

Board

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I. Introduction

The Sarbanes-Oxley Act of 2002 (the "Act"), as originally enacted, made it unlawful for public accounting firms that are not registered with the Public Company Accounting Oversight Board ("PCAOB" or "Board") to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any "issuer" (which generally encompasses public companies with securities that trade in U.S. capital markets).^{1/} The Act authorizes the Board to carry out a range of oversight responsibilities related to issuer audits. Those responsibilities include establishing auditing, attestation, quality control, ethics and independence standards to be used in the preparation and issuance of audit reports;^{2/} conducting a program of inspections of registered public accounting firms in connection with their performance of audits, issuance of audit reports, and related matters involving issuers;^{3/} and, when appropriate, investigating and disciplining registered public accounting firms and associated persons of such firms.^{4/} The Board has conducted its oversight programs for approximately nine years. Those programs are codified in the Board's rules.^{5/}

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended various provisions of the Act (the "Dodd-Frank amendments") and,^{6/} among other things, gave the Board oversight authority with respect to audits of brokers and dealers that are registered with the U.S. Securities and Exchange Commission

^{1/} As defined in Section 2(a)(7) of the Act, "issuer" means an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 ("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filed a registration statement that has not yet become effective under the Securities Act of 1933 and that it has not withdrawn.

^{2/} See Section 103(a)(1) and (b) of the Act.

^{3/} See Section 104(a)(1) of the Act (originally Section 104(a) of the Act).

^{4/} See Section 105(a) of the Act.

^{5/} The Board's rules are available at <http://pcaobus.org/Rules/PCAOBRules/Pages/default.aspx>.

^{6/} Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) (the "Dodd-Frank Act").

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("SEC" or "Commission").^{7/} Specifically, 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. 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."^{8/}

The Board is proposing to update its rules to conform to the Dodd-Frank amendments. These proposals would include specific references to audits and auditors of brokers and dealers in the Board's rules.^{9/} The proposals would also conform the

^{7/} Section 110 of the Act, which was added by the Dodd-Frank amendments, incorporates the definitions of "broker" in Section 3(a)(4) of the Exchange Act and "dealer" in Section 3(a)(5) of the Exchange Act, but includes only those brokers or dealers that are required under Section 17(e)(1)(A) of the Exchange Act to file a balance sheet, income statement, or other financial statement certified by a registered public accounting firm. See Section 110(3) and (4) of the Act.

^{8/} S. Rep. No. 176, 111th Cong., 2d Sess. (Apr. 30, 2010) at 154. 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 the Act 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 explicit authority to inspect, set standards for, or engage in investigation and enforcement actions with respect to registered firms that audit brokers and dealers. Beginning in 2003, the Commission issued a series of orders granting temporary exemptions to brokers and dealers that are not issuers from the obligation to file financial statements under Section 17(e) of the Exchange Act that have been audited by a registered public accounting firm. The latest order, issued on December 12, 2006, extended the exemption to cover financial statements for fiscal years ending before January 1, 2009. As a result of the expiration of the exemption, the audits required under Section 17(e) for fiscal years ending after December 31, 2008 have been required to be performed by a registered public accounting firm.

^{9/} The Board's rules applicable to the conduct of audits typically are framed in terms of audits of issuers, either specifically or by incorporating other terms that are defined by reference to issuers. This should not be understood generally to mean,

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Board's rules to the Dodd-Frank amendments that (1) clarified the definition of "person associated with a public accounting firm,"^{10/} (2) permitted the Board to share certain information with foreign auditor oversight authorities,^{11/} 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.^{12/} Certain rules in each section of the Board's rules, except the funding rules,^{13/} and the rules related to assistance to non-U.S. authorities in inspections and investigations, would be affected by these conforming amendments.^{14/} 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
- Ethics Code

Beyond the procedural task of conforming the Board's rules to the Dodd-Frank amendments, the Board has made a more substantive assessment of how the Board's

however, that the Board's current rules do not apply to registered public accounting firms that audit brokers or dealers, or that those rules have no application at all to audits of brokers or dealers. The applicability of any Board rule must be judged on its specific terms. Firms that are registered with the Board solely because they audit brokers or dealers have, for example, the same obligations as issuer auditors to comply with Board rules on annual and special reporting (Rules 2200-2207).

^{10/} See Section 2(a)(9)(C) of the Act.

^{11/} See Section 105(b)(5)(C) of the Act.

^{12/} See Section 105(c)(6)(A) of the Act.

^{13/} 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 does not propose to substantively amend the funding rules, the Board is proposing a technical amendment to Rule 7104. See *infra* note 17.

^{14/} The Board is not proposing amendments to 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.

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new authority under the Dodd-Frank Act should be implemented. In light of this assessment, the Board is taking this opportunity to propose three additional categories of proposals that would 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 Board proposes to tailor the Board's professional practice standards to the audits of brokers and dealers. Under the proposed amendments to the Board's ethics and independence requirements, Rule 3521 (Contingent Fees), Rule 3522 (Tax Transactions), and Rule 3523 (Tax Services for Persons in Financial Reporting Oversight Roles) would apply to the audits of brokers and dealers to the same extent that they currently apply to the audits of issuers. In contrast, 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) would remain limited to services provided to issuer audit clients, and amendments would be made to add a definition of "audit committee" so that Rule 3526 (Communication with Audit Committees Concerning Independence) would be applicable to brokers and dealers that may not have organizational structures that include audit committees.

Second, the Board is proposing to amend 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 would include, 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 proposing to amend a number of rules and forms in light of administrative experience and to make a number of updates to address recent events. These amendments would, 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.

The Board requests comment on all aspects of the amendments proposed in this release. In particular, the Board is interested in responses to the comment requests specified below.

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Appendix 1 to this release provides the proposed amendments as incorporated into the Board's existing rules. Appendix 2 provides the proposed amendments to the Board's existing forms.

II. Section 1 – General Provisions

Rule 1001, in Section 1 of the Board's rules, contains definitions of terms used in the Board's rules, unless the context otherwise requires. The Board's proposed amendments would 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.^{15/} The proposed amendments would also add the new statutory term "foreign auditor oversight authority" to Rule 1001.

Accordingly, the Board is proposing the following amendments to Rule 1001.^{16/}

"Audit" and "Audit Report" (Rule 1001(a)(v) and (a)(vi)). The Board is proposing to amend the definitions of "audit" and "audit report" to conform these terms to the definitions appearing in Section 110 of the Act, which was added by the Dodd-Frank amendments.^{17/} These definitions would expand the terms to include not only audits of

^{15/} 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.

^{16/} In addition to the proposed amendments discussed below, the Board proposes to reserve Rule 1001(n)(i), and to renumber the definitions of "party" in Rule 1001(p)(iii) and "secretary" in Rule 1001(s)(iii).

^{17/} The proposed amendments would also remove the notes accompanying the definitions of "audit" and "audit report." The Board recently added these notes 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). If adopted and approved, the other proposed amendments to the definitions of "audit" and "audit report" in this release would make these notes unnecessary.

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financial statements under PCAOB auditing standards but also examinations of reports, notices, other documents, procedures or controls under PCAOB attestation standards. These definitions recognize that auditors of brokers and dealers are required under Commission rules to examine and issue reports on, among other things, broker-dealer supplemental schedules that provide information regarding a broker-dealer's net capital, reserves and other items.^{18/} Also, under the SEC's proposed amendments to SEC Rule 17a-5, the terms "audit" and "audit report" would apply to reports prepared on a broker's or dealer's financial report, compliance report, and exemption report.^{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 proposes to amend the terms "audit services" and "other accounting services" to include services provided by auditors to broker and dealer audit clients. Because firms provide different services to broker and dealer audit clients than they provide to issuer audit clients, the Board proposes definitions tailored to each category of audit client. As discussed in more detail in Section VII below, these proposed amendments would be used in the context of collecting certain fee information on broker and dealer audit clients in Form 1.^{20/} In the event that a firm has both issuer and broker and dealer audit clients, the fee information would be collected separately for issuer and for broker and dealer audit clients.

As proposed, the term "audit services," in the context of broker or dealer audit clients, would cover professional services rendered for the audit of a broker's or dealer's annual financial statements as described in SEC Rule 17a-5(d). Audit services would also include audit services rendered in relation to the audit of the supporting schedules regarding computations and information required under SEC Rules 15c3-1 and 15c3-3.

Similarly, because the proposed amendments to the definitions of "audit" and "audit report" would make note three accompanying Rule 7104(b) unnecessary, the Board proposes to remove this note.

^{18/} See generally, SEC Rule 17a-5 under the Exchange Act (17 CFR 240.17a-5).

^{19/} See proposed SEC Rule 17a-5(g). In June 2011, the SEC proposed amendments to SEC Rule 17a-5 to, among other things, update the broker and dealer audit requirements and provide for an examination of compliance, and internal control over compliance, with regulatory requirements that would provide the Commission with greater assurance as to a broker's or dealer's compliance with the requirements. See SEC, *Broker-Dealer Reports*, Exchange Act Release No. 64676 (June 15, 2011).

^{20/} See *infra* notes 94-96 and accompanying text.

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The proposed amendments to "audit services," as applied to broker or dealer audit clients, would also refer to professional services rendered in connection with engagements to attest to a broker's or dealer's assertions regarding compliance with certain regulatory requirements. For example, "audit services" would include services provided for a report on the examination or review of a broker's or dealer's assertions regarding compliance with, or exemption from, the SEC Rule 15c3-3 procedures for safeguarding customer assets. Audit services would also include services provided for a report on the broker's or dealer's supplemental report regarding Securities Investor Protection Corporation ("SIPC") annual general assessment reconciliation or exclusion from SIPC membership.

Under the SEC's proposed amendments to SEC Rule 17a-5, the proposed Rule 1001 term "audit services" would include services related to the audit of a broker's or dealer's financial statements and supporting schedules, as described in proposed SEC Rule 17a-5(d)(2), as well as the report on a broker's or dealer's compliance report, as described in proposed SEC Rule 17a-5(d)(3), a report on a broker's or dealer's exemption report, as described in proposed 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 proposed SEC Rule 17a-5(e)(4).

The term "other accounting services," would be amended to apply both to issuer audit clients and to broker or dealer audit clients. As described below, the Rule 1001 terms "tax services" and "non-audit services" would also be used to collect certain broker and dealer audit client fee information on Form 1, but the Board is not proposing to amend these terms because they are broad enough to apply to the services provided to broker and dealer audit clients in their current form.^{21/}

To the extent a firm's services and particular fees may overlap these proposed fee categories, the firm would have to attribute the fees it billed to just one of the proposed fee categories. 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 proposed fee

^{21/} See Rule 1001 (n)(ii) and (t)(i). Thus, tax services would include services related to the auditor's provision of tax compliance, tax advice, and tax planning services to broker and dealer audit clients. Non-audit services would serve as a catch-all category for any professional services other than audit services, other accounting services, or tax services.

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categories always possible. For this reason, the Board expects that estimates would be required to attribute particular billed fees to one of the proposed fee categories.^{22/}

"Foreign Auditor Oversight Authority" (Rule 1001(f)(iii)). The Board proposes to amend Rule 1001 to include the definition of "foreign auditor oversight authority" to track the definition in Section 2(a)(17) of the Act. This definition supports the Board's authority to share information with its counterparts in other countries.

"Person Associated with a Public Accounting Firm (and Related Terms)" (Rule 1001(p)(i)). The Board proposes to amend 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 also proposes to add a note to Rule 1001(p)(i) highlighting a related amendment to Section 2(a)(9). Specifically, the note explains that Section 2(a)(9) has been amended to make clear that, for purposes of the Board's enforcement 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 for the Dodd-Frank amendments states 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."^{23/}

The Board also proposes to amend a proviso that the Board included in the definition in its rules but is not included in the statutory definition. Before adopting Rule 1001(p)(i), 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 definition including a proviso that persons associated with a particular public accounting firm do

^{22/} See *infra* text accompanying note 97.

^{23/} H.R. Rep. No. 111-687, 111th Cong., 2nd Sess., at 79, (Dec. 16, 2010) (accompanying H.R. 3817, the Investor Protection Act of 2009). Portions of the Dodd-Frank Act, including section 929F, applicable to "formerly associated persons," were also in the Investor Protection Act of 2009.

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not include persons whom that firm reasonably believes are persons primarily associated with another registered public accounting firm.^{24/} Experience in administering the rule after its adoption has shown that, in contexts other than registration and reporting, this proviso to the statutory definition may create confusion and 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, and without implicating the unusual issues involved in determining what constitutes the "belief" of a "firm" at a given point in time. Accordingly, the Board proposes to add language to Rule 1001(p)(i) to limit the proviso 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 the reasonable belief proviso does not otherwise operate to amend the statutory definition.^{25/}

"Play a Substantial Role in the Preparation or Furnishing of an Audit Report" (Rule 1001(p)(ii)). The Board proposes the insertion of "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 also proposes amending this definition to correct an error, by replacing the word "accountant" with "auditor," which is the more appropriate term.^{26/}

^{24/} See *Registration System for Public Accounting Firms*, PCAOB Release No. 2003-007 (May 6, 2003) at A-3-xii. 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>.

^{25/} The Board also is proposing technical corrections to 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.

^{26/} "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.

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"Professional Standards" (Rule 1001(p)(vi)). The Board is proposing to amend the definition of "professional standards" to conform to the definition of this term in Section 110 of the Act.^{27/} Under the proposed amendments to this rule, the definition of professional standards is extended to include accounting principles and auditing standards relating to the audit reports for brokers and dealers, as well as issuers.

"Suspension" (Rule 1001(s)(iv)). The Board proposes 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 reports issued for brokers or dealers.

Questions. The Board requests comment on the changes it proposes to make to Rule 1001.

- Are the proposed amendments to these defined terms clearly stated?
- Would the proposed amendments appropriately conform Rule 1001 to the Dodd-Frank amendments?
- Are the proposed amendments to the defined terms "audit services" and "other accounting services" sufficiently clear? Are there additional or alternative broker and dealer audit client services categories the Board should define?
- Would any unintended consequences result from the proposed amendments?

III. Section 2 – Registration and Reporting Rules

This section of the Board'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 by these firms, and sets out the procedures for a firm to withdraw from registration with the Board. In addition, it 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 the grounds that providing the information would violate certain non-U.S. laws.

^{27/} The proposed amendments would also remove – as unnecessary – the note accompanying the definition of "professional standards." See *supra* note 17.

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Most of the amendments that the Board is proposing to this section are to add "broker" and "dealer" to those rules that currently apply only to auditors of issuers.

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.^{28/} Therefore, the Board is proposing revisions to 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 proposes 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 proposes amending this provision to add "brokers or dealers" to reflect the Board's expanded authority under the Dodd-Frank amendments.

Questions. The Board requests comment on the proposed changes to the rules in Section 2.

- Would the proposed amendments appropriately conform these rules to the Dodd-Frank amendments?
- Are additional or alternative changes to these rules necessary to conform these rules to the Dodd-Frank amendments?

^{28/} Before the Dodd-Frank amendments, Section 17(e)(1)(A) of the Exchange Act required every registered broker and dealer to file with the Commission a balance sheet and income statement certified by a registered public accounting firm.

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IV. Section 3 – Professional Standards

Section 3 of the Board's rules establish auditing and related professional practice standards, including auditing, attestation, quality control, ethics, and independence standards, applicable to registered public accounting firms and their associated persons. The proposed amendments would make Section 3 applicable to the 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 an annual report containing audited financial statements, supporting schedules, supplemental reports, and independent public accountant reports, as applicable, with the Commission and the broker's or dealer's designated examining authority ("DEA").^{29/} Current SEC Rule 17a-5 requires that the independent public accountant's audit be made in accordance with generally accepted auditing standards ("GAAS"), and include a "review" and appropriate tests of the broker's or dealer's accounting system, internal accounting control and procedures for safeguarding securities.^{30/}

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 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.^{31/} 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

^{29/} See Section 17(a) and (e) of the Exchange Act, and SEC Rule 17a-5(d).

^{30/} See SEC Rule 17a-5(g).

^{31/} SEC, *Commission Guidance Regarding Auditing, Attestation, and Related Professional Practice Standards Related to Brokers and Dealers*, Exchange Act Release No. 62991 (Sep. 24, 2010).

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standards of the PCAOB.^{32/} Finally, in July 2011, the Board proposed audit and attest standards that would apply to audit and attest engagements for brokers and dealers required under the proposed amendments to SEC Rule 17a-5.^{33/}

If the Commission adopts its proposed amendments to SEC Rule 17a-5, or provides other direction that auditors of brokers and dealers are to comply with PCAOB professional standards, the Board's auditing, attestation, quality control, and independence standards would then apply to audit, attest, and other engagements for brokers and dealers required by Section 17 of the Exchange Act and SEC Rule 17a-5. Until that time, the Commission's September 2010 interpretive guidance is operative, and, under that guidance, auditors of brokers and dealers should continue to apply the AICPA's auditing and attestation standards to SEC Rule 17a-5 engagements.^{34/}

A. 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. If, as anticipated, the Commission directs that PCAOB standards apply to audits of brokers and dealers, Rules 3100 and 3101 will become applicable to those audits without any need for amendment to those rules.

Rules 3200T, 3300T and 3400T generally require registered firms and their associated persons to comply with the AICPA's auditing, attestation and quality control

^{32/} SEC, Exchange Act Release No. 64676.

^{33/} See *Proposed Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards*, PCAOB Release No. 2011-004 (July 12, 2011), and *Proposed Auditing Standard on Auditing Supplemental Information Accompanying Audited Financial Statements*, PCAOB Release No. 2011-005 (July 12, 2011), which would apply to the audits of both issuers and brokers and dealers.

^{34/} See *supra* note 31. If the proposed amendments to Rules 3200T, 3300T, and 3400T are adopted and approved before the Commission determines that the PCAOB's professional standards apply to SEC Rule 17a-5 engagements, the Board will delay the compliance date for these proposed amendments until after the Commission has made this determination. See *also infra* text accompanying note 69.

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standards as in existence on April 16, 2003, to the extent not superseded or amended by the Board. If the amendments the Board is proposing in this release are adopted and approved, Rules 3200T and 3300T would, by their terms, become applicable to audits of brokers and dealers. Upon direction from the Commission that auditors of brokers and dealers are to comply with PCAOB standards, Rules 3200T and 3300T, as well as standards adopted by the Board and approved by the Commission, would apply to audit, attest, and other engagements for brokers and dealers required under Section 17(e)(1)(A) of the Exchange Act to file financial statements.

To clarify that Rule 3300T regarding interim attestation standards would apply, as noted above, to broker or dealer engagements, the Board is proposing to remove the words "for issuers" from the phrase in the rule "audit reports for issuers." As a result, Rule 3300T would apply, and the interim standards would have to be followed, in connection with attestation engagements related to the preparation or issuance of audit reports for brokers and dealers as well as issuers.^{35/}

Rule 3400T requires, among other things, that certain registered firms – firms that were members of the former SEC Practice Section ("SECPS") of the American Institute of Certified Public Accountants – 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.^{36/} Under the proposed amendments, the Board would only apply the SECPS membership requirements to the auditors of broker and dealers that were members of the SECPS in 2003. This proposed approach would be consistent with the current rule (which applies the SECPS membership requirements only to those registered firms that are former members of the SECPS). In the future,

^{35/} As noted above, the Board is proposing to amend 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.

^{36/} 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 122.

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the Board intends to address the quality control standards more generally, and to consider whether the substance of the SECPS membership requirements should be applied to other registered firms.

The Board also is proposing to amend the rules in Section 3 to remove outdated and currently irrelevant provisions. For example, the Board is proposing amendments to delete the Notes to Rules 3200T, 3300T and 3400T that address 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 proposing to delete Rule 3101(c), which provided relief from certain documentation requirements before November 2004. The Board is proposing to delete 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. Finally, the Board is proposing to amend Rule 3400T to remove the Note that addresses application of the SECPS membership requirement for concurring partner reviews, which was superseded by AS 7, Engagement Quality Review.

B. Auditor Independence

Registered public accounting firms must follow not only the Commission's auditor independence requirements^{37/} but also, to the extent applicable, the ethics and auditor independence requirements in Rules 3520 through 3526.^{38/}

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 amended by the Dodd-Frank amendments, the Board proposes to merge Rule 3600T into Rule 3500T. This proposal would result in the specific auditor independence rules

^{37/} SEC Regulation S-X, Rule 2-01.

^{38/} 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.

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following the incorporation of the interim independence rules without having to renumber the existing PCAOB auditor independence rules. The Board also is proposing a technical amendment to current Rule 3600T(b) to delete a reference to Independence Standards Board Standard No. 1, which was superseded by Rule 3526.^{39/}

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.^{40/} The areas covered by these rules, and the Board's proposed application of each rule to audits of brokers and dealers, are discussed below.^{41/}

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

The Board is proposing to add 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.^{42/} The proposed definition generally would track 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 proposed definition would include a phrase indicating that for nonissuers, if no audit committee or board of directors (or equivalent body) exists, the term would mean those persons designated to oversee the

^{39/} PCAOB Release No. 2008-003 at 4.

^{40/} See, e.g., PCAOB Release Nos. 2003-011; 2005-014; 2005-20; 2007-005A; and 2008-003.

^{41/} 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.

^{42/} See proposed Rule 3501(a)(v).

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accounting and financial reporting processes of the entity and the audits of entity's financial statements.^{43/} As a result, if a broker or dealer audit client (or potential client) did not have an audit committee or a board of directors, the auditor could provide the Rule 3526 communications to persons overseeing the broker's or dealer's accounting and financial reporting processes and its audits.

The Board does not propose that the broker or dealer audit client or potential client would have to formally designate persons who oversee the client's accounting and financial reporting processes and audits. Instead, auditors would be 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 designated person could be the owner. Under a limited partnership, the designated person could be the managing or general partner responsible for preparation of the financial statements and oversight of the partnership's audits.

Although the Board is not proposing amendments to other definitions in Rule 3501, the Board notes that the meaning of certain definitions may be altered when the Board's rules and standards are made 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." If the Board's rules become applicable to the audits of brokers and dealers, the "entity" referenced in this definition would include a broker or dealer, as well as an issuer.^{44/}

^{43/} The Board proposed essentially the same definition of "audit committee" in its recent audit committee communications proposal. See *Proposed Auditing Standard Related to Communications with Audit Committees*, PCAOB Release No. 2011-008 (Dec. 20, 2011).

^{44/} The definition of "audit client" in SEC auditor independence rules includes brokers and dealers. See SEC Rule 17a-5(f)(3), which governs audits of brokers and dealers and states, "An accountant shall be independent in accordance with the provisions of Rules 2-01(b) and (c) of Regulation S-X." Similarly, the SEC's proposed amendments to SEC Rule 17a-5 would state, "The independent public accountant must be qualified and independent in accordance with § 210.2-01 of this chapter and, in addition, the independent public accountant must be registered with the Public Company Accounting Oversight Board if required by the Sarbanes-Oxley Act of 2002." See proposed SEC Rule 17a-5(f)(1).

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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 to all associated persons in all registered public accounting firms and the Board is not proposing any amendment to the rule.

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 proposed change in the definition of "audit client" described above, this rule would apply to auditors of brokers and dealers as well as to auditors of issuers. To remove any doubt that this rule would apply to auditors of brokers and dealers, as well as to auditors of issuers, the Board is proposing to remove the reference to "an issuer" from Note 1 of this rule, and to make other technical changes.

Contingent Fees (Rule 3521). This rule, which is consistent with the SEC's auditor independence rules,^{45/} states that a registered public accounting firm is not independent if it enters into a contingent fee or commission arrangement, directly or indirectly, with its audit client. With the expanded interpretation of "audit client" as noted above, this rule would apply 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,^{46/} making the PCAOB rule similarly applicable to those audits should not affect practice in this area.

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

^{45/} See SEC Rule 2-01(c)(5) of Regulation S-X.

^{46/} See SEC Rule 17a-5(f)(3), stating, "An accountant shall be independent in accordance with the provisions of Rules 2-01(b) and (c) of Regulation S-X."

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confidential transactions"^{47/} under the Internal Revenue Service's regulations or transactions that would be considered "aggressive tax position transactions."^{48/}

The Board adopted this Rule in 2005 following a report by the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs (the "Subcommittee") that some of the nation's largest accounting firms had in the past sold generic tax products to multiple corporate and individual clients despite evidence that some of those products were potentially abusive or illegal.^{49/} 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.^{50/} At the time the initiative was announced, IRS Commissioner Mark W. Everson 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."^{51/}

^{47/} 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.

^{48/} 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.

^{49/} 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).

^{50/} Announcement 2005-19, 2005-11 I.R.B.1.

^{51/} Internal Revenue Service ("IRS") News Release, Settlement Offer Extended for Executive Stock Option Scheme, IR 2005-17 (Feb. 22, 2005), available at

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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.^{52/} The GAO also noted that the IRS considered some of these "transactions abusive, with tax benefits subject to disallowance under existing law, and other transactions possibly to have some traits of abuse."^{53/}

The Board adopted Rule 3522 following a public roundtable discussion with individuals representing a variety of viewpoints, including investors, auditors, government officials, and others,^{54/} and the solicitation of public comments. After consideration of the information it received, the Board concluded that if an auditor markets, plans or opines in favor of the tax motivated transactions described in the rule then there is an unacceptable risk to an auditor's independence.^{55/}

With the proposed change in meaning of the term "audit client," as described above, Rule 3522 would apply to audits of brokers and dealers. Accordingly, the proposed amendments would 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). This rule prohibits auditors from providing any tax service to any person who performs a

<http://www.irs.gov/newsroom/article/0,,id=135596,00.html>. Commissioner Everson 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.*

^{52/} See GAO, *Tax Shelters: Provided by External Auditors*, GAO-05-171 (2005).

^{53/} *Id.*

^{54/} The Board held the Auditor Independence Roundtable on Tax Services (the "Roundtable") on July 14, 2004. A list of Roundtable participants may be found at pages 2 and 3 of the transcript of the Roundtable. See Auditor Independence Roundtable on Tax Services (July 14, 2004), available at <http://www.pcaobus.org/Standards/Standards and Related Rules/2004-07-14 Roundtable Transcript.pdf>.

^{55/} PCAOB Release No. 2005-014 at 23.

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financial reporting oversight role at an 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.^{56/} The rule addresses the concern that performing tax services for certain individuals involved in the financial reporting processes of an audit client creates an appearance of a mutuality of interest between the auditor and those individuals.^{57/}

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.^{58/} 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.^{59/}

The Board is proposing that Rule 3523 similarly apply to the audits of brokers and dealers. Providing such tax services for persons in a financial reporting oversight role at a broker or dealer could create the appearance that the auditor is giving preference to the person's economic interests over the preparation of accurate and fully informative financial reports filed with the Commission.

The Board recognizes, however, 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. Accordingly, the Board seeks specific comment on whether Rule 3523 prohibition on tax services for persons in a financial reporting oversight role should continue to be limited to issuer audit clients.

^{56/} *Id.* at 34-39.

^{57/} *Id.* at 34-35.

^{58/} PCAOB Release No. 2008-003 at 15.

^{59/} *Id.* at 14-15.

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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 the Sarbanes-Oxley Act, that all non-audit services for an issuer audit client "shall be preapproved by the audit committee of the issuer."^{60/} The Dodd-Frank amendments, however, did not extend the Exchange Act's issuer-audit committee preapproval requirements to non-audit services provided to brokers and dealers. In addition, the SEC's independence rules over audit committee administration are only applicable to issuers.

As a result, the Board is not proposing to extend the preapproval requirements in Rule 3524 to broker or dealer audit clients.^{61/}

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.^{62/} The prior auditing standard, Auditing Standard No. 2, had required audit committee pre-approval of internal control related non-audit services.^{63/} 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 of the Sarbanes-Oxley Act. 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. Accordingly, the Board is proposing that the application of Rule 3525 remain limited to services provided to issuer audit clients.

Communication with Audit Committees Concerning Independence (Rule 3526). The Board adopted Rule 3526 to assure that those making the decisions to hire,

^{60/} PCAOB Release No. 2005-014 at 40, *quoting* Section 10A(i)(1)(A) of the Exchange Act.

^{61/} 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.

^{62/} See PCAOB Release No. 2007-005A at 14-15 and Appendix 2.

^{63/} AS 2.33.

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compensate, and oversee the work of the auditor have information about the auditor's independence that could assist them in performing those responsibilities.^{64/} 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 reasonably may 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 that the public accounting firm is in compliance with Rule 3520, and document the substance of the discussion with the audit committee.^{65/}

SEC Rule 17a-5 requires that every broker or dealer registered with the Commission pursuant to Section 15 of the Exchange Act file a report audited by an independent public accountant,^{66/} and that the accountant must be independent in accordance with the Commission's independence rules in Regulation S-X.^{67/} It is as important that those persons discharging the responsibilities to engage 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 proposing to make 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, therefore, is proposing to add a definition of "audit committee" to Rule 3501 that would make Rule 3526 applicable to broker and dealer audit clients. This definition, as discussed above, would provide that if a broker or dealer does not have an audit committee then the

^{64/} PCAOB Release No. 2008-003 at 3-4.

^{65/} 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 audit client or persons at the audit client in a "financial reporting oversight role."

^{66/} SEC Rule 17a-5(d)(1)(i). See *also* proposed SEC Rule 17a-5(d)(2)(C).

^{67/} SEC Rule 17a-5(f)(3). The Commission's independence requirements include SEC Rule 2-01 and related interpretations. See *also* proposed SEC Rule 17a-5(f)(1).

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required communications should be made to the individuals overseeing the accounting and financial reporting processes for the broker or dealer.^{68/}

Compliance dates for Rules 3521 through 3526. If the proposed amendments to Rules 3521 through 3526 are adopted and approved, the Board will delay the date of required compliance for these proposed amendments until a Commission determination that the PCAOB auditing, attestation, and related professional practice standards should govern the preparation and issuance of audit reports to be included in broker and dealer filings with the Commission.^{69/} A Commission determination that the PCAOB standards should govern may occur upon the Commission's adoption of amendments to SEC Rule 17a-5, the adoption of other rules that provide a similar requirement for the use of PCAOB standards in the audits of broker or dealer financial and compliance reports and reviews of exemption reports, or the issuance of a Commission interpretive release. The delayed compliance date for the proposed amendments would ensure that audits of brokers and dealers would not become subject to the Board's auditor independence requirements before the Commission determines that those audits should be governed by PCAOB standards.^{70/}

Questions. The Board requests comment on the proposed amendments to the rules in Section 3.

- Should the general requirements in Rules 3100, 3200T, 3300T, and 3400T be made applicable to the auditors of brokers and dealers? If not, why not? If these general requirements become applicable to auditors of brokers and dealers should there be any transition provisions and, if so, what would be the basis for those provisions?

^{68/} See generally, Section 301 of the Sarbanes-Oxley Act, which directed 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).

^{69/} As noted above, in September 2010, the Commission issued interpretive guidance stating that references in Commission rules, staff guidance, and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to audits of non-issuer brokers and dealers, should continue to be understood to mean auditing and attestation standards generally accepted in the U.S., in addition to any applicable rules of the Commission. See Exchange Act Release No. 62991.

^{70/} See *supra* note 34.

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- Is it appropriate to apply the PCAOB's ethics and independence rules to the audits of brokers and dealers? If not, why not?
- Does providing tax services to persons in financial reporting oversight roles at brokers and dealers impair an auditor's independence with respect to that broker or dealer? Does the provision of these services to persons at brokers and dealers create the appearance of a mutuality of interest between the auditor and the broker or dealer? Should Rule 3523's prohibition on tax services for persons in a financial reporting oversight role be made applicable to broker and dealer audit clients? Would auditors or their broker and dealer audit clients need a period of transition during which the Board would delay the effectiveness of this proposed rule amendment? If so, how long should the transition period be?
- Is the Board's proposal not to apply the pre-approval rules to auditors of brokers and dealers appropriate in light of the Dodd-Frank amendments?
- Are the Board's proposed amendments to the audit committee communication rule appropriate in light of the Dodd-Frank amendments and the organizational structures of brokers and dealers?

V. 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 of brokers and dealers.^{71/} 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.

At this time, the Board proposes 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"),^{72/} 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 proposing herein to the definitions of "audit," "audit report," and "professional standards" in Section 1.

^{71/} PCAOB Release No. 2011-001.

^{72/} 17 CFR 202.140.

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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. However, if the Board determines that the firm has not addressed a criticism or defect to the Board's satisfaction, 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.^{73/} The Board proposes a conforming amendment to Rule 4009(d)(3).

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.^{74/} 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 proposed rulemaking would make these definitions permanently applicable to all of the Board's rules, the Board proposes deleting the second sentence of Rule 4020T(b).^{75/}

^{73/} See SEC Rule 140(c)(5), (d), and (e)(4).

^{74/} See PCAOB Release No. 2011-001 (June 14, 2011).

^{75/} As discussed above, we would also remove the notes accompanying the definitions of "audit," "audit report," and "professional standards" in Rule 1001. See *supra* notes 17, 27.

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VI. Section 5 – Investigations and Adjudications

Section 5 of the Board's rules govern the process of PCAOB investigations and disciplinary proceedings. The Board is proposing amendments to 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 proposing amendments to a number of the rules in this Section in light of its experience administering and enforcing these rules.^{76/}

Many of the rules in this Section would be affected by the proposed changes 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 – would 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 extends the definition of these three terms to the rules in this section.^{77/} This proposed rulemaking would make these changes part of the Board's permanent rules.

In addition, the proposed revisions to the definition of "Person Associated With a Public Accounting Firm" in Rule 1001 would 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.

^{76/} The Board is also proposing a number of technical amendments, such as updating cross-references, to Rules 5205, 5407, and 5462.

^{77/} These definitions were made part of the temporary rule for an interim inspection program because they are integral to the interim inspection program and the relative timing of that rulemaking with this rulemaking.

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A. 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 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." The Board is proposing to change 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.

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. The Board is proposing amendments to Rule 5105 to make the rule's provisions applicable to brokers and dealers. The proposed amendments to Rule 5105 would also require that entities set forth the matters on which their designated representatives will testify.^{78/} This proposal tracks the proposed amendment to Rule 5102(c)(4), discussed above, and would ensure that the Board receives appropriate notice of the subject matter of each designee's testimony.

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 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

^{78/} See proposed Rule 5105(a)(2). The Board is proposing to change the phrase "may set forth" in Rule 5105(a)(2) to "shall set forth."

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105(b)(5): self-regulatory organizations and foreign auditor oversight authorities. The Board is proposing to make 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.^{79/}

Self-regulatory organization. The Board is proposing Rule 5108(e) to conform to the Dodd-Frank amendments that permit the Board to share confidential information with, as newly defined in Rule 1001, "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."^{80/}

Foreign auditor oversight authority. The Board is proposing 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 proposes to define in Rule 1001.^{81/} Rule 5108(f) would track 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

^{79/} See Section 105(b)(5)(B) and (C) of the Act. We are proposing these rule amendments to maintain consistency between Sections 105(b)(5) of the Act and Rule 5108(a), which we 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).

^{80/} The term "self-regulatory organization" was adopted as a part of the Board's funding rules release. See PCAOB Release No. 2011-002

^{81/} See proposed Rule 1001(f)(iii).

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accomplish the purposes of the Act or to protect investors, the Board must also determine that it is appropriate to share such information.^{82/}

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 proposes the addition of an explanatory note at the end of Rule 5109(d), indicating that, in considering factual assertions in a statement of position, the Board will consider whether those factual assertions are supported by evidence, such as an affidavit or declaration by an individual with knowledge of the asserted facts. The note would encourage associated persons and registered firms to provide the Board with appropriate information that would further assist the Board in evaluating statements of position.

Board Referrals of Investigations (Rule 5112). Rule 5112(b) provides that the Board may refer any Enforcement 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 proposes adding subparagraph (2) to Rule 5112(b) to conform to these amendments.

B. Disciplinary Proceedings

Commencement of Disciplinary Proceedings (Rule 5200(a)(2)). The Board proposes 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 proposed amendment would conform the rule to the Dodd-Frank amendments to Section 105(c)(6) of the Act concerning the imposition of sanctions for failure to supervise.

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

^{82/} See Section 105(b)(5)(C) of the Act.

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practice, the Board is proposing amendments so that these special procedures do not automatically apply in cases involving both non-cooperation and other charges.

First, the Board proposes 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 would retain the discretion to include hearing dates or deadlines in any OIP.

Second, the Board is proposing to amend 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 proposed amendments would 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 proposal would 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).

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." The Board proposes adding a second sentence to Rule 5204 that would make it clear that respondents who raise affirmative defenses bear the burden of proving those affirmative defenses, also by a preponderance of the evidence. The proposed 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 proposed amendments to Rule 5204 would only become relevant if the interested division has met its burden of proving an alleged violation by a preponderance of the evidence. Thus, the proposal would clarify that once the

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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.

Civil Money Penalties (Rule 5300). Rule 5300(a) lists the sanctions that the Board may impose if it finds that 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,^{83/} the SEC adjusts the maximum amounts of certain penalties under the Act for inflation at least once every four years.^{84/} The Board proposes revising Rule 5300(a)(4) to recognize the penalty inflation adjustments, as published in the Code of Federal Regulations at 17 CFR 201 Subpart E. In addition, the Board proposes the addition of 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 201 Subpart E.

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. The Board proposes to expand 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 proposal would permit a self-regulatory organization to seek a stay of a hearing that is in the public interest or for the protection of investors.

Documents That May be Withheld From Production (Rule 5422). After disciplinary proceedings have been instituted, Rule 5422(a) provides that the Division of Enforcement and Investigations 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 those documents that the Division may decline to make available for inspection and copying.

^{83/} Pub. L. 104-134, 110 Stat. 1321-373 (codified at 28 U.S.C. 2461 note).

^{84/} 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).

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The Board is proposing two amendments to Rule 5422(b) to clarify the scope of the Division's ability to withhold certain documents.

First, the Board proposes clarifying Rule 5422(b)(1)(i) to cover documents "obtained" from the Board or Board's staff, or persons retained by the Board or its staff, rather than simply documents that are prepared by them. Second, the Board proposes adding Rule 5422(b)(1)(ii) to allow the Division to withhold documents "accessed from generally available public sources . . . except to the extent that the interested division intends to introduce such documents as evidence." The current rule could be misread to require the Division to log any legal research or background research done during the investigation.

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 proposes 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.

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 proposes 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. The proposed language tracks Rule 250 of the Commission's Rules of Practice.

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 proposing 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.

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.

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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 proposed clarification to Rule 5200(a)(3) discussed above, the Board proposes to add 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 also proposes to add a note to Rule 5460(a) that would set out how the Board would 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 notice of appearance and filed an electronic mailing address with the Board, pursuant to Rule 5401(c), the Board would deem service to have occurred on the date that the Secretary has transmitted the initial decision by electronic mail to the e-mail 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 proposes deleting the phrase "and any response thereto" from this provision because no Board rule permits a response to a petition for review.

Questions. The Board requests comment on the proposed amendments to the rules governing PCAOB investigations and disciplinary proceedings.

- Would the proposed conforming amendments appropriately conform the rules in Section 5 to the Dodd-Frank amendments?
- Would Board inquiries and investigations be enhanced if firms and associated persons were encouraged to provide evidence to support their statements of position?
- The proposed amendments would also clarify a number of provisions in the Board's rules concerning disciplinary proceedings, including who bears the burden of proving affirmative defenses, what information the staff makes available for inspection and copying, and motions for summary disposition. Are these proposed amendments clear? Are there alternatives to these proposals that the Board should consider? Should additional changes be made to the rules in Section 5?

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VII. Registration and Reporting Forms

The Board is also proposing to amend PCAOB Forms 1, 1-WD, 2, 3, and 4, the Board's registration, withdrawal, and reporting forms. The proposed amendments would revise the forms to call for relevant information relating to a firm's audits of brokers and dealers. That information would include, among other things, information about audit reports issued by registered firms for broker and dealer audit clients. The proposed amendments would also make a number of amendments to the forms in light of administrative experience.

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.^{85/} The Board proposes to amend Form 1 to conform with the Dodd-Frank amendments by adding "broker" and "dealer" to the Form in appropriate places.^{86/} In addition, the proposed amendments would 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,^{87/} and for which the applicant prepared, or expects to prepare or issue, audit reports during the current calendar year.^{88/} The proposed amendments would also require applicants to disclose the fees they billed to broker and dealer audit clients.^{89/} The proposed amendments would 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.^{90/}

^{85/} See Registration System for Public Accounting Firms, PCAOB Release No. 2003-007 (May 6, 2003).

^{86/} See, e.g., proposed Form 1, Items 5.1, 5.2, 7.1, and 8.1. The proposed amendments would 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).

^{87/} Proposed Form 1, Item 3.1.

^{88/} Proposed Form 1, Item 3.2 and Item 3.3.

^{89/} Proposed Form 1, Item 3.1.c-e and Item 3.2.c-e.

^{90/} Proposed Form 1, Item 5.1.c-d.

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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, proposed Part III of Form 1 would require disclosures about the applicant's broker or dealer audit clients, including their names, business address, CRD number,^{91/} CIK number,^{92/} the date of the audit report, and disclosures about the fees billed to broker or dealer audit clients by the applicant. The disclosures would be divided into four items that would closely track the items in Part II of Form 1 relating to issuer audit clients. Proposed Item 3.1 would cover broker and dealer clients for which the applicant prepared an audit report during the previous year.^{93/} Proposed Item 3.2 would cover broker and dealer clients for which the applicant prepared an audit report during the current year. Proposed Item 3.3 would cover broker and dealer clients for which the applicant expects to prepare an audit report during the current year. Proposed Item 3.4 would cover 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.

Proposed Items 3.1 and 3.2 would 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.^{94/} Because proposed Item 3.3 would refer to a future period, it would only require the broker's or dealer's name, business address, and CRD and CIK numbers. Proposed Item 3.4 would require disclosure of the broker's or dealer's name,

^{91/} 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.

^{92/} 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 also proposes to amend Form 1, Items 2.1 through 2.4 to require issuers' CIK numbers.

^{93/} Under the Board's proposed amendments to the term "audit report," proposed Item 3.1 would apply to an auditor that issued a report on a broker's or dealer's compliance or exemption report, under the Commission's proposed amendments to SEC Rule 17a-5, without also issuing an audit report on the broker's or dealer's financial statements. See proposed amendments to Rule 1001(a)(vi).

^{94/} As discussed above, we are proposing to amend the terms "audit services" and "other accounting services" to apply to broker and dealer audit clients. See *supra* note 20 and accompanying text.

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business address, CRD 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 proposed 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 "audit services, other accounting services, and non-audit services" for each broker or dealer audit client.

The Board expects that the Form 1 proposed fee disclosure requirements for broker and dealer audit clients would not affect most registered public accounting firms. First, all current auditors of broker and dealer clients should already be registered with the Board,^{95/} and so would already have filed Form 1. Also, going forward the Board expects that most new firms would 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 proposed Items 3.1 and 3.2 would generally not apply to them.^{96/} Finally, because the Board recognizes that firms with broker and

^{95/} 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 8.

^{96/} While proposed Items 3.1 and 3.2 would 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 would be required to comply with the proposed fee disclosure requirements in proposed Items 3.1 and 3.2 as to these previously provided tax and other accounting services.

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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 proposed to define them), we are proposing a note to these proposed Items that would provide that estimated amounts may be used in responding to these proposed Items in Form 1, to the extent that these fees have not previously been disclosed or otherwise known to an applicant.^{97/}

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 Board 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 proposes to add 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 proposing to collect this information on Form 1 is not that a firm's relationship with such a person would result in rejection of the firm's application, but in some circumstances it may be relevant information that would cause the Board to seek a fuller understanding of the person's role in the firm, relative to the reasons the firm seeks to register, before acting on the application. In the same vein, the Board also proposes to require 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.^{98/} The proposed amendments would add new Items 5.1.c, 5.1.d, and 5.1.e to Form 1.

^{97/} This would mean, 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 proposed rules, estimated amounts could be used in responding to these Items.

^{98/} Because currently effective denials or suspensions may have been ordered at any time, not just within the five years preceding an application, the proposed 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 proposed 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. A corresponding language change is also being proposed for Form 3, as described below.

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Part VI amendments. The Board also proposes to amend Part VI of Form 1, which currently 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,^{99/} the Board proposes that an applicant would also be required to 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).^{100/} For each such instance in the preceding or current calendar year, an applicant would be 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.^{101/}

Form 1-WD: Request to Withdrawal 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-

^{99/} 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."

^{100/} Proposed Form 1, Item 6.4. See SEC Rule 17a-5(f)(4). The Commission has proposed conforming amendments to SEC Rule 17a-5(f)(4). See SEC, Exchange Act Release No. 64676, at text preceding n.170. If adopted by the Commission, these proposed amendments would renumber paragraph (f)(4) as paragraph (f)(3) of SEC Rule 17a-5. The Board has used the Commission's proposed numbering in the proposed amendments to Form 1.

^{101/} Proposed Form 1, Items 6.5 and 6.6. The proposed amendments would 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 would not need to disclose such issue in Form 1.

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WD to the Board, in addition to submitting the form to the Board electronically.^{102/} To facilitate the 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 proposes to amend Form 1-WD's general instructions to eliminate the requirement that the form's original hard copy be submitted to the Board. Under the proposed amendment, firms would only be required to submit Form 1-WD to the Board electronically.

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.^{103/} The Board proposes to amend Form 2 to call for relevant information concerning a firm's audits of brokers and dealers.^{104/}

Part III amendments. Part III of Form 2 requires registered firms to annually disclose information about their issuer-related practice. The proposed amendments would require that registered firms indicate whether they issued any audit reports with respect to any broker or dealer during the annual reporting period,^{105/} 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.^{106/}

The Board also proposes to revise 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.^{107/} This statutory provision applies to any foreign public

^{102/} See Form 1-WD, General Instruction 4.

^{103/} See *Rules on Periodic Reporting by Registered Public Accounting Firms*, PCAOB Release No. 2008-004 (June 10, 2008).

^{104/} See, e.g., proposed Form 2, Items 3.1, 7.1, and 7.3. The proposed amendments would 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 86.

^{105/} Proposed Form 2, Item 3.1.d.

^{106/} Proposed Form 2, Item 3.1.e.

^{107/} See Section 106(d)(2) of the Act.

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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 proposal, a foreign registered firm that has already made this designation to the Commission or Board would be required to check a box indicating that the firm has done so and identify the name and address of the designated agent.^{108/} A foreign registered firm that has not already made a Section 106(d)(2) designation would be required to indicate whether or not it has performed any of the activities specified by Section 106(d)(2) since enactment of the Dodd-Frank Act.^{109/} 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.

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 proposed amendments would 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.^{110/} Also, if the firm did not issue any broker or dealer audit reports during the reporting period, the proposed amendments would 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.^{111/}

Proposed Item 4.3 would require 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 proposal would require that the firm provide the broker's or dealer's name,

^{108/} Proposed Form 2, Item 3.3.a.

^{109/} Proposed Form 2, Item 3.3.b.

^{110/} Proposed Form 2, Item 4.3.a.

^{111/} Proposed Form 2, Item 4.4. The Board also proposes to amend Form 2, Item 4.1, so that 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.

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CRD number, CIK number, and the date of the audit report(s).^{112/} Unlike the fee information the Board proposes to require for broker and dealer audit clients under Form 1, at least until the Board determines the elements of its permanent inspections program (including whether and how to differentiate among classes of brokers and dealers, and whether to exempt any category of public accounting firms from the program), the Board does not propose to impose 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, proposed Item 4.4 would require registered public accounting firms to disclose, with respect to each 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 would conform to the information currently required for issuer clients in Item 4.2.a.^{113/}

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 proposed amendments, firms would 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.^{114/} Finally, the Board proposes to amend Items 7.1, 7.2, and 7.3 to correct certain cross-references.

^{112/} Under the proposed 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.

^{113/} Note 1 to proposed Form 2, Item 4.4 would clarify that if a firm identifies a broker or dealer in response to 4.3, the firm would not have to respond to proposed Item 4.4.

^{114/} Proposed Form 2, Items 7.1.a and 7.3.a. Consistent with the current Form 2 reporting requirements, the proposal would 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.

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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 proposed amendments would revise Form 3 to call for relevant information concerning firms' audits of brokers and dealers.^{115/}

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 Commission Form 8-K) concerning the matter.^{116/} Because the Board believes that a withdrawn audit report is a risk indicator concerning the fairness or accuracy of the broker's or dealer's audited financial statements and the safeguarding of securities held for account holders preceding the withdrawal, the proposed amendments would extend the obligation to report withdrawn audit reports on Form 3 to firms' broker and dealer audit clients.^{117/} Under the proposed amendments, if a firm has withdrawn an audit report on a broker's or dealer's financial report, compliance report, or exemption report, filed pursuant to proposed SEC Rule 17a-5(d), or its consent to the use of its name in one of these reports, the firm must report the broker's or dealer's name, CRD number, CIK number, the date of the report(s) that the firm has withdrawn, and a description of the reason(s) the firm has withdrawn the report(s).^{118/} Because there is no reporting mechanism for disclosing withdrawals of reports for broker and dealer audit clients, as there is for issuer audit clients on SEC Form 8-K, the Board would apply the proposed Form 3 reporting requirement to all relevant broker and dealer report withdrawals. Under the proposals, the firm would have to file Form 3 within 30 days of withdrawing the report.^{119/}

Issuer auditor changes. The Board believes a risk is posed when an issuer (including the issuer's significant subsidiaries) decides to change auditors and the issuer does not comply with the Commission's reporting requirements concerning the change in auditors. To ensure that the Board is made aware of these events, the Board proposes to amend Form 3 to require registered firms to file a special report with the

^{115/} See, e.g., proposed Form 3, Items 2.5, 2.6, 2.8, 2.9, and 4.1. The proposed amendments would also make a technical change to General Instruction 8 of Form 3 to more closely conform the instruction to Rule 2300. See *supra* note 86.

^{116/} Form 3, Items 2.1 and 3.1.

^{117/} Proposed Form 3, Items 2.1-BD and 3.2.

^{118/} Proposed Form 3, Item 3.2.

^{119/} See Rule 2203(a); proposed Form 3, General Instruction 3.

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Board if the firm resigns, declines to stand for re-appointment, or is dismissed from an issuer audit engagement and the issuer fails to file a required report with the Commission.^{120/} Under the proposed amendments, if a firm resigns, declines to stand for re-appointment, or is dismissed from an audit engagement, and the issuer does not comply with the Commission's reporting requirements concerning auditor changes, the firm must report whether – (a) the firm resigned, declined to stand for re-election or was dismissed, and the date thereof; (b) 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; (c) the former client's audit committee (or equivalent body), or board of directors (or equivalent body) recommended or approved the change; and (d) 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).^{121/}

In addition, the Board seeks specific comment on whether it would be appropriate to amend the SECPS membership requirement 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 by the end of the fifth business day after the firm determines that the client-auditor relationship has ended, irrespective of whether or not the issuer has reported the change in auditors in a timely filed SEC Form 8-K.^{122/} The SEC's Office of the Chief Accountant has provided guidance on how these notifications should be reported to the Commission.^{123/} The Board notes that the notice reported to the Commission staff under the SECPS membership requirement is due within five business days of an auditor change, while

^{120/} See proposed Form 3, Item 2.1-C and Item 3.3. The relevant Commission reporting requirement is in Item 4.01 of Form 8-K.

^{121/} See proposed Form 3, Item 3.3.

^{122/} See SECPS sec. 1000.08(m), which also requires that the firm provide a simultaneous written notice to the former SEC audit client. SECPS sec. 1000.08(m) does not apply to the termination of engagements with broker or dealer audit clients. See Appendix D, SECPS sec. 1000.38(1)(b).

^{123/} See <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.").

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the proposed Form 3 special report would be due within 30 days of an auditor change.^{124/} Should auditors be required to provide separate notice to the Commission's Office of the Chief Accountant only if the issuer has not timely filed an SEC Form 8-K? How would the difference in the timing of these notices affect commenters' views on whether it would be appropriate to amend the SEC notification requirement?

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.^{125/} Consistent with the proposed changes to Item 5.1 of Form 1, the Board proposes to revise 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.^{126/}

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. The Board proposes to amend Form 4 to conform with the Dodd-Frank amendments by adding a new "yes" or "no" answer to Item 3.2 of Form 4. The proposed amendments would require a firm seeking to succeed to the registration status of a predecessor firm to indicate whether any 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 Board, and has never had an application for registration approved by the Board.^{127/}

^{124/} Compare SECPS sec. 1000.08(m), with proposed Form 3, General Instruction 3.

^{125/} Form 3, Items 2.12 and 2.13, and Items 5.1 and 5.2.

^{126/} Proposed Form 3, Items 2.12 and 2.13, and Items 5.1 and 5.2.

^{127/} See proposed Form 4, Item 3.2.e.3. The proposed amendments would also make a technical change to General Instruction 8 of Form 4 to more closely conform the instruction to Rule 2300. See *supra* note 86.

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Questions. The Board requests comment on the proposed amendments to the Board's forms.

- Do these proposals call for relevant information concerning the audits of brokers and dealers? Are there additional or alternative items the Board should amend? Do any of the proposed form amendments go too far? Would any unintended consequences result from the proposed amendments?
- Would applicants be able to calculate or estimate the fees billed to broker and dealer audit clients according to the proposed definitions for the statutory categories for proposed Form 1? If not, are there alternative definitions the Board should consider? Should firms be required to report audit fee information for broker and dealer audit clients on an ongoing basis on Form 2?
- Should the Board require registered foreign firms to indicate on Form 2 whether or not Section 106(d)(2) of the Act applies to them, and, if so, to provide the name and address of their designated U.S. agent? Does proposed Form 2, Item 3.3 fairly reflect the Dodd-Frank amendments to Section 106 of the Act?
- Should the Board amend the SECPS membership requirement that registered firms notify the SEC's Office of the Chief Accountant of the end of their relationships with their issuer audit clients? Would it be appropriate to require separate notice to the Commission's Office of the Chief Accountant only if the issuer has not timely filed an SEC Form 8-K? Would additional or alternative amendments to this membership requirement be appropriate?
- As required by Section 102(b)(2)(G) of the Act, proposed Form 1 would require applicants to identify instances in which a broker or dealer notified the Commission under SEC Rule 17a-5, during the current or preceding calendar year, of a disagreement with the applicant. Proposed Form 1 would require that such instances be reported only if the disagreement related to a matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission. Should registered firms be required to report notices from brokers or dealers disclosing such disagreements after the firm is registered with the Board, and on an ongoing basis, as a special report filed on Form 3?

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VIII. Ethics Code

The Board adopted the Ethics Code pursuant to Section 101(g)(3) of the Act on June 30, 2003, and it was approved by the Commission on November 7, 2003.^{128/} The Code is made up of 14 provisions: EC1 through EC14. The Board is proposing amendments to six of the 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 proposed amendments would 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 over the first nine years of the Board's existence.

The Board is proposing amendments to the note accompanying the definition of "practice" in EC2(f).^{129/} 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.^{130/} The note accompanying the current 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 proposed amendments would extend the note to former Board members and professional staff participating in the financial reporting process for, or in an audit of, a broker or dealer.^{131/}

^{128/} See *Ethics Code for Board Members, Staff and Designated Contractors and Consultants*, PCAOB Release No. 2003-008 (June 30, 2003); and *Order Approving Proposed Code of Ethics*, Release No. 34-48755 (Nov. 7, 2003).

^{129/} 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.

^{130/} 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).

^{131/} The Board is also proposing a technical amendment to the note accompanying the definition of "honoraria" in EC2(e) to clarify that meals provided to all

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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 proposes technical amendments to EC5(d) to clarify that disclosure should be made to the Ethics Officer, and, to permit flexibility, the proposed amendments would 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.^{132/} These tax-exempt entities, however, may not be principally funded from one or more public accounting firms or issuers. The Board's proposed amendments would 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 proposes to replace it with "or personal interest." Thus, under the proposed amendments, EC8's disclosure and recusal provisions would 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 proposes amending EC12(a) to require Board members and professional staff to

conference participants are not considered "honoraria" that Board members and professional staff are prohibited from accepting under EC7(a).

^{132/} See EC7(b)(2)(C).

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disclose employment negotiations with brokers or dealers, in addition to registered accounting firms and issuers.

Questions. The Board requests comment on the proposed amendments to the Ethics Code.

- Would the proposed amendments appropriately conform the Ethics Code to the Dodd-Frank amendments?
- Should the Board consider additional changes in light of the Board's expanded authority? What additional amendments would be appropriate?
- Are the Board's technical amendments appropriate?

IX. Request for Public Comment

Interested persons are encouraged to submit their views to the Board. The Board seeks comment on all aspects of the proposal. Written comments should be sent to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments also may be submitted by e-mail to comments@pcaobus.org or through the Board's Web site at www.pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 39 in the subject or reference line and should be received by the Board no later than April 30, 2012. The Board will consider all timely comments.

On the 28th day of February, in the year 2012, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Secretary

February 28, 2012

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Appendices –

Proposed Rule Amendments

Proposed Form Amendments

Appendix 1 – Proposed Amendments to Board Rules and Ethics Code

The Board proposes to amend Sections 1, 2, 3, 4, 5, and 7 of its Rules, and its Ethics Code and as set out below. Language deleted by these proposed amendments is struck through. Language that is added is underlined.

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~~The term "audit services" means professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports 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 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),~~
Each 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)~~(4)~~ and (o), as in existence on April 16, 2003 (AICPA SEC Practice Section Manual § 1000.08(d), ~~(f)~~, (j), (m), (n)~~(4)~~ and (o)), to the extent not superseded or amended by the Board.

~~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, e.g., Rule 2-01 of Reg. S-X, 17 C.F.R. 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 an entity, the entire board of directors of the entity. For audits of nonissuers, if no such committee or board of directors (or equivalent body) exists with respect to the entity, those persons designated to oversee 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-3(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 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 3526. Communication with Audit Committees Concerning Independence

A registered public accounting firm must –

(a) prior to accepting an initial engagement pursuant to the standards of the PCAOB –

(1) describe, in writing, to the audit committee of the potential audit client, all relationships between the registered public accounting firm or any

affiliates of the firm and the potential audit client or persons in financial reporting oversight roles at the potential audit client that, as of the date of the communication, may reasonably be thought to bear on independence;

(2) discuss with the audit committee of the potential audit client the potential effects of the relationships described in subsection (a)(1) on the independence of the registered public accounting firm, should it be appointed the potential audit client's auditor; and

(3) document the substance of its discussion with the audit committee of the potential audit client.

(b) at least annually with respect to each of its audit clients –

(1) describe, in writing, to the audit committee of the audit client, all relationships between the registered public accounting firm or any affiliates of the firm and the audit client or persons in financial reporting oversight roles at the audit client that, as of the date of the communication, may reasonably be thought to bear on independence;

(2) discuss with the audit committee of the audit client the potential effects of the relationships described in subsection (b)(1) on the independence of the registered public accounting firm;

(3) affirm to the audit committee of the audit client, in writing, that, as of the date of the communication, the registered public accounting firm is independent in compliance with Rule 3520; and

(4) document the substance of its discussion with the audit committee of the audit client.

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 C.F.R. 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.~~

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, 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 5109. Rights of Witnesses in Inquiries and Investigations

* * *

(d) Statements of Position

Registered public accounting firms, and persons associated with firms, who become involved in an informal inquiry or a formal investigation may, on their own initiatives, submit a written statement to the Board setting forth their interests and positions in regard to the subject matter of the investigation. Upon request, the Board's staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to those persons and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Board for the commencement of a disciplinary proceeding. In the event a recommendation for the commencement of a disciplinary proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Board in conjunction with the staff recommendation.

Note: In considering assertions made in statements of position, the Board will take into account the extent to which the assertions are supported by evidence in the investigative record or by affidavit, declaration, or similar statement signed by an individual who claims to have knowledge of the asserted facts.

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), 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 committed 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 5205~~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 C.F.R. § 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 C.F.R. § 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 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, or obtained from, 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) any other document that is privileged, including any other document protected by the attorney work product doctrine;

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

(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)(iii) 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)(iii).

(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) or (b)(1)(iv) 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) –

(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)(iv) –

(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 5461(a); 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 5460(a) ~~204(d)~~;

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

* * *

SECTION 7. FUNDING

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.~~

* * *

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~~ Within 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."

* * *

Appendix 2 – Proposed Amendments to Board Forms

The Board proposes to amend Form 1, Form 1-WD, Form 2, Form 3, and Form 4 as set out below. Language deleted by these proposed amendments is struck through. Language that is added is underlined.

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 as to why, based on the facts and circumstances of the particular case, 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 disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information 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 Website address of the applicant.

Item 1.3 Primary Contact and Signatories

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

Item 1.4 Applicant's Form of Organization

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

Item 1.5 Applicant's Offices

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

Item 1.6 *Associated Entities* of Applicant

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

Item 1.7 Applicant's Licenses

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

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

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

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

- a. The *issuer's* business address (as shown on its most recent filing with the *Commission*), 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 accountant (i.e., the *public accounting firm* that issued the *audit report*) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company *issuers*, the fees disclosed in response to paragraphs (c) – (e) of this Item should include all fees for services rendered to the *issuer*, to the *issuer's* investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and to any entity controlling, controlled by, or under common control with, the adviser that provides ongoing services to the *issuer*.

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

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

a. The *issuer's* business address (as shown on its most recent filing with the *Commission*), 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 accountant (i.e., the *public accounting firm* that issued the *audit report*) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item. For investment company issuers, the fees disclosed in response to paragraphs (c) – (e) of this Item should include all fees for services rendered to the *issuer*, to the *issuer's* investment adviser (not including any sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser), and to any entity controlling, controlled by, or under common control with, the adviser that provides ongoing services to the *issuer*.

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

List the names of all *issuers* for which the applicant expects to prepare or issue any *audit report* dated during the calendar year in which this application is filed. In addition to the *issuer's* name, include, with respect to each *issuer*, the *issuer's* business address (as shown on its most recent filing with the *Commission*), 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 presume 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 – [RESERVED]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 (as shown on its most recent audited financial statement), 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 accountant (i.e., the *public accounting firm* that issued the *audit report*) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item.

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 (as shown on its most recent audited financial statement), 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 accountant (i.e., the *public accounting firm* that issued the *audit report*) need be disclosed in response to this Item. To the extent not previously disclosed or known by the applicant, estimated amounts may be used in responding to this Item.

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 (as shown on its most recent audited financial statement), and the *broker's* or *dealer's* CRD number, and CIK number, if any.

Note: An applicant may presume 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 (as shown on its most recent audited financial statement), 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 C.F.R. 229.304(a)(1)(iv).

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

Item 6.2 Listing of Disagreements With *Issuers*

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

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

Item 6.3 Copies of Filings

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

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 C.F.R. 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. ~~The registered public accounting firm must also submit an original hard copy of the form with manual signatures in Item 3.1 and Item 5.1, with such signatures dated not later than the date of electronic submission.~~
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 e-mail 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, an exhibit that complies 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 the requirements of 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. 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. 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 Website address of the Firm.

Item 1.3 Primary Contact with the *Board*

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

PART II – GENERAL INFORMATION CONCERNING THIS REPORT

Item 2.1 Reporting Period

State the reporting period covered by this report.

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

Item 2.2 Amendments

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

- 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 both ~~Items~~Item 3.1.a and 3.1.c, indicate whether, 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, the Firm issued any document with respect to financial statements of a non-*issuer* broker-dealer in which the Firm either set forth an opinion on the financial statements or asserted that no such opinion can be expressed.

Item 3.2 Fees Billed to *Issuer Audit* Clients

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

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

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

Note: 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 ~~4.15.1~~ 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 4.25.2 of Form 3, and only if the Firm has not previously reported the information on Form 1, Form 2, or Form 3, state whether, as of the end of the reporting period, the Firm was owned or partly owned by an entity that was the subject of (a) a *Board* disciplinary sanction entered within the five years preceding the end of the reporting period, which has not been vacated on review or appeal, suspending or revoking that entity's registration or disapproving that entity's application for registration, or (b) a *Commission* order under Rule 102(e) of the *Commission's* Rules of Practice entered within the five years preceding the end of the reporting period, which has not been vacated on appeal, suspending or denying the privilege of appearing or practicing before the *Commission*.

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

1. The name of each such entity;
2. A description of the nature of the relationship;
3. The date that the Firm entered into the relationship; and
4. The date of the relevant order and an indication whether it was a *Board* order or a *Commission* order.

Item 7.3 Certain Arrangements to Receive Consulting or Other Professional Services

a. Other than a relationship required to be reported in Item 4.35.3 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 FIRMS*
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 e-mail address.

PART XI – EXHIBITS

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

- Exhibit 3.2 Description of Methodology Used to Estimate Components of Calculation in Item 3.2 and Reasons for Using Estimates
- Exhibit 99.1 Request for Confidential Treatment

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

FORM 3 – SPECIAL REPORT FORM

GENERAL INSTRUCTIONS

1. Submission of this Report. Effective 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, an exhibit 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 ~~complies~~ fails to comply with the requirements of 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. 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 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 2.1-1 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-B-D The Firm has withdrawn an *audit report* on a broker's or dealer's financial report, compliance report, or exemption report filed pursuant to SEC Rule 17a-5(d). (Complete Item 3.2 and Part VIII.)

Item 2.1-C The Firm has resigned, declined to stand for re-appointment, or been dismissed from an *audit* engagement for an *issuer* (or a significant subsidiary of an *issuer*), and the *issuer* has failed to comply with a *Commission* requirement to make a report concerning the matter. (Complete Item 3.3 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*, ~~or~~ (b) a *Commission* order under Rule 102(e) of the ~~*Commission's Rules of Practice*~~ suspending or denying the privilege of appearing or practicing before the *Commission*, 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, ~~or~~ (b) a *Commission* order under Rule 102(e) of the ~~*Commission's Rules of Practice*~~ suspending or denying the privilege of appearing or practicing before the *Commission*, 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 e-mail of the person most recently designated by the Firm (on Form 2, Form 3, or Form 4) as the Firm's primary contact with the *Board*, or the Firm is designating a new person to serve as the primary contact. (Complete Item 7.2 and Part VIII.)

Amendment

Item 2.19 Amendments

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

- a. Indicate, by checking the box corresponding to this item, that this is an amendment.
- b. Identify the specific Item numbers of this Form (other than this Item 2.19) as to which the Firm's response has changed from that provided in the most recent Form 3 or amended Form 3 filed by the Firm with respect to the events reported on this Form.

PART III – WITHDRAWN AUDIT REPORTS 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 *Withdrawn broker and dealer audit reports*

If the Firm has withdrawn an *audit report* on a *broker's* or *dealer's* financial report, compliance report, or exemption report, pursuant to SEC Rule 17a-5(d), or withdrawn its consent to the use of its name in a report, document, or written communication containing a *broker's* or *dealer's* financial report, compliance report, or exemption report, provide –

- a. The *broker's* or *dealer's* name, CRD number, and CIK number, if any;
- b. The *date(s)* of the report(s) that the Firm has withdrawn; and
- c. A description of the reason(s) the Firm has withdrawn the report(s).

Item 3.3 *Issuer auditor changes*

If the Firm has resigned, declined to stand for re-appointment, or been dismissed from an *audit* engagement and the former client is an *issuer* (or a significant subsidiary of an *issuer*) 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, state –

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

- b. Whether the Firm's audit report(s) for the former client 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;
- c. Whether the former client's audit committee (or equivalent body), or board of directors (or equivalent body) recommended or approved the decision to change Firms; and
- d. Whether during the former client's two most recent fiscal years and any subsequent interim period preceding such change in Firms there were any disagreements with the Firm on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of the Firm would have caused the Firm to make reference to the subject matter of the disagreement(s) in connection with its audit report(s).

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*, ~~or~~ (b) a *Commission* order under Rule 102(e) of the *Commission's Rules of Practice* suspending or denying the privilege of appearing or practicing before the *Commission*, 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, ~~or~~ (b) a *Commission* order under Rule 102(e) of the *Commission's Rules of Practice* suspending or denying the privilege of appearing or practicing before the *Commission*, 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 e-mail address of the person most recently designated by the Firm (on Form 2, Form 3, or Form 4) as the Firm's primary contact with the *Board*, or if the Firm is designating a new person to serve as the primary contact, provide the name and current business mailing address, business telephone number, business facsimile number, and business e-mail of the partner or authorized officer of the Firm who will serve as the Firm's primary contact with the *Board*.

PART VIII – CERTIFICATION OF THE FIRM

Item 8.1 Signature of Partner or Authorized Officer

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

- 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 e-mail address.

PART IX – EXHIBITS

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

Exhibit 99.1 Request for Confidential Treatment

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

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* Website. 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, an exhibit 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 complies fails to comply with the requirements of 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. 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 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 Website 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 e-mail address of a partner or authorized officer of the Firm who will serve as the Firm's primary contact with the *Board*, including for purposes of 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 e-mail 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. 2003-011A (Nov. 13, 2003).

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) has never had 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) has never had 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 e-mail 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.