PRICEWATERHOUSECOOPERS

July 24, 2006

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Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW, 9th Floor
Washington, DC 20006

RE: PCAOB Rulemaking Docket Matter No. 019, Release No. 2006-004, Proposed Rules on Periodic Reporting by Registered Public Accounting Firms

Dear Mr. Secretary,

PricewaterhouseCoopers LLP appreciates the opportunity to comment on the Public Company Accounting Oversight Board's proposed rules, *Proposed Rules on Periodic Reporting by Registered Public Accounting Firms, PCAOB Release No. 2006-004, May 23, 2006, PCAOB Rulemaking Docket Matter No. 019*. We support the PCAOB's efforts to establish guidelines for meaningful reporting by registered public accounting firms intended to enhance oversight of the accounting profession and the role it plays in providing the investing public with information regarding public companies and their financial position and results. We have reviewed the PCAOB's proposed rules and believe they contain measures that would advance these goals. We do, however, have a number of observations and proposals that we feel will help support the overall objectives of the Board. Our comments are set forth in the attachment.

Many of our comments are framed by the following overarching themes:

- balancing the benefits of the new requirements to the PCAOB against costs of compliance to firms;
- resolving temporal issues presented by the proposed rules, both with respect to the timing of implementation of the rules and in connection with the various dates, periods and deadlines specified for ongoing reporting obligations;
- minimizing difficulties that may arise out of the retrospective aspects of certain rules; and
- highlighting the particular concerns of foreign registered public accounting firms.

Our comments address specific operational and legal issues from the proposed requirements, and, where appropriate, we propose alternatives that we believe would deal with our concerns. Throughout our comments, however, we have made adherence to the regulatory purposes underlying the PCAOB's proposals the guiding principle informing our discussion.

We hope that our commentary will help the PCAOB strike the right balance between ensuring the Board receives the relevant information it needs and allowing registered public accounting firms to satisfy the reporting requirements without undue burden and expense.

We will be pleased to discuss any of our comments or answer any questions that you may have. Please do not hesitate to contact Richard R. Kilgust at (646) 471-6110 regarding our comment letter.

Very truly yours,

PricewaterhouseCoopers

PricewaterhouseCoopers

PricewaterhouseCoopers Comment Letter Dated July 24, 2006

PROPOSED RULES ON PERIODIC REPORTING BY REGISTERED PUBLIC ACCOUNTING FIRMS, PCAOB Release No. 2006-004, May 23, 2006; PCAOB Rulemaking Docket No. 019

PricewaterhouseCoopers ("PwC")[1] appreciates the opportunity to comment on the Public Company Accounting Oversight Board's (the "Board" or "PCAOB") rulemaking proposal relating to periodic reporting by registered public accounting firms.

PwC fully supports the Board's efforts to develop an appropriate system of annual and special reporting. We favor rules that will facilitate the Board's inspection program and provide meaningful and useful information about registered public accounting firms. We are cognizant and appreciative of the Board's stated desire to avoid unnecessary and unduly burdensome regulations. Such concern is both necessary and appropriate.

This comment letter presents our comments on certain aspects of the proposed rules that we believe should be clarified and/or reconsidered to mitigate burdens on registered public accounting firms. Where appropriate, we propose alternatives that we believe would address these points while remaining faithful to the Board's underlying purposes for the proposed rules.

Our comment letter is divided into five main sections:

(i) General Comments.

Section I outlines general observations and themes that recur throughout our comments, including (a) balancing the benefits of new reporting requirements against the costs and burdens to firms of implementing them, (b) adopting any reporting rule within a reasonable period of time while providing sufficient time for firms to implement measures to enable compliance, (c) minimizing any unnecessary retrospective aspects of the proposed rules, and (d) limiting unintended consequences for foreign firms.

(ii) Annual Reporting Rules and Form 2.

Section II focuses on the proposed annual reporting requirements and Form 2. Among PwC's chief concerns are (a) difficulties in calculating precise revenue percentages attributable to services provided to SEC issuer audit clients, (b) issues raised by the proposed reporting requirements for relationships between a firm and certain persons and entities, (c) the need for a more refined definition of an "acquisition," and (d) other operational and legal observations about compliance with the proposed rules for annual reporting.

(iii) Special Reporting Rules and Form 3.

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[1] PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International, Ltd., each of which is a separate and independent legal entity.

Section III discusses PwC's concerns about the special reporting requirements and Form 3. These concerns include (a) the short timeframe and one-size-fits-all approach of the proposed 14-day period for filing special reports, (b) the vagueness of the "awareness" trigger for reporting and resultant uncertainties about reporting duties, (c) issues related to the proposed requirement that firms report certain issuer conduct to the Board, (d) issues arising out of required reporting of issuer, as opposed to firm, conduct, (e) overbreadth and other issues with respect to the reporting of legal proceedings, (f) concerns over the current reporting of the firm's relationships with certain persons and entities contemplated by Form 3 and (g) other operational and legal observations about compliance with the proposed rules for special reporting.

(iv) Confidential Treatment.

Section IV focuses on the need for guidance and protocols regarding the treatment of confidential information.

(v) Legal Impediment and Other Issues Affecting Foreign Firms.

The final Section discusses the need for a broader rule concerning the withholding of information based on claims of legal impediment.

PricewaterhouseCoopers Comment Letter Dated July 24, 2006
PROPOSED RULES ON PERIODIC REPORTING BY REGISTERED PUBLIC ACCOUNTING FIRMS, PCAOB Release No. 2006-004, May 23, 2006; PCAOB Rulemaking Docket No. 019

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I. GENERAL COMMENTS.

A. BALANCING COSTS AND BENEFITS.

The proposed rules, if adopted as written, would require accounting firms to design and implement new information-gathering and -reporting processes. PwC believes strongly that it is important to balance the need for the information required by these rules against the imposition on registered public accounting firms of increased costs and burdens that may result from the new requirements. We are cognizant of, and appreciate, the Board's sensitivity to regulatory burdens and its efforts to craft the proposed rules to reduce those burdens.

It may seem relatively straightforward to compile and produce the information required by the proposed rules. In practice, however, large registered firms, including many foreign firms for whom U.S. audit clients comprise a minority of their business, would likely encounter significant difficulties and costs in compiling some of this information. A number of our comments center on this theme. Wherever possible, we have proposed alternatives that seek to accomplish what we take to be the Board's regulatory purposes in proposing to require the reporting of information while minimizing excess burdens and costs.

It also bears noting that foreign regulators have adopted or are developing their own reporting requirements for accounting firms they regulate. These include, among others, the Canadian Public Accountability Board disclosure rules and the upcoming European Union 8th Directive requirements. Even where there is no current *per se* legal impediment to foreign firms' disclosing the information sought by the Board in the proposed rules, foreign firms may be subject to additional costs and burdens to the extent U.S. rules diverge from those of other jurisdictions. We urge the Board to consider incorporating into the final rules flexibility to allow convergence with other jurisdictions' requirements (to the extent they address goals similar to those of the U.S. reporting rules) as those requirements are adopted.

B. TIMING OF ADOPTION.

1. Need for Transitional Rules for Annual Reports.

As proposed, Item 2.1 of Form 2 provides for a reporting year beginning April 1 and ending March 31. We appreciate the Board's efforts to spare firms from having to prepare duplicate responses on the same subject at different times, and we have no objection to the Board's proposed reporting cycle (except as noted herein with respect to issuer fee calculations) for domestic registered firms. We note, however, that many foreign firms' clients make their SEC reports on Form 20F, and those reports are filed by June 30. Therefore, we propose that the reporting year for foreign firms should end on June 30, rather than March 31, and the annual report should be due on September 30 rather than June 30.

PROPOSAL: The reporting year for foreign firms should end on June 30, rather than March 31, and the annual report should be due on September 30 rather than June 30.

Despite our general support for the reporting years of U.S. firms ending on March 31, requiring reporting in 2007 for the first reporting year of April 1, 2006, through March 31, 2007, would present significant difficulties. Under the proposed schedule, the initial reporting year will likely be more than half over by the time the rules are enacted.

This will present major logistical and operational issues for registered public accounting firms. Much of the information that would be disclosed under the proposed rules has not previously been collected by accounting firms in the format require by the proposed rules. Mid-year adoption would require reporting firms to gather information retrospectively for the part of the initial year preceding the enactment of the rules and to implement new information controls and systems mid-year to track such information at the engagement level and consolidate it for firm-wide reporting.

Firms cannot begin to collect newly required information (or implement systems changes necessary to do so) until approval by the SEC of final rules. The difficulty is compounded by the fact that the rules will likely not be adopted for several months, and they are likely to be revised during that period. Because of issues like these, in a number of placed throughout this comment letter, we have proposed modifications of the rules that would address the issue of transitional difficulties while continuing to adhere to the Board's regulatory purposes.[2]

PROPOSAL: *Transitional rules should be developed for the initial period of the new reporting regime to allow firms to collect retrospective information. We have included our proposals for transitional rules in the body of this comment letter in connection with our comments on the various reporting requirements the transitional rules would affect.*

2. Querying Past Periods.

As proposed, both Form 2 and Form 3 require that the reporting firm "look back" and supply retrospective information for periods after the cut-off date of the firm's initial registration through the effective date of the Form. In this section, we address the difficulties caused by retrospective aspects of the proposed rules.

(a.) Look-back for Form 2 reporting of relationships with persons subject to disciplinary matters.

Part VII of Form 2 requires that the first annual report of a registered firm include information relating to disciplinary actions against certain persons connected with the firm or entities during periods prior to the initial reporting period dating back to the cut-off date of the firm's original registration filings (a period of over three years in the case of U.S. firms). PwC does not object to obtaining this retrospective information in the case of current employees, partners,

[2] We further request that the Board make the precise XML Schema for Form 2 and Form 3 available to firms as quickly as possible after approval, and preferably at least 60-90 days prior to the first required reporting deadline for each Form. This will allow firms the time needed to prepare for electronic submission of the Forms.

shareholders, principals, members, or owners ("firm individuals"), though it will be costly and time-consuming for registered firms to go back several years to query information that they did not track at the time.

As drafted, however, the information sought is not limited to current firm individuals. Rather, it also includes firm individuals who are no longer connected with the firm. It will be, as a practical matter, virtually impossible for firms to gather a complete body of such information since the firm no longer has any relationship with these former firm individuals. Moreover, given this lack of any current relationship between the reporting firm and these former firm individuals, it is difficult to see the value of such information to the Board. Therefore, we urge the Board to narrow the requirement so that initial annual reports must include retrospective disciplinary information about only current firm individuals at the end of the first reporting year.

PROPOSAL: *The requirement that a firm report retrospective information about the disciplinary history of the firm's employees, partners, shareholders, principals, members and owners should be limited to those individuals who are currently connected with the firm at the time the initial Form 2 is filed.*

In any event, more time may be needed than the period between adoption of final rules and the first annual reporting date for firms to query past periods. By definition, there is no immediate need for this information, as it relates to past events that have not been reported up to now.

PROPOSAL: *More time should be provided to enable firms to gather retrospective information for the initial Form 2 filing.*

(b.) *Look-back for Form 3 reporting of legal proceedings.*

The same logic applies to the retrospective reporting requirement in Rule 2203 for firms that were registered prior to the adoption of the rules. For parties no longer connected with the firm as of the rules' adoption, the requirement that registered firms retrospectively report the information sought by Items 2.6, 2.8 and 2.9 of Form 3 should be clarified to limit the disclosure requirement to persons who are currently associated with the firm as of the date the initial Form 3 is filed.

PROPOSAL: *Retrospective reporting requirements in Items 2.6, 2.8 and 2.9 should be limited to individuals that are current associated persons of the firm as of the date the initial Form 3 is filed.*

(c.) *Filing of initial catch-up Form 3.*

The Board has proposed that initial catch-up Form 3 filings be made 14 days after the effective date of the rules, which period would be added to the 21 days between SEC approval of the final rules and the effective date to make a 35-day period for firms to compile the retrospective information required for the filing. The proposed period is wholly inadequate to allow firms to

compile and evaluate the historical information, much of which has not been collected prior to now, and to prepare the Form 3 filings on time. As with Form 2 requirements, as a practical matter, firms cannot begin to collect newly required information until SEC approval of final rules, when there will be certainty around the technical requirements of the rules. We propose a 120-day period to allow firms to prepare the initial Form 3 filings.

PROPOSAL: *Firms should be required to submit their catch-up Form 3 filings no later than 120 days after the effective date of the final rules.*

C. ISSUES RELATING TO FOREIGN FIRMS.

We appreciate the Board's continued attentiveness to the operational and legal issues facing foreign firms in the proposed rules. Such firms are likely to face special legal and operational issues in gathering and reporting certain of the information that the proposed rules would require, and our comments highlight these situations. In addition, we discuss separately the limitations of the proposed approach to claims of legal impediment, which we believe in certain respects does not provide sufficient flexibility to allow foreign firms to avoid insoluble conflicts between the U.S. reporting regime and foreign laws and regulatory rules.

It is worth noting that foreign firms' task in implementing the reporting rules will be compounded by the fact that many of these firms and their clients will be completing the first year of compliance with the requirements of Audit Standard 2 and Section 404 of the Sarbanes-Oxley Act, which is scheduled to go into effect for foreign firms during the next Audit Standard 2 / Section 404 reporting cycle, which will coincide with the first year of reporting under the Board rules. To ease the burden of simultaneously implementing compliance with both Audit Standard 2 / Section 404 and the Board annual and special reporting requirements, the Board should delay implementation of the reporting requirements with respect to foreign firms until such time as the first cycle of Audit Standard 2 / Section 404 reporting by foreign firms is complete.

PROPOSAL: *The Board should delay implementation of the reporting requirements with respect to foreign firms until such time as the first cycle of Audit Standard 2 / Section 404 reporting by foreign firms is complete.*

II. ANNUAL REPORTING RULES AND FORM 2.

A. FIRM REVENUE PERCENTAGES (FORM 2, ITEM 3.2).

Item 3.2 of Form 2 calls for statistical information that breaks down the percentages of a firm's total billings that are attributable to four enumerated categories of services. We understand the Board's regulatory purpose underlying the requirements of Item 3.2 to be the need for an overall picture of the relationship between the firm's revenues derived from work for audit clients vis-à-vis non-audit clients. As proposed, this Item presents a number of logistical and operational

difficulties. We believe it would be possible to diminish the burdens of compliance with this rule by modifying the details of some of its requirements while remaining faithful to the Board's regulatory purpose.

1. Defined Service Categories.

The proposed category definitions should be conformed to SEC proxy rule definitions that are already in force in SEC rules and reported by issuers: "audit fees", "audit-related fees", "tax fees" and "all other fees", as each term is defined under SEC rules (*see, e.g.*, Item 9(e) of Schedule 14A for requirements applicable to domestic issuers). This will better enable the Board to obtain the information sought without either adding significant costs or creating interpretive difficulties that might inhere in tracking information according to two sets of definitions.

PROPOSAL: *The category definitions should be conformed to SEC proxy rule definitions that are currently in force.*

2. Reporting of Percentage Ranges.

More substantively, the proposed rule would require firms to provide an exact calculation of various categories of services for audit clients as a percentage of total firm revenue. Because this information may not correspond to current reporting metrics used by many firms for client or internal management purposes, many firms' billing and financial reporting systems likely do not presently compile or maintain information by category of services as defined in the SEC/PCAOB rules. As such, readily comparable information regarding the relationship between audit client revenues and total revenues may not exist and could not be generated without substantial effort and significant process changes and modifications to the firm's financial reporting systems.

As mentioned above, individual SEC issuer audit clients do currently generate information regarding categories of services for SEC reporting purposes. Audit procedures generally include a reconciliation of these numbers. However, this information may be maintained only by the audit teams themselves, not by any centralized firm management information system. Therefore, to collect this information could involve either significant system changes or querying the individual engagement teams. This time-consuming administrative task could impose additional burdens on the individuals that conduct audits.

Another complexity is created by the fact that audit clients report their fees to their auditors on an aggregate basis. For a large multinational accounting firm network, these fees are apportioned among many different member firms in numerous countries. Any process for determining revenue percentages would also have to break out the fees among these different member firms. This administrative burden would be exacerbated for non-U.S. firms that have significant numbers of U.S. audit clients, but for which U.S. audit clients are not their principal business. For example, a Canadian registered public accounting firm may have 70-100 U.S. audit clients that nevertheless represent a small percentage of its thousands of total clients. In such an instance (not unique to Canada), it would be unduly burdensome for the firm to have to

redesign its management information systems to capture information that is only relevant to its U.S. audit clients.

To address these issues, we propose that the Board modify the rules in two ways. First, firms should be allowed to use a reasonable estimation methodology that would yield approximate rather than exact percentages. Second, firms should be allowed to report their estimates by stating into which of several different ranges their relative percentage of each category of services falls.[3]

(a.) *Firm-chosen estimation methodology and explanation of basis for methodology.*

Because each firm will collect the raw data that will be used to calculate the relative percentage of its revenues derived from each service category in a different way according to its circumstances, a standardized approach is less likely to yield the most useful reported information for the Board than a more flexible approach.

Each firm should instead be required to use a reasonable methodology to estimate its percentages and to describe briefly the basis for its use of that methodology. The flexibility of this approach would allow each firm to choose the approach that would, in its reasonable view, best achieve the regulatory purpose of providing the Board with a meaningful picture of the relative revenues derived from each service category. The requirement that the firm explain and justify its methodology would both ensure that a reasonable, defensible methodology would be used and facilitate dialogue between the Board and the firm about both its approach and the substance of the numbers reported. This approach would carry the added benefit of allowing firms to reduce the administrative burdens and implementation costs associated with providing exact data according to a fixed formula by tailoring their approaches to their own systems and operational processes.

One method of achieving the foregoing would be to allow a firm to report the four categorized fee percentages derived using numerators (fees by each category of service) based on information reported by its audit clients during the reporting period (appropriately adjusted to pull out fees attributable to work by other registered public accounting firms) and a denominator equal to the firm's total revenues for the most recent fiscal year ended during the reporting period. This approach would create a derived number that would represent only an approximation, but it should be sufficient to achieve the requirement's regulatory purpose.

PROPOSAL: *Form 2 should require a firm to (1) choose a reasonable methodology to be used in estimating the percentages attributable to each service category and (2) explain briefly the basis for such methodology. One method would be to have the reporting firm divide categorized fee figures provided by audit clients by the*

[3] Even if the rules are not modified, firms should as a transitional matter be permitted to use audit clients' reported proxy data for the first reporting year.

firm's total revenues to approximate the actual percentages of each class of service.

(b.) *Reporting of percentage ranges rather than exact values.*

Because of the difficulties outlined in the introduction to this section, calculating the exact percentage of revenues derived from each service category will require considerable resources and will also create the risk of error even where the firm is allowed to choose the reporting methodology best suited to its own circumstances. The regulatory purpose of providing the Board with a picture of how the firm's service for audit clients compare with its services for other clients as well as the allocation of services of different types to SEC issuer audit clients could still be preserved while reducing these burdens and risks if the Form were instead to require firms to make their report by stating into which of several different ranges their relative percentage of a particular category of service falls.

For example, the percentage ranges might run from zero up to and including 10%, from amounts greater than 10% up to and including 20%, and so on. Under this approach, a firm estimating its percentage of audit services as 55% of its total revenue would report that the audit services percentage is greater than 50% but no more than 60% of its total revenue. The use of ranges rather than exact percentages would still show the relative magnitude of a firm's billings attributable to each category while avoiding the need for them to reduce the estimates illustrating this relation to an exact value, which would seem to be an exercise in diminishing returns as differences between revenues by category become small. This approach would also have the added benefit of reducing the time and effort of firms for which particular categories constitute a small fraction of revenue.

PROPOSAL: *Firms should be allowed to report their estimates by stating the range into which their percentages of each service falls.*

B. AUDIT-RELATED MEMBERSHIPS, AFFILIATIONS OR SIMILAR ARRANGEMENTS (FORM 2, ITEM 5.2).

Some of the relationships that firms must disclose with respect to audit-related memberships, affiliations and similar arrangements are defined in terms that are overbroad or ambiguous, thereby creating uncertainty about what must be reported to the Board. For example, Item 5.2.a.2 refers to "joint audits." In some foreign jurisdictions, joint audits, which may or may not be statutorily required, are not done through a network or alliance. Item 5.2.a.3 refers to arrangements with another entity by which a firm "commonly" employs or leases personnel to perform audit services. The phrase "commonly employs or leases personnel" is unclear, and we think this item needs to be revised to establish a materiality threshold so that it applies only to arrangements that are significant to a firm's audit practice taken as a whole. The text of Item 5.2 should be clarified to make clear that it is not intended to require the reporting of support personnel hired or contracted in connection with a firm's rendering of audit services.

PROPOSAL: *Item 5.2.a.2 should be revised to omit reference to joint audits, and Item 5.2.a.3 should be revised to limit it to arrangements that are significant to a firm's audit practice taken as a whole.*

C. PERSONNEL (FORM 2, PART VI AND ITEM 4.1.B).

The proposed rule requires the reporting firm to provide information about numbers of accountants, CPAs (including those with "comparable licenses from non-U.S. jurisdictions"), total personnel and personnel who worked on audit clients by functional categories. We understand why statistics of this nature may be useful to the Board in analyzing the profile of a firm's business and planning for the Board's inspection program. However, this item, particularly the requirement to identify the number of personnel who performed work for audit clients, raises several operational issues:

- While firms have systems in place to provide appropriate training and qualifications for persons who work on audit client engagements, they may not have systems in place to track which individuals do or do not in fact work on audit client engagements. As such, this reporting requirement is another situation requiring significant changes to firms' information-gathering systems.

- Many personnel may work for both audit and non-audit clients and may work for more than one audit client. Similarly, there are also likely to be personnel who performed only a very minor role or devoted a relatively small number of hours to a particular audit project. For these reasons, statistics provided pursuant to the proposed requirements would not provide relevant data to the Board.

- As a practical matter, there may be no way to satisfy this requirement short of surveying all firm personnel every year to identify all individuals who worked on the client engagement during the reporting period and to specify their positions and level of involvement in the particular engagement. As with the revenue figures above, responding to this regulatory requirement could require those working on audits to compile this information.

As illustrated above, the proposed rule would not capture information that we believe is worthwhile to the Board. It may be overinclusive in potentially over-counting individuals that work on multiple engagements and unnecessarily counting others whose involvement was peripheral to the rendering of audit services. At the same time, capturing this information would cause firms to incur costs disproportionate to the marginal value of the information.

As such, we favor a compromise solution: requiring firms to report the information sought by Item 6.1 as currently proposed but only as to personnel employed in the firm's principal audit business unit as of the end of the reporting period. This is information that can be readily obtained from existing information systems and, while this compromise approach would

admittedly not provide a completely comprehensive count of all individuals engaged in providing audit services during the reporting period, it would provide an approximation of the actual figure, as the personnel in a firm's principal audit business unit perform the bulk of audit services rendered by the firm. This proposal therefore strikes a balance between the Board's regulatory purpose of receiving a reasonably comprehensive picture of reporting firms' use of personnel in rendering audit services and the need to minimize firms' administrative burdens associated with reporting this information.

PROPOSAL: *A reporting firm should be required to report the information sought by Part VI of Form 2 as currently proposed but only as to personnel employed in the firm's principal audit business unit as of the end of the reporting period.*

For similar reasons, the requirement in Item 4.1.b that a reporting firm disclose the total number of personnel who exercised the authority to sign the firm's name to an audit report during the reporting period will be difficult to fulfill. We therefore propose that the compromise solution outlined in this section for Part VI be applied to Item 4.1.b as well, so that a firm would only be required to provide the number of partners from its principal audit business unit who are members of its principal audit business unit as of the end of the reporting period.

PROPOSAL: *A reporting firm should only be required pursuant to Item 4.1.b to provide the number of partners who are members of its principal audit business unit as of the end of the reporting period.*

If the Board elects to maintain the requirement that all personnel rendering audit services be disclosed as set forth in the proposed rules, the reporting requirement should be subject to an exception for personnel providing audit services below a *de minimis* threshold. This would reduce the administrative burden on firms in compiling this information without unduly diminishing information relevant to the Board.

PROPOSAL: *If the Board maintains the proposed requirements, firms should not be required to include in the reported number those individuals whose provision of audit services fall below a* de minimis *threshold.*

Finally, an issue particular to foreign firms is raised by Item 6.1.b of Form 2, which requires that the firm report the total number of its certified public accountants and to "include in this number all accountants employed by the Firm with comparable licenses from non-U.S. jurisdictions." In a number of foreign jurisdictions, the large variety of different professional qualifications combined with the proposed rule's requirement that licenses "comparable" to a CPA certification must be included creates a serious interpretive burden on foreign firms. This is particularly difficult in jurisdictions where there are no specific licensing requirements to practice public accounting. Without further guidance from the Board, non-U.S. firms will be required to compare the certifications of their employees against another nation's certification, an exercise outside their usual competence. This is compounded by the fact that this comparison will be

with a licensing standard in the U.S., a jurisdiction in which they may or may not have operations themselves. To avoid placing this interpretive burden on foreign firms, we urge the Board to elucidate the comparability concept more clearly by tying it more clearly to the individual's function, such as a requirement that a foreign firm report all accountants that are authorized by the firm to sign audit reports in the name of the firm.

PROPOSAL: *Foreign firms should be required to report the total number of all accountants that are (1) licensed by the jurisdiction in which they render services and (2) by virtue of such licensure are certified to perform the functions of a public accountant.*

D. CERTAIN RELATIONSHIPS (FORM 2, PART VII).

Part VII of Form 2 requires firms to disclose certain relationships into which they have entered with individuals and/or entities that have been subject to a Board or SEC sanction within the past five years. As discussed in Section I.B.2, *supra*, our position is that the retrospective reporting requirements be narrowed to eliminate certain reporting requirements that are both most onerous and least likely to produce complete, accurate and relevant information.

The disclosure requirements should be more narrowly tailored than the proposed rule on a going-forward basis as well.

PROPOSAL: *Limitations such as the following would restrict the unfair attribution of others' acts to reporting firms that enter into relationships with them, while also diminishing the administrative burden of the reporting requirements of the proposed rule:*

- *Item 7.1 requires disclosure of any employee, partner, shareholder, principal, member or owner that has been the subject of disciplinary action. For foreign firms, this represents a significant expansion of the scope of required information. We therefore propose that for foreign firms disclosure should be required only for those employees, partners, shareholder, principals, members or owners who actually render audit services to SEC issuer audit clients..*

- *Where a firm takes on an employee, partner, shareholder, principal or member that was previously connected with, or becomes wholly or partly owned by an individual that was previously an owner of, a firm that was sanctioned at the organizational level, the new firm should only be required to report the relationship where the individual in question was personally involved in the conduct that was the subject of the sanction. In other words, the fact that a firm with which the person was previously connected was subject to disciplinary sanction(s) should not require disclosure per Item 7.2 if the individual was not himself or herself involved.*

- *As proposed, the disclosure requirements with respect to consultants and contractors are too broad in the scope. Firms hire consultants and contractors to provide a wide array of professional services beyond those related to the firm's rendering of audit services to clients, and the present rule would require reporting as to all such individuals and entities. To make these disclosures with respect to all consultants and contractors would require extensive affirmative investigation by reporting firms into the past histories of entities and individuals where both transparency and the firm's control are necessarily limited and where the relationship to the firm's provision of audit services may be attenuated. To avoid the overbroad scope of this requirement, consulting and contractual arrangements should be limited to consultants and contractors who are providing services to the firm relating directly to the issuance of audit reports.*

E. ACQUISITIONS (FORM 2, ITEM 8.1).

While it is appropriate for the Board to seek information relating to acquisitions, the proposed rule requires further clarification. If the goal of the Board is to reflect a true acquisition rather than a hiring away of a certain number of key individuals, the reporting threshold of taking, 75% of another firm's partners, should be supplemented. To constitute a reportable acquisition in which a reporting firm absorbs a substantial part of another such that it is likely to be affected by the acquired firm's culture, clients and practices, a reporting firm should, in addition to taking on 75% of another firm's partners, also have acquired at least 75% of the acquired firm's assets, including its client base, and hired or retained at least 75% of the acquired firm's non-partner workforce.

Also, to avoid triggering a reporting requirement through cumulative hiring away of another firm's partners over an extended period, which is unlikely to have the effects at which the proposed rule seems to be aimed, we would propose that the 75% threshold be time-limited, such that reporting would be required where 75% of another firm's partners are taken on during a one-year period.

Finally, the relative sizes of the acquiring and acquired firms should be such that the acquisition represents a material addition to the acquiring firm that would be likely to affect its profile. Accordingly, we propose that only acquisitions involving the taking on of partners who would comprise 20% or more of the pre-acquisition partnership of the acquiring firm should trigger the reporting requirement.

PROPOSAL: *To constitute a reportable acquisition, the 75% requirement in Item 8.1 should be supplemented with the following additional requirements: (1) taking on of partners must be combined with acquisition of at least 75% of the acquired firm's assets, including client base, and at least 75% of its non-partner workforce; (2) taking on of acquired firm's partners must occur within a one-year period; and*

(3) taking on of a number of partners equal to or greater than 20% of the acquiring firm's pre-acquisition partnership.

F. AFFIRMATION OF CONSENT (FORM 2, ITEM 9.1).

Item 9.1 of Form 2 tracks the concepts in Item 8.1 of Form 1 by requiring that the firm (subject, in each case, to legal impediments identified by foreign firms) (1) affirm its consent at the organizational level to cooperate with any Board investigation, (2) affirm that it has secured from its associated persons, and agrees to enforce as a condition their continued employment, similar consents, and (3) affirm that it understands and agrees that cooperation and the securing and enforcement of consents are conditions to the continued effectiveness of its registration. However, Item 9.1.b appears to expand on the original requirements in Item 8.1 of Form 1 through the addition of the final phrase of that Item, "and that the associated person understand and agrees that such consent is a condition of his or her continued employment by or other association with the Firm."

If the intent of the Board is to make clear that the consent to be secured by firms from their associated persons must include this language, we have no objection to the substance of that requirement. The language of the requirement should, however, be modified to make clear that the requirement is only that the consent contain this language, not that the firm be required to affirm the fact of its associated persons' understanding and agreement that the consent is a condition to his or her continued employment or association, as the latter effectively would make the firm the guarantor of its associated persons' state of mind.[4]

PROPOSAL: *Item 9.1.b should be revised to clarify that firms are being asked to affirm only that the consents they have secured include language to the effect that the employee understands and agrees that the consent is a condition to his or her continued employment or association. Firms should not be required to affirm the fact of such understanding and agreement on the part of their associated persons.*

G. CERTIFICATION OF THE FIRM (FORM 2, ITEM 10.1).

It is entirely appropriate to ask the firm to state in its annual report that it has filed all required Form 3 reports during the reporting year. However, we do not think it necessary to require the certifying officer to assume personal liability for this statement. Because the firm would be liable at the organizational level for failing to file all required Form 3 reports, the individual's liability seems unnecessary and unlikely to provide any additional incentive to the firm to make sure the information it has provided is correct.

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[4] It is also worth noting that to the extent the Form 2 requirements go beyond comparable registration requirements in Form 1, the added requirements may be in conflict with foreign employment law in certain circumstances (such as where the person was employed prior to the consent requirement coming into effect). This could render the foreign firm unable as a matter of local law to enforce the consent "as a condition of employment." These situations would be subject to assertions of legal impediment.

PROPOSAL: *The certifying officer on Form 2 should not be required to sign a statement certifying the Firm's filing of Form 3 reports for all reportable events during the annual reporting period.*

III. SPECIAL REPORTING RULES AND FORM 3.

A. TIMING.

As proposed, Form 3 prescribes a 14-day filing period for all special reports. As a general proposition, we believe 14 days is an insufficient amount of time to require a firm to review, assess and report on information required by the Form. Although many of the matters covered by the Form are appropriate for current rather than annual reporting, they are not so exigent that almost immediate reporting is necessary.

As an alternative, we propose a 45-day deadline for reporting all matters listed as reportable on Form 3. A 45-day deadline would still provide timely reporting while allowing firms sufficient time to evaluate reportable matters fully, thus allowing for a fuller understanding of their impact, and, ultimately, this timing will lead to a more a more useful report. It should facilitate a more substantial, well-informed dialogue with the Board after submission of the report, to the extent additional questions arise. While it is to be expected that firms may require less than the full 45 days to become aware of and report some of the enumerated items listed on Form 3, the administrative ease and simplicity of having a single time period for all items will ease the compliance burden of reporting firms considerably.

PROPOSAL: *The time period for reporting all triggering events listed on Form 3 should be 45 days.*

B. "AWARENESS" OF THE FIRM.

Many of the Form 3 reporting requirements are triggered by the firm's "becoming aware" of the reportable event. This term is too vague and should be more clearly defined. "Awareness" of the event, rather than its occurrence, is the trigger of the reporting obligation. First, the word "awareness" is itself ambiguous. To avoid interpretive uncertainty, we propose that the "awareness" trigger be defined as actual knowledge. Second, a potential problem emerges where some individuals within a firm could have knowledge of a reportable event, while those responsible for Board reporting may not. We do not believe the Board intends that knowledge of any person within the firm should be attributed to the organization. Accordingly, we propose that the trigger should be actual knowledge of the chief executive officer, chief financial officer, chief legal officer or chief compliance officer (or their equivalents) of the reporting firm. Of course, firms would be expected to implement processes to ensure timely internal reporting of such information.

PROPOSAL: *A firm should be deemed to be "aware" of an event only when the firm's chief executive officer, chief financial officer, chief legal officer or chief compliance officer (or their equivalents) has actual knowledge of the event.*

C. REPORTING OF ISSUER CONDUCT (FAILURE TO REPORT WITHDRAWAL AND IMPROPER USE OF FIRM NAME) (FORM 3, ITEMS 2.1 AND 2.4).

Two proposed special reporting items related to audit client conduct present issues that warrant comment. These are Form 3, Item 2.1, which requires a firm to report when an audit client fails to report the firm's withdrawal, and Item 2.4, which covers improper use of the firm name. These proposals seem to be aimed at regulating issuer conduct rather than conduct of auditing firms. As such, we think they should fall within the jurisdiction of the SEC rather than the Board, which would have no power to remediate these issuer actions in any event. Moreover, firms have every incentive to work to rectify these matters themselves if the events targeted by the reporting requirements should occur.

We gather that the Board views this rule as a vehicle for firms to be able to report publicly the withdrawal of audit reports where their clients fail to do so on Form 8-K. However, it seems impractical for the Board's website to serve as a separate source of public disclosures in addition to the SEC reporting system. While we appreciate the Board's desire to afford firms a mechanism to deal with potential issues arising out of client conduct, as a practical matter, this reporting requirement represents something of a solution without a problem: it is rare that an audit client does not file a Form 8-K disclosing its withdrawal of an audit report. Similarly, it is rare that an audit client uses the firm's name without consent. For the foregoing reasons, we believe these reporting requirements to be superfluous and respectfully ask that they be removed.

In any event, if the Board does not omit these proposals, we believe these Items could be clarified in certain respects. First, the reference in Item 2.1 to Item 4.02 of Form 8-K should be to Item 4.02(b) only. Second, the rule should explain more fully what types of unauthorized use are covered. For example, it is unclear whether the rule applies to consents other than those statutorily required under the Securities Act, or to consents in connection with private offerings by public issuers. The rule should also clarify whether it applies to consents in connection with financial statements that are not contained in a document, but are incorporated by reference.

PROPOSAL: *Items 2.1 and 2.4 should be deleted. If Items 2.1 and 2.4 are not omitted, they should be clarified in certain respects.*

D. LEGAL PROCEEDINGS REPORTING (FORM 3, ITEMS 2.5 THROUGH 2.10).

In certain respects, the scope and definitions of reportable criminal or governmental regulatory proceedings in the proposed rules are expanded beyond those set forth in the registration rules. For example, Item 5.1 of Form 1 requires the registering firm to list criminal and civil proceedings brought by a governmental authority "arising out of the applicant's or such person's

conduct *in connection with an audit report*" (emphasis added), as opposed to the Form 3 requirements, which are not restricted to conduct in connection with audit reports. We believe that the requirement in Form 2 should be consistent with that imposed by the registration requirements, and therefore propose that the comparable disclosure requirements in Form 2 be limited to proceedings arising in connection with audit reports or comparable reports for non-public clients.

PROPOSAL: *Definitions of reportable events in Items 2.5 through 2.9 should be conformed to comparable requirements in Form 1 to avoid firms' having to track two sets of reporting criteria for legal proceedings. Also, matters required to be reported should be limited to audit reports or comparable reports for non-public clients.*

Foreign firms are presented with an additional issue by the change in the requirements, which require in Items 2.6 and 2.8 disclosure where a partner, shareholder, principal, owner, member or manager becomes a defendant in legal proceedings. Under Form 1, the analogous requirement in Item 5.1 was limited to associated persons, which in the case of foreign firms served to eliminate the need to report proceedings involving individuals that do not provide audit services. To return to a scope similar to that of the registration requirements, we propose that foreign firms be required to make disclosures under Items 2.6 and 2.8 only to the extent that the individual involved is a partner or manager who renders audit services to SEC issuer audit clients.

PROPOSAL: *Foreign firms should only be required to make disclosures under Items 2.6 and 2.8 if the individual at issue is a partner or manager who renders audit services to SEC issuer audit clients.*

Item 2.6 requires disclosure of criminal proceedings regarding certain persons associated with a firm. It generally limits reportable criminal offenses to specific enumerated types of offenses that could reasonably raise questions about an individual's fitness to act as an auditor for public companies. We generally agree with this targeted approach and with the enumerated categories set forth in the proposed rule. However, we urge the Board to clarify the meaning of the term "dishonesty" or to delete it entirely. The rule also contains a catchall for "any crime arising out of alleged conduct that, if proven, would bear materially on the individual's fitness to provide audit services to issuers." This is a vague standard that would require firms to make reporting decisions based on a subjective assessment of the significance of a criminal charge, which is outside the usual competence of an accounting firm. Accordingly, we propose that this catchall category be deleted.

PROPOSAL: *The catchall category of proceedings in Item 2.6 requires firms to make subjective legal judgments to fulfill their reporting requirements and therefore should be deleted.*

Items 2.7 and 2.8 require disclosure of the fact that either the firm or certain firm individuals have become a defendant or respondent in civil proceedings brought by a governmental or other

administrative authority. This requirement should be further narrowed with respect to foreign firms, many of which are based in jurisdictions where the threshold for commencing a government proceeding may be low and for which audits of U.S. public companies may comprise only a small fraction of their total practice. Accordingly, we propose that the requirements in Items 2.7 and 2.8 be limited to civil proceedings involving, in the case of foreign firms, the rendering of audit services to an issuer reporting to the SEC and, in the case of foreign firm individuals, those partners, shareholders, principals, owners, members or managers who actually render audit services to SEC issuer audit clients.

PROPOSAL: *The reporting requirements in Items 2.7 and 2.8 should be limited to civil proceedings involving, in the case of firms, the rendering of audit services to an issuer reporting to the SEC and, in the case of firm individuals, those persons who actually render audit services to SEC issuer audit clients.*

Item 2.10 requires the firm to report the fact that the firm or its affiliate has become the subject of certain bankruptcy proceedings. As proposed, Item 2.10 would require the reporting of both voluntary and involuntary bankruptcy petitions. Involuntary petitions are initiated by creditors and require a court order before an actual proceeding commences. Accordingly, we would propose that the phrase "has become the subject of a petition filed in a bankruptcy court" be revised to read "has become the subject of an order for relief from creditors entered by a bankruptcy court (or similar judicial forum)". The revised provision would focus the disclosure requirement on situations in which the firm is actually dealing with an insolvency issue rather than simple creditor disputes and the like.

PROPOSAL: *Item 2.10 should be revised to make clear that the reporting requirement deals with actual insolvency situations rather than petitions filed by creditors seeking payment from a solvent firm.*

Item 5.1, which sets forth the detailed information firms are required to report for proceedings required to be reported pursuant to Items 2.5 and 2.7, includes requirements that firms report information that goes beyond the informational reporting requirements set forth in Item 5.1.b of Form 1. Both Form 1 and Form 3 require information about proceedings that is purely factual in nature—e.g., filing date, docket number, etc.—and we have no objections to providing this information for Form 3 reports, just as it was to be provided on Form 1. Form 3's requirements diverge from the purely factual, however, by requiring the reporting firm to include descriptions of the nature of the case, the statutes, rules or legal duties alleged to have been violated and the conduct of the firm and/or any individual defendants that is alleged to constitute the violation. This represents an inherently subjective exercise, and requiring firms to make qualitative descriptions of pending claims and firm conduct seems onerous, given that the firm's description will be publicly filed even as the described proceedings continue to be pending. Similarly, the requirement in Item 5.2.c that a reporting firm describe "the conclusion of the proceeding as to the Firm or partner, shareholder," etc., will force the firm to make subjective legal judgments for the report. For these reasons, the subjective reporting requirements impose an undue burden on

reporting firms, and as a consequence the Form 3 reporting requirements should be conformed to those set forth in Form 1.

PROPOSAL: *The requirements in Items 5.1 and 5.2 that firms make qualitative descriptions of pending claims, firm and individual conduct and the effects of concluded proceedings on individuals require the making of subjective legal judgments and should be deleted.*

E. REPORTING OF CERTAIN RELATIONSHIPS (FORM 3, ITEMS 2.11 THROUGH 2.13).

The requirement that firms report certain firm relationships on Form 3 raises issues that are generally similar to those raised by comparable requirements in Form 2, Part VII. In addition to the issues we cited in our discussion of Form 2, Part VII, however, the Form 3 reporting requirement is fundamentally questionable in that it is difficult to see a need for current reporting of these events, even if they are required to be disclosed in the annual report. Entry into the relationships listed in these items of Form 3 is not a critical exigency sufficient to warrant immediate disclosure to the Board, and we therefore propose that disclosure of these matters be limited to annual reports. Failing that, however, our proposals made with respect to Form 2, Part VII as to non-disclosure of entry into relationships with non-associated persons, the hiring of persons who were not involved in their previous employers' sanctioned actions and consultants and contractors, would also apply to Form 3 reporting of these matters.

PROPOSAL: *Reporting of these relationships does not rise to the level of exigent circumstances that should be subject to special reporting, and these matters should therefore be dropped from Form 3's requirements. Failing that, however, the reporting requirements should be more narrowly drawn, as for Form 2, Part VII.*

F. REPORTING OF LICENSES AND CERTIFICATIONS (FORM 3, ITEMS 2.14 AND 2.15).

Item 2.14 requires a special report where, among other things, licenses have expired without renewal. As a technical matter, in some cases state renewal processes may result in a license's "expiring" while a renewal is pending. As a practical matter, these states treat the license as continuing to be active unless there is some affirmative step to not renew or suspend it. We think that firms should not be required to make disclosures in these circumstances.

PROPOSAL: *Reporting should be required of licenses that have expired without renewal only where the expiration has the effect of prohibiting the firm from continuing to practice in the relevant jurisdiction.*

Item 2.15 of Form 3 requires that firms make a special report of any new license or certification, regardless of its subject matter, that has not been previously identified on a Form 1 or Form 3 filing. To avoid firms' having to file such reports for licenses and certifications not relevant to

the Board's oversight, this requirement should be limited to the reporting of new licenses or certifications that bear on the firm's ability to render audit services to clients.

PROPOSAL: *Item 2.15 should be limited to reporting of new licenses or certifications that bear on the firm's ability to render audit services.*

IV. CONFIDENTIAL TREATMENT.

We agree with the Board's recognition of the importance of preserving confidential information in appropriate circumstances and, in general, accept the categories of information for which confidential treatment would not be allowed (subject to any legal impediments that prevent such information's being made non-confidential). The Board should, however, consider offering affirmative guidance as to categories for which confidential treatment will ordinarily be granted as a matter of course. Such guidance would lessen the burden on firms to have to make repetitive and duplicative requests every time information is reported for matters that are routinely approved for confidential treatment. Two examples of information that we believe should fall into this category would be information relating to pending litigation and disclosures of a firm's relationships with persons or entities that have been subject to Board or SEC sanction.

PROPOSAL: *The Board should offer guidance as to categories for which confidential treatment will ordinarily be granted as a matter of course.*

V. LEGAL IMPEDIMENT AND OTHER ISSUES AFFECTING FOREIGN FIRMS.

Among the supporting materials that the firm is required by Rule 2207(c) to have in its possession is a written description of its efforts to seek consents or waivers that would be sufficient to allow it to provide the required information or affirmation to the Board, dated or updated not more than 30 days before the submission to the Board. We think additional clarification of this requirement is necessary.

If the Board is proposing to require only that the description of the reporting firm's efforts to secure consent be dated not more than 30 days prior to the filing of the Form, regardless of when such efforts took place, then no issue is presented. If, however, the Board is proposing that efforts to seek consent must be renewed within the 30 days prior to filing, regardless of the reasons for and finality of such consent's having been denied when requested earlier, then such a requirement would seem to be overly burdensome where it was previously determined that, for example, giving consent was impermissible under applicable law. If the latter approach is what the Board intends to require, additional flexibility should be incorporated to allow firms not to renew their consent requests where such requests would be futile, in the firm's judgment and supported by its description of its earlier efforts to secure consent.

PROPOSAL: *The requirement that an asserting firm have a description of its efforts to secure consent dated within 30 days prior to filing should be clarified as to whether this*

requirement entails the firm's having to refresh its efforts to secure consent as of that date; if that is the Board's intention, then an exception should be made where such a renewal would be futile.

To the extent any U.S. firm makes a claim of legal impediment on behalf of a foreign affiliate that is not itself a registered firm, such as discussed in Note 2 to Item 9.1 of Form 2, the U.S. firm should not be required to make an independent assessment of the merits of the foreign firm's assertion of legal impediment or review its supporting documentation for adequacy. Moreover, we suggest that, as the U.S. firm should not be required to make an independent assessment, there is no reason why it should be required to maintain its own copies of all supporting documentation. Rather, the U.S. firm should be able to rely on representations from its foreign affiliated firm that the foreign firm has such documentation.

PROPOSAL: *U.S. firms should not be required to make an independent assessment of foreign affiliates' assertion of or documentation supporting legal impediment, nor should U.S. firms be required to maintain separate copies of supporting documentation.*