' applicable to broker and dealer audits; (2) require that auditors of brokers and dealers comply with the PCAOB's rules establishing auditing, attestation, and quality control standards (Rules 3200T, 3300T, and 3400T); (3) require that broker and dealer auditors adhere to certain of the PCAOB's ethics and auditor independence rules (Rules 3500T, 3501, 3502, 3520, 3521, 3522, and 3526) but not to others (Rules 3523, 3524, and 3525); and (4) tailor certain Form 1, Form 2, Form 3 and Form 4 items to call for relevant broker and dealer audit client information and implement the Dodd-Frank amendments (Items 3.1 and 3.2 of Form 1, Items 3.1, 3.2, 3.3, 4.3, 4.4, 7.1, and 7.3 of Form 2, Items 2.5, 2.6, 2.8, 2.9, and 4.1 of Form 3, and Item 3.2.e.3 of Form 4).

The PCAOB is also amending some rules and form items in light of administrative experience and to make a number of updates to address recent events. These amendments include the revisions to: (1) Rule 5422; (2) Section 1000.08(m) of the SEC Practice Section Requirements of Membership; (3) Items 2.1, 2.2, and 2.4 of Form 1, and General Instruction 4 of Form 1–WD; and (4) Items 2.1–C and 3.2 of Form 3. The PCAOB considers the economic consequences of these amendments below.

Rule 1001 amendments. The PCAOB is amending the Rule 1001 definitions of ''audit services'' and ''other accounting services'' to encompass the professional services auditors provide to broker and dealer audit clients. Pursuant to Section 102(b)(2)(B) of Sarbanes-Oxley, public accounting firms applying for PCAOB registration will use these definitions, along with the definition of ''non-audit services'' (which is not being amended), to attribute the annual fees they received from each broker and dealer audit client to one of the defined categories of services on Items 3.1 and 3.2 of Form 1. Commenters did not address the proposed amendments to the definitions of ''audit services'' and ''other accounting services,'' and the PCAOB is adopting the amendments as proposed. The PCAOB does not expect that these amendments will result in cost-related implications apart from the related Form 1 amendments discussed below.

Section 3 amendments. The amendments also generally make Rules 3200T, 3300T, and 3400T, the PCAOB's rules establishing auditing, attestation, and quality control standards, applicable to audits of brokers and dealers. Several commenters opposed the proposed application of the PCAOB's rules and standards—focusing particularly on the Board's quality control, ethics, and independence standards—to audits of ''introducing'' or ''non-carrying'' brokers and dealers.[208] One commenter asserted that requiring auditors of brokers and dealers to follow PCAOB quality control, ethics, and independence standards is not warranted until the PCAOB decides the scope and elements of its permanent inspection program for broker and dealer audits.[209] Additionally, one commenter suggested that Rule 3400T's application of the requirements of the SEC Practice Section (''SECPS'') of the American Institute of Certified Public Accountants only to the auditors of brokers and dealers that were members of the SECPS in 2003 could result in an unbalanced and disparate application of the Board's requirements.[210]

In response to these comments, the PCAOB has further considered the application of the PCAOB's rules establishing auditing, attestation, and quality control standards to auditors of brokers and dealers. As explained in the release, the SEC has decided that all audit reports filed with the SEC and designated examining authorities by brokers and dealers must be prepared in accordance with PCAOB standards. A final Board decision regarding the scope of the Board's inspection program will be made at a later date. The Board is not delaying adoption of the amendments to its rules. The PCAOB has also determined to make operative the two SECPS requirements that are applicable to broker and dealer engagements only to firms that were members of the SECPS in 2003.

The benefit of these amendments is that they will clarify the applicability of these rules to audits of brokers and dealers. The amendments will promote investor protection by clarifying that registered firms must comply with the PCAOB's rules establishing auditing, attestation, and quality control standards in audits of SEC-registered brokers and dealers. Consistent compliance with PCAOB standards for these audits will facilitate the Board's regulatory oversight over broker and dealer audits, and, among other things, facilitate the PCAOB's development and implementation of a permanent inspection program for these audits. The amendments will also facilitate the SEC's regulatory oversight of auditors,

[207] Separately, Section 1161(h) of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654, 2781 (2008) amended Sarbanes-Oxley to authorize the PCAOB to share information gathered in Board inspections and investigations with the Director of the Federal Housing Finance Agency (with respect to audits of institutions within the Federal Housing Finance Agency's jurisdiction). The PCAOB is adopting amendments to conform to Section 1161(h) of the Housing and Economic Recovery Act. *See* Rule 5108(a)(2)(b).

[208] *See* AICPA Comment Letter; Crowe Horwath Comment Letter; KPMG Comment Letter; Rothstein Kass Comment Letter; WeiserMazars Comment Letter.

[209] *See* AICPA Comment Letter.

[210] *See* Grant Thornton Comment Letter.

brokers, and dealers (because the SEC has direct oversight authority over the PCAOB, including the authority to approve or disapprove the Board's rules and standards).

The PCAOB has determined that these amendments will create some additional compliance costs for affected market participants. These costs include the one-time implementation costs for registered firms to update their broker and dealer audit methodologies to reflect PCAOB standards and train their personnel. These costs are attributable to SEC Rule 17a–5. Thus, the PCAOB does not anticipate that its conforming rule changes will result in significant costs to auditors (or to brokers and dealers in the form of increased audit fees).

Similarly, the Board notes that only two of the five SECPS membership requirements adopted by the PCAOB apply to the audits of brokers and dealers. These two requirements relate to continuing professional education requirements for audit firm personnel and the firm communicating through a written statement to its professional personnel the firm's broad policies and procedures related to accounting principles, client relationships, and services provided. The Board notes that all firms (including those that were members of the SECPS in 2003) are required to comply with state and professionally mandated continuing professional education requirements that satisfy most, if not all, of these education requirements, and expects that firms distribute such information to their professional personnel to effectively manage their firms.[211] The PCAOB therefore estimates that application of these requirements to audits of brokers and dealers that were members of the SECPS in 2003 will not result in a significant compliance burden on auditors of brokers and dealers.

The amendments also require that broker and dealer auditors adhere to certain of the PCAOB's ethics and auditor independence rules (Rules 3500T, 3501, 3502, 3520, 3521, 3522, and 3526) but not to others (Rules 3523, 3524, and 3525).

These rules establish a standard of ethical behavior for the conduct of persons associated with registered firms (Rules 3502 and 3520). They also prohibit broker and dealer auditors from: (1) Entering into a contingent fee or commission arrangement (Rule 3521); or (2) providing any non-audit service related to transactions that are ''confidential transactions'' or ''aggressive tax positions'' under Internal Revenue Service regulations (Rule 3522). The PCAOB is also adding a definition of ''audit committee'' to Rule 3501 so that Rule 3526 (Communication with Audit Committees Concerning Independence) applies to brokers and dealers that may not have organizational structures that include audit committees. No commenters opposed or suggested that these ethics and auditor independence rules does not apply audits of brokers and dealers. The PCAOB is not prohibiting firms from providing tax services to persons in financial reporting oversight roles (Rule 3523) in part due to commenter concerns about additional cost-related implications for auditors and brokers and dealers.

The PCAOB believes applying Rules 3500T, 3501, 3502, 3520, 3521, 3522 and 3526 to audits of brokers and dealers is consistent with investor protection. The amendments will promote investor protection by clarifying that auditors of brokers and dealers are required to adhere to certain of the PCAOB's ethics and independence rules. These rules, among other things, prohibit auditors from entering into contingent fees or commission arrangements or providing non-audit services related to aggressive tax positions to broker and dealer audit clients. Although these amendments will result in some new compliance costs on auditors of brokers and dealers, the Board does not anticipate that these costs will be significant. These costs will relate primarily to the one-time costs to update the firm's policies and procedures and training for these ethics and independence rules. Firms will also have recurring monitoring costs related to these amendments.

Form amendments. The amendments also tailor certain Form 1, Form 2, Form 3, and Form 4 items to call for relevant broker and dealer audit client information and reflect the Dodd-Frank amendments (Items 3.1 and 3.2 of Form 1, Items 3.1, 3.3, 4.3, 4.4, 7.1, and 7.3 of Form 2, Items 2.5, 2.6, 2.8, 2.9, and 4.1 of Form 3, and Item 3.2.e.3 of Form 4). This information will further the PCAOB's understanding of the market for broker and dealer audit services and enable the Board to make regulatory decisions (like how to allocate its inspections program resources) that will protect the interests of investors. This information may also help inform investors and the market generally about auditors' broker and dealer audit practice.

Form 1. In addition to the conforming amendments to Form 1, which were discussed earlier, the PCAOB is adding Items 3.1 and 3.2 to Form 1 to require general identifying information about the applicant's broker or dealer audit practice. Items 3.1 and 3.2 require the name of the broker or dealer, its business address, CRD number, and CIK number, as well as the date of the audit report, and the total amount of fees billed for audit services, other accounting services, and non-audit services (as defined by the PCAOB). The PCAOB expects that the Form 1 disclosure requirements for broker and dealer audit clients will not affect most registered firms, which have already filed Form 1. Going forward, the PCAOB expects that most new firms will not have prepared audit reports for broker or dealer clients during the preceding or current calendar year (without having been previously registered). The PCAOB is also taking steps to minimize the compliance burden associated with these amendments. Recognizing that firms with broker and dealer audit clients have not necessarily been maintaining billing records in a way that readily facilitates precise reporting according to the fee categories in Sarbanes-Oxley (as the PCAOB has defined them), the PCAOB is adopting a note that provides that estimated amounts may be used in responding to these Form 1 items, to the extent that these fees have not previously been disclosed or otherwise known to an applicant. Commenters did not address these Form 1 items. The PCAOB expects these amendments will result in small additional compliance costs related to reporting this information for a small number of applicant firms. The PCAOB is adopting these amendments as proposed.

Form 2. The amendments to Form 2 require that firms annually disclose general information about their broker and dealer audit practice. Specifically, the amendments require that firms indicate whether they issued any audit reports with respect to any broker or dealer during the annual reporting period, and, if they did not issue any such audit reports, to indicate whether they played a substantial role in the preparation or furnishing of an audit report with respect to a broker or dealer (Item 3.1). The amendments also require firms to disclose information concerning each audit report the firm issued for a broker or dealer audit client during the reporting period (Item 4.3). If the firm did not issue any broker or dealer audit reports during the reporting period, the amendments require the firm to disclose

[211] State CPE requirements range from a minimum of 0 hours (in one state) to a maximum of 120 hours every three years (in 45 states), and the PCAOB is requiring 120 hours every three years (with a minimum of at least 20 hours every year).

the names and identifying information for each broker or dealer audit report the firm played a substantial role in preparing or furnishing in the reporting period (Item 4.4). Firms are also required to report information about certain types of relationships with individuals and entities that have specified disciplinary and other histories involving brokers or dealers (Items 7.1 and 7.3). Commenters generally asserted that firms should not be required to report audit fee information for broker and dealer audit clients on an ongoing basis on Form 2.[212] The PCAOB has determined to mitigate firm costs by not imposing an annual reporting requirement with respect to fees for services provided to broker and dealer audit clients. The PCAOB did not receive other comments on these Form 2 amendments and is adopting them as proposed.

The amendments to Form 2 also reflect the Dodd-Frank amendment requiring certain foreign public accounting firms to designate to the SEC or PCAOB an agent in the United States upon whom may be served any request by the SEC or PCAOB under Section 106 of Sarbanes-Oxley or upon whom may be served any process, pleading, or other papers in any action to enforce Section 106 of Sarbanes-Oxley (Item 3.3). One commenter said proposed Item 3.3 could result in confusion and efforts by persons other than the SEC or PCAOB to serve subpoenas or process on foreign firms' designated agents.[213] The PCAOB has determined to adopt Item 3.3 as proposed. This amendment imposes only a new reporting requirement and does not confer rights on anyone.

The PCAOB believes the Form 2 amendments strike an appropriate balance between the Board's need for general identifying information to assist the Board in overseeing registered firms' broker and dealer audit practices, and facilitate the PCAOB's and SEC's ability to track foreign firm designations, and the time and resources firms will need to spend compiling, preparing, and reporting this information. These reporting requirements will contribute to investor protection by providing additional information upon which the PCAOB can base future program adjustments to ensure efficient deployment of the PCAOB's resources. This information may also help inform investors and the market generally about auditors' broker and dealer audit practice. These reporting requirements will also result in cost-related implications for auditors of brokers and dealers and foreign registered firms. Specifically, one-time costs that relate primarily to updating their records to facilitate annual reporting of their broker and dealer audit practice to the PCAOB and reporting their Section 106 designee. Recurring costs will include the costs of compiling and reviewing information responsive to these additional items in their annual reports. Over time, the PCAOB expects that firms will develop certain efficiencies in filing their annual reports, allowing these costs to decrease to some extent.

Form 3. The amendments to Form 3 require firms to report information about certain types of relationships with individuals and entities that have specified disciplinary and other histories involving auditors of brokers or dealers (Items 2.5, 2.6, 2.8, 2.9, and 4.1). The PCAOB did not receive comment on these Form 3 amendments and has determined to adopt them as proposed. The PCAOB believes the Form 3 amendments will contribute to investor protection by providing the PCAOB and the public with general information about disciplinary and other histories involving auditors of brokers and dealers. These reporting requirements are expected to result in small compliance costs for firms related to monitoring and compiling this information.

Form 4. The amendments to Form 4 require a firm succeeding to the registration status of a predecessor firm to indicate whether the firm issued an audit report with respect to a broker or dealer audit client for financial statements with years ending after December 31, 2008 while not registered with the PCAOB and has never had an application for registration approved by the Board (Item 3.2.e.3). The PCAOB did not receive comment on this Form 4 amendment and has determined to adopt it as proposed. The PCAOB believes the Form 4 amendment will contribute to investor protection by providing the PCAOB with useful information. This reporting requirement is expected to result in small compliance costs related to reporting this information for a small number of firms.

Amendments made in light of administrative experience. Under the amendments to Rule 5422 the Division of Enforcement and Investigations (''DEI'') need not make available for inspection and copying any document prepared by persons retained by the PCAOB or the PCAOB's staff to provide services in connection with a PCAOB investigation, disciplinary proceeding, or hearing on disapproval of registration. The amendments also permit DEI to withhold documents accessed from generally available public sources except to the extent that DEI intends to introduce such documents as evidence. Commenters were concerned that there is no parallel provision in the SEC's comparable rule, and that they could enable DEI to withhold exculpatory documents. Because the SEC's rule is structured differently, and the PCAOB does not agree that the amendments permit DEI to withhold exculpatory documents, the PCAOB has determined to adopt the amendments as proposed in most respects. The amendments to Rule 5422 are designed to correct an anomaly in DEI's document production requirements. These amendments will facilitate the PCAOB's efficient deployment of its enforcement program's resources. The PCAOB does not expect that the amendments to Rule 5422 will result in increased compliance burdens for registered firms or other market participants.

The Board is also amending Section 1000.08(m) of the SECPS membership requirements requiring that registered firms (that are former members of the SECPS) notify the Commission's Office of the Chief Accountant of the end of an auditor's relationship with an issuer audit client (including an EGC audit client) only if the issuer has not timely filed Form 8–K.[214] Previously, these notices were required irrespective of whether the issuer audit client reported the change in auditors in a timely filed Form 8–K. This amendment is designed to streamline the SECPS reporting requirement and to make firm notices more meaningful.[215] The PCAOB is also updating Appendix I of SECPS Section 1000.43 to reflect the SEC's updated contact information and preference for email notifications.[216]

[212] *See* CAQ Comment Letter; Crowe Horwath Comment Letter; EY Comment Letter; KPMG Comment Letter; McGladrey Comment Letter.

[213] *See* KPMG Comment Letter.

[214] *See* SECPS sec. 1000.08(m)(1). As amended, if by the end of the fifth business day after a client-auditor relationship has ended, and the issuer has not reported the change in auditors in a timely filed Form 8–K, then a former SECPS member firm must simultaneously send a written report of this fact to the former client and to the SEC's Office of the Chief Accountant.

[215] For SEC Registrants that do not file current reports on Form 8–K, Section 1000.08(m) remains unchanged. Notices for these former clients are due by the end of the fifth business day following the end of the firm's determination that the client-auditor relationship has ended, irrespective of whether or not the registrant has reported the change in auditors in a timely filed report. *See* SECPS sec. 1000.08(m)(2).

[216] The SEC staff strongly encourages emailing the SECPS report notification to *SECPSletters@sec.gov. See* Appendix I, SECPS sec. 1000.43. *See also http://www.sec.gov/about/offices/oca/10a1notices.htm* (''The Office of the Chief

Commenters generally supported reporting issuer auditor changes under Section 1000.08(m) only if the issuer audit client has not reported the change in auditors in a timely filed SEC form (exception reporting).[217] But one commenter suggested that Section 1000.08(m) should be eliminated entirely,[218] and one other commenter said Section 1000.08(m) reporting is ''working, helpful, and appropriate'' and should not be amended.[219] After considering these comments, the PCAOB has determined that more focused Section 1000.08(m) reporting for SEC Registrants that are required to file current reports on Form 8–K should enhance the SEC's ability to monitor issuer auditor changes. The amendments to Section 1000.08(m) of the SECPS membership requirements are designed to make firms' SECPS notices more meaningful. These amendments will contribute to the SEC's oversight of issuer auditor changes.

Requiring that issuer auditor changes be reported only on an exception basis for Form 8–K filers will also mean that auditors will be required to make fewer SECPS reports to the SEC, eliminating duplicative reporting of issuer auditor changes in most cases. At the same time, the PCAOB understands that there will be some incremental costs associated with the amendment to Section 1000.08(m). Auditors that are former SECPS members will bear some additional expense in monitoring whether their former audit clients reported the change in auditors in a timely filed Form 8–K. Given that former SECPS member firms are already required to make these reports, and that moving this reporting requirement to an exception basis is a fairly subtle change, the Board anticipates that these additional expenses will be minimal.

Finally, the PCAOB is amending Form 1 to require issuer CIK numbers [220] (in Items 2.1, 2.2, and 2.4), amending Form 1–WD to eliminate the requirement that ''original hard copies'' of requests for leave to withdraw from Board registration be submitted (General Instruction 4), and amending Form 3 to require firms to report circumstances where a former issuer audit client does not comply with Item 4.01 of Commission Form 8–K (Item 3.2). The PCAOB did not receive comment on these proposed amendments to Forms 1 and 1–WD and has determined to adopt them as proposed. Requiring applicants to provide issuer CIK numbers on Form 1 will increase reporting costs slightly for a small number of applicants, but it will enable the PCAOB to more easily identify issuers (as well as reducing search costs for investors, the SEC, and others). The Form 1–WD requirement will reduce compliance burdens for withdrawing firms by eliminating an unnecessary filing requirement.

The Board also received comment on these proposed amendments to Form 3. Two commenters supported this proposed reporting requirement.[221] Two commenters suggested that the proposed Form 3 reporting requirement appeared redundant to Section 1000.08(m) of the SECPS membership requirements and encouraged the Board to develop a single solution for reporting auditor changes.[222] Commenters were also concerned about the scope of the proposed Form 3 reporting, some of which commenters suggested would be difficult for the auditor to know or would not be relevant in circumstances where the auditor resigns or does not stand for reappointment.[223] Finally, one commenter said requiring auditors to make a Form 3 filing in these circumstances would inappropriately put auditors in the position of publicly reporting information that has not yet been reported by the issuer.[224]

The PCAOB has further considered this proposal in light of the comments and determined to adopt these proposed amendments to Form 3 largely as proposed. To ensure that the Board and public are made aware of these events, the Board is amending the instructions to Form 3 to require firms to file a special report with the Board if a client-auditor relationship has ended and the issuer has not reported the change in auditors on a Form 8–K.[225] Specifically, if a firm resigns, declines to stand for re-appointment, or is dismissed from an issuer audit engagement, and the issuer does not comply with Item 4.01 of Form 8–K, the firm within 30 days must report on Form 3 the issuer's name and CIK number, if any, whether the firm resigned, declined to stand for re-election or was dismissed, and the date thereof.[226] The Form 3 requirement will ensure that the Board and public are made aware of issuer auditor changes. This reporting requirement is expected to result in small compliance costs for firms related to monitoring and reporting this information.

Applicability to Audits of Emerging Growth Companies

Statutory Background

The Board is adopting these amendments pursuant to its authority under Sarbanes-Oxley.[227] Before rules adopted by the Board can take effect, they must be approved by the SEC. Pursuant to Section 107(b)(3) of Sarbanes-Oxley, the SEC shall approve a proposed rule if it finds that the rule is ''consistent with the requirements of [the] Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.''

Section 104 of the Jumpstart Our Business Startups Act (''JOBS Act'') amended Sarbanes-Oxley to provide that any additional rules adopted by the PCAOB after April 5, 2012 do not apply to audits of emerging growth companies (''EGCs'') [228] unless the SEC

Accountant strongly encourages sending the SECPS report notification to *SECPSletters@sec.gov.* The staff will accept the date the email is received as the notification date.'').

[217] Crowe Horwath Comment Letter; EY Comment Letter; Grant Thornton Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[218] KPMG Comment Letter.

[219] D&T Comment Letter.

[220] CIK numbers are unique, publicly-available identifiers and access codes issued by the SEC's Electronic Data Gathering, Analysis, and Retrieval System.

[221] *See* EY Comment Letter; KPMG Comment Letter.

[222] *See* CAQ Comment Letter; KPMG Comment Letter (recommending that the SECPS requirement be eliminated).

[223] *See* CAQ Comment Letter; Crowe Horwath Comment Letter; KPMG Comment Letter; McGladrey Comment Letter; PWC Comment Letter.

[224] *See* D&T Comment Letter (suggesting, as an alternative, that the PCAOB be copied, on a confidential basis, on the five-day SECPS letter so that the Board could be timely informed of issuer auditor changes).

[225] Form 3, Item 3.2 is only triggered by an issuer's failure to comply with Item 4.01 of SEC Form 8–K. This reporting requirement does not apply to foreign private issuers (that are required to report issuer auditor changes on Item 16F of Form 20–F) or investment companies other than business development companies (that are required to report auditor changes on Item 77K of Form N–SAR).

[226] *See* Form 3, Item 2.1–C and Item 3.3. If the issuer comes into compliance with an SEC requirement to make a report concerning the matter pursuant to Item 4.01 of Form 8–K during this 30-day period, the firm would not be required to report the change in auditors on Form 3.

[227] Under Section 101 of the Act, the mission of the PCAOB is to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 101(g) authorizes the Board to adopt rules to provide for ''the exercise of its authority, and the performance of its responsibilities under [the] Act.'' Section 103 of the Act authorizes the Board to adopt auditing standards for use by registered public accounting firms in the preparation and issuance of audit reports ''as required by [the] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.''

[228] Section 3(a)(80) of the Exchange Act defines the term ''emerging growth company.'' An issuer generally qualifies as an EGC if it has total annual gross revenue of less than $1 billion during its most recently completed fiscal year (and its first sale of common equity securities pursuant to an effective Securities Act registration statement did not occur

Continued

''determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.'' [229] Thus, the Board's amendments are subject to a separate SEC determination regarding their applicability to audits of EGCs.

To assist the SEC in determining whether the Board's amendments should apply to audits of EGCs, this submission sets forth the PCAOB's assessment of the economic consequences of these amendments. It also considers the potential impact the amendments would have on audits of EGCs, including consideration of efficiency, competition, and capital formation.

Characteristics of Self-Identified EGCs

The PCAOB has been monitoring implementation of the JOBS Act in order to better understand the characteristics of EGCs and inform the Board's considerations regarding whether it should request that the SEC apply the amendments to audits of EGCs. To assist the SEC, the Board is providing the following information regarding EGCs that it has compiled from public sources.[230]

As of October 1, 2013, based on the PCAOB's research, 1,144 SEC registrants have identified themselves as EGCs in SEC filings. These entities operate in diverse industries. The five most common Standard Industrial Classification (''SIC'') codes applicable to these entities are: Blank check companies, pharmaceutical preparations, real estate investment trusts, prepackaged software services, and computer processing/data preparation services.

A majority of the entities that have identified themselves as EGCs have begun reporting information under the securities laws. Of these entities, approximately:

- 22% identified themselves in registration statements and were not reporting under the Exchange Act as of October 1, 2013.
- 61% of entities that have identified themselves as EGCs began reporting under the Exchange Act in 2012 or later.
- 17% of these entities have been reporting under the Exchange Act since 2011 or earlier.

Approximately 24% of these entities have securities listed on a U.S. national securities exchange as of October 1, 2013. Approximately 64% of the entities that have identified themselves as EGCs and filed an Exchange Act filing indicated that they were smaller reporting companies.[231]

Audited financial statements were available for nearly all of the entities that have identified themselves as EGCs.[232] For those entities for which audited financial statements were available, based on information included in the most recent audited financial statements filed as of May 15, 2013:

- The reported assets for those entities ranged from zero to approximately $18.2 billion. The average and median reported assets of the entities were approximately $182.4 million and approximately $0.3 million, respectively.[233]
- The reported revenue for these entities ranged from zero to approximately $962.9 million. The average and median reported revenue of these entities was approximately $60.2 million and $2 thousand, respectively.
- The average and median reported assets among entities that reported revenue greater than zero was approximately $360.8 million and $69.3 million, respectively. The average and median reported revenue among entities that reported revenue greater than zero was approximately $118.7 million and $22.1 million, respectively.
- Approximately 48% of the entities that filed audited financial statements identified themselves as ''development stage entities'' in their financial statements.[234]
- Approximately 38% were audited by firms that are annually inspected by the PCAOB (i.e., firms that have issued audit reports for more than 100 public company audit clients in a given year) or are affiliates of annually-inspected firms. Approximately 62% were audited by triennially-inspected firms (i.e., firms that have issued audit reports for 100 or fewer public company audit clients in a given year) that are not affiliates of annually-inspected firms.

Efficiency, Competition, and Capital Formation Considerations for EGCs

In this section the PCAOB considers whether the action discussed above will promote efficiency, competition, and capital formation in audits of EGCs. PCAOB staff has discussed the applicability of the JOBS Act to this rulemaking with the SEC staff. The PCAOB is not aware of any EGCs that are also registered brokers or dealers. Moreover, the reporting regimes for registered brokers and dealers under SEC Rule 17a–5 are separate and distinct from those for companies subject to reporting requirements pursuant to Section 13 and 15 of the Exchange Act or for a Securities Act registration statement. The Board defers to the SEC on the applicability of the JOBS Act to brokers and dealers.

Amendments Involving No PCAOB Discretion

As described above, the conforming amendments are technical and non-substantive and are not expected to

on or before December 8, 2011.) *See* JOBS Act Section 101(a), (b), and (d). Once an issuer is an EGC, it retains its EGC status until the earliest of: (i) The first year after it has total annual gross revenue of $1 billion or more (as indexed for inflation every five years by the SEC); (ii) the end of the fiscal year after the fifth anniversary of its first sale of common equity securities under an effective Securities Act registration statement; (iii) the date on which the company issues more than $1 billion in non-convertible debt during the prior three-year period; or (iv) the date on which it is deemed to be a ''large accelerated filer'' under the Exchange Act (generally, an entity that has been public for at least one year and has an equity float of at least $700 million).

[229] *See* Section 103(a)(3)(C) of Sarbanes-Oxley (15 U.S.C. 7213(a)(3)), as added by Section 104 of the JOBS Act, Public Law 112–106 (Apr. 5, 2012).

[230] To obtain data regarding EGCs, the PCAOB's Office of Research and Analysis has reviewed registration statements and Exchange Act reports filed with the SEC with filing dates between April 5, 2012, and October 1, 2013, for disclosures by entities related to their EGC status. Any filings subsequent to October 1, 2013 are not included in this analysis. For example, a filing made after this date suggesting an entity deregistered and is no longer an EGC is not included in this analysis. The PCAOB has not validated these entities' self-identification as EGCs. The information presented also does not include data for entities that have filed confidential registration statements and have not subsequently made a public filing.

[231] Companies generally qualify to be smaller reporting companies, and have scaled disclosure requirements, if they have less than $75 million in public equity float. Companies without a calculable public equity float qualify as smaller reporting companies if their revenues were below $50 million in the previous year.

[232] Audited financial statements were available for 1,134 of the 1,144 self-identified EGCs.

[233] For purposes of comparison, the PCAOB compared the data compiled with respect to the 898 entities with companies listed in the Russell 3000 Index in order to compare the EGC population with the broader issuer population. The Russell 3000 was chosen for comparative purposes because it is intended to measure the performance of the largest 3000 U.S. companies representing approximately 98% of the investable U.S. equity market (as marketed on the Russell Web site). The average and median reported assets of issuers in the Russell 3000 was approximately $12.1 billion and approximately $1.5 billion, respectively. The average and median reported revenue from the most recent audited financial statements filed as of May 15, 2013 of issuers in the Russell 3000 was approximately $4.6 billion and $717.2 million, respectively.

[234] According to FASB standards, development stage entities are entities devoting substantially all of their efforts to establishing a new business and for which either of the following conditions exists: (a) Planned principal operations have not commenced or (b) planned principal operations have commenced, but there has been no significant revenue from operations. *See* FASB Accounting Standards Codification, Subtopic 915–10, Development Stage Entities—Overall.

result in economic consequences independent from the directives of Congress and the SEC. The PCAOB expects that these amendments will not have efficiency, competition, or capital formation effects for audits of EGCs.

Amendments Involving Some PCAOB Discretion

To the extent these amendments apply to EGCs, the PCAOB has no reason to think the economic consequences for EGCs would differ significantly from those for the general population discussed above. The compliance costs associated with these new rule and reporting requirements are relatively fixed and may have a somewhat disproportionate impact on smaller registered firms. These costs may be passed on to firms' audit clients, including smaller and newer public companies like EGCs. But the PCAOB has endeavored to minimize the cost-related implications of these amendments to the extent possible, and estimates that the cost-related implications of the amendments for issuers, brokers, and dealers will not be significant. Similarly, the PCAOB estimates that the amendments will not result in significant efficiency, competition, or capital formation effects for EGCs.

With respect to the amendments affecting broker and dealer audits, brokers and dealers enhance the efficiency and liquidity of the financial markets by playing the intermediary role of connecting retail and institutional investors to investments. The adoption of the form amendments will increase, to some extent, the total amount of information available about brokers and dealers. In addition, to the extent that the additional PCAOB independence rules further enhance auditor independence, the quality of the financial reporting of brokers and dealers may improve. Enhanced financial disclosures of brokers and dealers help reduce information asymmetry between managers and customers, and reduce the adverse selection risk for market participants. To the extent they do so, the PCAOB believes the amendments will promote market efficiency, competiveness, and capital formation by informing investors and other market participants of the broker and dealer audit practices of registered firms and promoting consistent compliance with the PCAOB's rules and standards.

Furthermore, the new information provided in the newly mandated form items can make the audit market more competitive to some extent. It enables auditors to learn more about their competitors, and can help brokers and dealers make more informed decisions in selecting auditors. Brokers and dealers serve an important financial intermediary role, so increased competitiveness in the audit market for brokers and dealers can, in theory, trickle down to the capital market. Finally, improving the financial reporting of brokers and dealers facilitates financial transactions of companies, including those of EGCs, which typically rely on smaller brokers and dealers.

Conclusion

The PCAOB requests that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply these amendments to audits of emerging growth companies. The PCAOB will assist the SEC in considering any comments the Commission receives on these matters during the public comment process.

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

Pursuant to Section 19(b)(2)(A)(ii) of the Exchange Act, and based on its determination that an extension of the period set forth in Section 19(b)(2)(A)(i) of the Exchange Act is appropriate in light of the PCAOB's request that the Commission, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, determine that the proposed rules apply to audits of emerging growth companies, as defined in Section 3(a)(80) of the Exchange Act, the Commission has determined to extend to May 5, 2014 the date by which the Commission should take action on the proposed rules.

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 email to *rule-comments@sec.gov.* Please include File Number PCAOB–2013–03 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 No. PCAOB–2013–03. This file number should be included on the subject line if email 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 rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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 charge; 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–2013–03 and should be submitted on or before February 24, 2014.

For the Commission, by the Office of the Chief Accountant, by delegated authority.[235]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–00271 Filed 1–31–14; 8:45 am]

BILLING CODE 8011–01–P

[235] 17 CFR 200.30–11(b)(2).