

July 24, 2006

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

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

Members and Staff of the Public Company Accounting Oversight Board:

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

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

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General Comments

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

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

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

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

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

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

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

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

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

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

Ownership Requirements

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

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

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

Impact of Pending Private Litigation

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

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

Need for Board Flexibility to Extend Temporary Registrations

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

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

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

Need for “Pre-Filing Conference” Procedures

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

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

Sincerely,



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Senior Vice President
AICPA

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Public Company Accounting Oversight Board
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cc: Mr. Mark W. Olson, Chairman, PCAOB
Ms. Kayla J. Gillan, Member, PCAOB
Mr. Daniel L. Goelzer, Member, PCAOB
Mr. Willis D. Gradison, Member, PCAOB
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