COMMENT LETTER ON BEHALF OF
DELOITTE & TOUCHE LLP,
THE NON-U.S. MEMBER FIRMS OF DELOITTE TOUCHE TOHMATSU
AND DELOITTE TOUCHE TOHMATSU
ON THE PCAOB'S PROPOSED PERIODIC REPORTING RULES
AND PROPOSED SUCCESSOR REGISTRATION RULES
FOR PUBLIC ACCOUNTING FIRMS

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

Re: PCAOB Rulemaking Docket Matter No. 019 and PCAOB Rulemaking Docket Matter No. 020

This letter is submitted on behalf of Deloitte & Touche LLP ("D&T"), the non-U.S. member firms of Deloitte Touche Tohmatsu, and Deloitte Touche Tohmatsu. We are pleased to respond to the request for comments from the Public Company Accounting Oversight Board (the "PCAOB" or the "Board") on both its *Proposed Rules on Periodic Reporting by Registered Public Accounting Firms*, PCAOB Rulemaking Docket Matter No. 019 (May 23, 2006), and its *Proposed Rules on Succeeding to the Registration Status of a Predecessor Firm*, PCAOB Rulemaking Docket Matter No. 020 (May 23, 2006).

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INTRODUCTION

We support the goals of the Sarbanes-Oxley Act of 2002 (the "Act") in restoring investor confidence, as well as the Board's efforts to faithfully implement the Act. Section 102(d) of the Act requires that "each registered public accounting firm shall submit an annual report to the Board, and may be required to report more frequently" to provide to the Board information specified by the Board or the Securities and Exchange Commission (the "Commission"). The act of periodic reporting by registered public accounting firms is important to the public markets, the accounting profession, and the Board, and we support the Board's effort to create a rational, efficient, and effective periodic reporting system.

We similarly support the Board's efforts to establish rules that allow a firm's registration status to continue after a change in the registered firm's legal form. Because Section 102(a) of the Act requires that all public accounting firms that will prepare or issue an audit report for an issuer be registered with the Board, we appreciate the Board's efforts to streamline the registration process for successor entities.

In this comment letter, we have identified those aspects of the Board's proposals that should be clarified or modified to enable the Board to carry out its duties and responsibilities. Such clarifications and modifications will also ensure that registered firms better understand and are better able to comply both with their periodic reporting responsibilities and with any registration responsibilities for successor entities. The recommendations proposed in this letter are intended so that the Board and public markets have access to relevant information, while simultaneously minimizing outdated and duplicative information that may be required to be produced under the rules as proposed. For ease of reference, we have included a summary of our

recommendations at Appendix A. If the Board would find it useful, we would welcome the opportunity to meet with the Board to provide further explanation of the recommendations we offer in this letter.

We first set forth general comments addressing significant issues that relate to several aspects of the Board's periodic reporting proposal. We then provide comments on the specific proposed rules and amendments to existing rules. Finally, we offer our comments with respect to proposed Form 2 and Form 3. Our comments generally follow the order in which the Board's May 23, 2006 Release No. 2006-004 presents the proposed rules.

In addition, this comment letter provides suggestions and clarifications to the Board's May 23, 2006 Release No. 2006-005 regarding proposed rules on succeeding to the registration status of a predecessor firm.

COMMENTS ON PROPOSED PERIODIC REPORTING RULES

We appreciate the Board's stated intent to accomplish its periodic reporting requirement objectives—to keep records current, to facilitate analysis and planning related to the Board's inspection responsibilities, and to track circumstances that may warrant inspection, investigation, or public attention—"without imposing any unnecessary burdens."[1] The proposed rules, however, do not achieve this important balance in certain respects and will lead to reporting certain information to the Board that is of little or no value while imposing excessively burdensome and, in some cases, potentially unworkable reporting requirements. In this comment letter, we suggest means by which these proposed rules may be revised, while still maintaining

[1] *See* PCAOB Release No. 2006-004, at 2.

the underlying purposes of the rules. We have also identified requirements in the proposed rules that would benefit from further clarification by the Board. Such revisions and clarification would increase the efficiency and effectiveness of the Board's own collection and analysis of relevant information, as well as decrease the burdens and costs of compliance on registered public accounting firms.

We hope our recommendations and identification of issues for clarification will facilitate the Board's implementation of the provisions of Section 102(d) of the Act in the most effective manner possible without imposing unnecessary burdens.

I. GENERAL COMMENTS

Although many issues identified in our comments relate to specific provisions of the proposed rules and forms, two aspects of the proposed periodic reporting requirements require special attention. First, the requirement that Form 3 reports be filed within fourteen days of any event triggering the obligation to report is unreasonable and, in some cases, may be impracticable in application. Second, the substantial "catch-up" reporting proposed in connection with initial Form 2 and Form 3 reports will impose a significant burden on registered firms without any corresponding benefit to the Board or the public.

A. REGISTERED FIRMS SHOULD BE GIVEN MORE THAN FOURTEEN DAYS TO REPORT SPECIFIED EVENTS.

The Board has explained that "the public interest, as well as the ability to consider whether prompt action is warranted by the Board's inspection staff or enforcement staff, would

be served by the contemporaneous reporting" of the occurrence of certain events.[2] We acknowledge the interests of the public and the Board, but the Board's proposed requirement that a special report—Form 3—be filed within *fourteen* days after the occurrence of the event imposes an unreasonable reporting obligation on registered firms.[3] The Board should revise this proposal to require that Form 3 be filed within forty-five days from the event triggering the reporting obligation (and, in the case of non-U.S. firms, within ninety days from the event triggering the reporting obligation).

Significantly, in its proposed rules on succeeding to the registration status of a predecessor firm, the Board itself has recognized that a fourteen day time period after the occurrence of an event triggering the obligation to file is short.[4] In the context of Form 4 reporting, the Board justifies such a short time period because the "transforming events to which Form 4 applies are events for which firms plan."[5] In contrast, the proposed events that trigger Form 3 reporting—for example, the initiation of legal proceedings against the firm or the modification or revocation of the registered firm's licensing status—are not the type of events for which firms plan. Thus, applying the Board's own reasoning to explain a short filing period for Form 4 compels extending the window for the Form 3 reporting requirements.

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[2] PCAOB Release No. 2006-004, at 8.

[3] *See* Proposed Rule 2203, PCAOB Release No. 2006-004, at A-2; Proposed General Instruction 3, PCAOB Release No. 2006-004, at A-28.

[4] PCAOB Release No. 2006-005, at 8 (describing the fourteen days allowed to file Form 4 as "relatively short"). As discussed in more detail below with regard to the proposed successor registration rules, the fourteen day reporting window for Form 4 events may prove impracticable for some non-U.S. firms.

[5] *Id.*

Requiring reporting of an event within fourteen days after its occurrence likely will not provide, in many instances, a registered firm with sufficient time (i) to recognize the occurrence of the event, (ii) to assess the reportability of the event, including the collection of salient facts relevant to the reporting analysis, (iii) to obtain legal advice regarding the report, as necessary, or (iv) to complete Form 3. For example, the Board proposes that a Form 3 report must be filed when a firm enters into an arrangement to receive consulting or other professional services from an individual or entity subject to certain disciplinary actions.[6] It is conceivable that persons within a registered firm responsible for the Form 3 reporting function may not be able to determine within the fourteen day time period whether the Form 3 reporting requirement has been triggered because of the time and effort necessary to identify whether such individual or entity has been sanctioned. These difficulties are only magnified when the reporting obligation is triggered by the registered firm's "awareness" of certain events, a state of knowledge left undefined by the proposed rules. As discussed more fully below in Section IV(B), the vagueness of this term may lead to unintentional noncompliance with the Form 3 reporting requirements.

This problem is even more acute for non-U.S. firms, which in addition to the foregoing problems, must determine whether the filing of Form 3 for a particular event conflicts with privacy or other obligations under non-U.S. law. To do so, non-U.S. firms will need to consult legal counsel in many instances. And, given the complexity of non-U.S. law that can be implicated in these matters and the nuanced legal judgments that may need to be made, fourteen days is too short of a time period to accommodate this important process. Moreover, documents

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[6] Proposed Item 2.13 on Form 3, PCAOB Release No. 2006-004, at A-34.

relevant to the Form 3 reportable event may need to be translated, exacerbating the difficulties for non-U.S. firms.[7]

Accordingly, we strongly urge the Board to adopt a more practicable timeframe within which firms are required to file Form 3 reports. Under the current proposal, which lacks a safe harbor for a firm's unintentional noncompliance with the reporting deadline, notwithstanding good faith efforts to comply, a registered firm may be subject to criticism, or even discipline, under the Board's proposed rules if it cannot file a Form 3 within fourteen days of the triggering event. The extension of the time period for filing Form 3, for example, to forty-five days after the occurrence of the triggering event (or ninety days for non-U.S. firms) would still serve the public interest by bringing the event to light soon after its occurrence and would still provide the Board with the ability to consider whether action is required by the Board's inspection or enforcement staff. At the same time, this more rational framework would allow registered firms the time necessary to analyze the facts and prepare to file Form 3.

B. THE "CATCH-UP" REPORTING PROVISIONS ARE NOT TAILORED TO PROVIDE RELEVANT INFORMATION AND ARE UNDULY BURDENSOME.

The proposed periodic reporting rules require that the first time a registered firm is required to file Form 2 and Form 3 after the effective date of the rules, the firm must engage in wholesale "catch-up" reporting, providing certain categories of information from the cut-off date that the firm used for purposes of its Form 1 registration application. In some cases, this

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[7] For non-U.S. firms, the Board should also consider allowing such firms to report items consistent with the timeframes established for periodic and special reporting under their home country's regulatory oversight framework for public accountants, to the extent that such periodic and special reporting rules have been adopted.

proposal will require registered firms retroactively to compile and analyze nearly *four* years worth of data to fulfill this aspect of the proposed reporting requirement.[8] Such catch-up reporting is difficult, time-consuming, and costly. To provide the catch-up information contemplated by the proposed rules, for example, a registered firm might be perceived as having to survey personnel who have left the firm and professional service providers with which the firm no longer has a relationship. Moreover, because the catch-up reporting provisions are not tailored to provide relevant information to the Board, the burden on registered firms of providing such information is not commensurate with any benefit that the Board may receive from the information provided. To the extent that the Board finds certain historical information meaningful for the purposes of fulfilling its obligations, some of this information already was accessible to the Board through the inspection process without the need for burdensome catch-up reporting.

As described below, because of the seemingly limited value of this historical information and the burdens associated with catch-up reporting, the Board should omit the catch-up reporting provisions in their entirety from its final reporting rules. Should the Board choose to retain catch-up reporting, in addition to any recommendations noted below, catch-up reporting should be limited to providing relevant information (*e.g.*, information relating to ongoing relationships with the firm or current legal proceedings) for the period following the registered firm's most recent Board inspection.

The Board should exempt non-U.S. firms that have not yet been inspected from any catch-up reporting requirements. If the Board retains catch-up reporting, the Board should limit

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[8] *See* Proposed Parts VII & VIII of Form 2, PCAOB Release No. 2006-004, at A-22-24; Proposed Rule 2203, PCAOB Release No. 2006-004, at A-2.

catch-up reporting for such firms to the six months preceding the effective date of the rule—this information likely would be the most valuable to the Board, as it would include information relating to ongoing relationships of the firm and current legal proceedings against such firms.

These recommendations stem from several concerns, discussed in more detail below, that the catch-up reporting requirements provide information of little value to the Board while imposing substantial burdens on registered firms. First, the Board should remove the catch-up reporting provisions in their entirety because the proposed catch-up reporting for both Forms 2 and 3 will result in the provision of information with little relevance to the Board's mission or the public in general. For example, the proposed catch-up reporting provisions require a registered firm to provide information regarding certain relationships between the firm and sanctioned individuals/entities, without limitation to relationships that are ongoing. Not only will it be difficult for firms to provide information about terminated relationships, but there is no value to the Board in receiving information where the registered firm no longer has a relationship with the sanctioned individual/entity. Similarly, the proposed Form 3 catch-up provisions are not limited to information about ongoing legal proceedings against the firm, its partners, shareholders, principals, owners, members, or managers, and would require submission of settled, dismissed, withdrawn, and otherwise resolved legal proceedings. The catch-up reporting requirements might also be perceived as requiring that the registered firm report actions that resulted in a finding in favor of the firm, its partners, shareholders, principals, owners, members, or managers. Because of the limited value of this information, and the availability of this information to the Board during the inspection process, the Board should eliminate the catch-up reporting requirement.

Second, the burden of these catch-up reporting provisions far exceeds the commensurate value to the Board of the information requested. The catch-up reporting provisions impose a substantial burden on the registered firm to collect information—for example, D&T, which has been registered since 2003, would be required to go back nearly *four* years to collect information. Requiring D&T, or any other registered firm, to provide information regarding certain relationships with sanctioned individuals/entities[9] and information regarding the many other possible Form 3 reportable events[10] presents a great challenge to collect information that may not have been recorded in a manner conducive for later retrieval or may not have been maintained at all by the registered firm. While Section 102(d) of the Act provides for periodic reporting, the statute does not suggest that catch-up reporting will be required. Nor has the Board previously alerted registered firms of this possible reporting procedure.

Third, although the Board "anticipates that most firms would have few or no Form 3 events to report for the catch-up period,"[11] registered firms nonetheless may have to expend considerable effort and resources to determine whether any reportable events occurred during the catch-up period. Thus, on account of the burdens and challenges of providing the proposed requested historical information, the Board should not require any catch-up reporting on Forms 2 or 3.

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[9] *See* PCAOB Release No. 2006-004, at 6; Proposed Part VII of Form 2, PCAOB Release No. 2006-004, at A-22.

[10] Proposed Rule 2203, PCAOB Release No. 2006-004, at A-2 (requiring a registered firm to file a Form 3 catch-up report, including information on withdrawn audit reports, certain legal proceedings, certain relationships with sanctioned individuals/entities, and changes to licenses and certifications, among other things).

[11] PCAOB Release No. 2006-004, at 13.

If, despite these reasonable and significant concerns, the Board does not eliminate the catch-up reporting requirement, the Board should limit any catch-up reporting required of registered firms to information regarding ongoing relationships with individuals and entities and pending legal proceedings—that is, information that reflects an individual's or entity's current relationship with the firm and information regarding pending legal proceedings. Additionally, the Board should create an appropriately tailored transition period that would allow the initial Form 2 and Form 3 catch-up reports to be supplemented for a reasonable period of time.

Finally, the proposed requirement that a firm must file a catch-up Form 3 within fourteen days of the effective date of the rule to report any event that occurred after the firm's registration[12] is even more unreasonable and unworkable than the standard fourteen day time period for reporting a Form 3 triggering event. Due to uncertainty over the precise information that may be required by the Board's final rules, it will be difficult for registered firms to begin this time-consuming and costly process prior to the publication of the Board's final rules. And, in any event, the collection and analysis of information from a period of nearly four years requires substantially more time than provided in the Board's proposal. Non-U.S. firms face the additional difficulty of seeking legal opinions regarding the provision of information under these catch-up reporting requirements, and the Board should recognize the additional time that obtaining such legal advice may take given the complexity of non-U.S. law. Thus, if the Board does not eliminate the catch-up reporting requirement, to accommodate the extensive efforts

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[12] Proposed Rule 2203(a)(3), PCAOB Release No. 2006-004, at A-2.

required by any catch-up reporting requirements, the Board should revise the deadline for filing a catch-up Form 3 report to, at a minimum, 120 days after the effective date of the rules.[13]

II. SPECIFIC COMMENTS ON PROPOSED RULES

A. RULE 2202—THE BOARD SHOULD PROVIDE CLARIFICATION REGARDING THE AMOUNT OF THE ANNUAL FEE TO BE PAID BY REGISTERED FIRMS.

Proposed Rule 2202 states that "[e]ach registered public accounting firm must pay an annual fee to the Board."[14] The Board's proposal, however, does not provide any mechanism for establishing the fee to be charged. Parameters should be set to ensure that the Board exercises its authority within boundaries that have been addressed by the regulated community through the comment process and considered by the Commission. Thus, in order to assist firms to appropriately plan for additional operating expenses, as well as to ensure that the Board's proposed annual fee receives due consideration by the Commission, the Board should further clarify the basis for the amount to be charged, either by establishing a range for the fee or by describing the method by which the Board will calculate the fee.

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[13] For Form 2 catch-up reporting, which under the Board's proposal is required to be filed with the first annual Form 2 report due after the effective date of the rules, *see* proposed Parts VII & VIII, Form 2, PCAOB Release No. 2006-004, at A-22, A-24, the Board should allow a registered firm the greater of (a) 120 days after the effective date of the rules or (b) the number of days between the effective date and the date the first Form 2 is due, to submit the catch-up reporting.

[14] PCAOB Release No. 2006-004, at A-1.

B. RULE 2205—THE BOARD SHOULD FURTHER DEFINE THOSE CIRCUMSTANCES THAT REQUIRE A FIRM TO FILE AN AMENDMENT TO FORM 2 OR FORM 3.

Proposed Rule 2205 requires that a registered firm file an amendment to Form 2 or Form 3 whenever the firm "becomes aware that it reported information that was incorrect at the time of such filing, or that it omitted any information or affirmation that it was, at the time of such filing, required to include in such report."[15] This provision specifies that the firm need not submit an amendment for errors or omissions that are "clearly inconsequential," which the Board defines in its introductory comments as "[i]nsigificant discrepancies in quantitative information, or misspellings and typographical errors that do not affect the meaning of the information or the identifiability of a person or entity."[16]

Requiring amendment of all information that is not "clearly inconsequential" sets the threshold too low, as a registered firm would be forced to amend errors and omissions that arguably could meet the Board's implicit standard for "consequential" but nevertheless be *immaterial*. Such a requirement unnecessarily burdens both registered firms and the Board with consideration of amendments that ultimately are of limited, or no, value. To reduce the burden of amendment on registered firms, and to ensure that the Board receives only meaningful amended forms, the Board should qualify the amendment provision to require that a firm submit an amendment when the incorrectly reported or omitted information is *qualitatively or quantitatively material* to the form.

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[15] *Id*. at A-3.

[16] *Id*. at 14.

In addition, proposed Rule 2205 requires that a registered firm file an amendment "no later than the fourteenth day after becoming aware of the error or omission."[17] Again, a fourteen day time period is unreasonable, particularly because it may be difficult for a firm to assess within a fourteen day period whether an error or omission is "clearly inconsequential." In addition, because the term "aware" is unclear, as discussed more fully in Section IV(B), a registered firm may have difficulty determining when it has become "aware" of the error or omission within the fourteen day time period. This proposed provision consequently may subject a registered firm to criticism or discipline under the Board's rules even when it has made good faith attempts to meet its amendment obligation. The Board should revise the amendment provision to allow a longer time period, for example forty-five days, and should clarify when a firm would be deemed to become "aware" of an error or omission.

C. RULES 2207 AND 2300—THE PROPOSED AMENDMENTS TO THE CONFIDENTIAL TREATMENT REQUESTS RULE RAISE SIGNIFICANT ISSUES.

We support the Board's continued acceptance that certain information should be accorded confidential treatment. The availability of such treatment is essential to the periodic reporting process. We nevertheless have several concerns regarding the Board's proposed amendments to the confidential treatment provision.

First, the proposed amendment to Rule 2300(b) provides that the "failure to provide an exhibit that complies with the requirements of paragraph (c)(2) of this Rule constitutes sufficient

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[17] *Id*. at A-3.

grounds for denial of any request for confidential treatment."[18] As it stands, decisions denying confidential treatment requests are appealable to the Board under Rule 5468, if the decision denying confidential treatment is made by the Board's delegate.[19] The Board should clarify that the proposed Rule 2300(b) is not intended to provide further substantive grounds for denying a confidential treatment request. This clarification is important to ensure that the registered firm's rights to appeal denials of confidential treatment requests are not unintentionally constricted by the operation of proposed Rule 2300(b).

Second, the proposed amendment to Rule 2300 provides that a registered firm must submit a copy of "the specific provision of law that the requestor claims protects the information from public disclosure."[20] Privileges and protections might arise from sources other than a particular provision of law (*e.g.*, a statute or regulation), including common law, judicial or arbitration orders, and contractual terms. The Board should revise this proposed amendment to more broadly define the scope of documentation that may be presented in support of a confidential treatment request and to acknowledge that confidential materials may support such a request.

Third, the Board's proposed amendment and related discussion provides an insufficient basis to assess the reliability of the systems the Board plans to use to redact confidential

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[18] *Id*. at A-8; *see also* Proposed General Instruction 7 for Form 2, PCAOB Release No. 2006-004, at A-13 (describing the portions of Form 2 for which a confidential treatment request may be made and stating that a confidential treatment request may be denied for failure to comply with proposed Rule 2300(c)(2)).

[19] PCAOB Rule 5468; PCAOB Rule 2300(h).

[20] Proposed amendment to Rule 2300(c), PCAOB Release No. 2006-004, at A-9.

information from a registered firm's filed Form 2 or Form 3. While we support the Board's commitment to release all forms to the public "as soon as practicable after filing,"[21] the Board's intention to use a Web-based reporting system to automatically publish a Form 2 or Form 3 to the Board's Web site is a source of potential concern.[22] In particular, the system's capabilities to automatically "redact from the published version any information for which the firm [has] requested confidential treatment"[23] may not function without error. Given the sensitivity of confidential information at issue, and the inability to reestablish confidentiality once information has become public, additional information is needed about the functionality of the system the Board proposes to use in this regard. Although automation undoubtedly decreases the burden on the Board of publishing this information, such automation may not be appropriate for handling a firm's confidential treatment requests.[24]

In addition, non-U.S. firms may be severely disadvantaged by proposed Rule 2207(e) which would require a firm to provide information withheld in accordance with non-U.S. law (*e.g.*, privacy and confidentiality laws) to the Board upon the Board's request.[25] This provision could put a non-U.S. firm in the untenable position of having to choose between either breaching

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[21] Proposed amendment to Rule 2300(c), PCAOB Release No. 2006-004, at A-8.

[22] *See id*. at 15.

[23] *Id*. at 15-16.

[24] Concerns about Web-based confidentiality sources have only increased in the wake of recent breaches of confidentiality—for example, the recent posting on a civilian Web site of personal data for 28,000 soldiers for which the source of the error allowing publication has not yet been determined. *See, e.g.*, Sailors' data posted on Web, CNN, June 23, 2006, http://www.cnn.com/2006/US/06/23/navy.data.ap/index.html.

[25] Proposed Rule 2207(e), PCAOB Release No. 2006-004, at A-4.

the Board's rules or breaching the relevant non-U.S. law. Although the Board appears to suggest that it will apply the proposed Rule only as a last resort,[26] the end result is unfair with respect to non-U.S. firms and their obligations under non-U.S. law. The Board should revise this proposal to include appropriate safeguards for non-U.S. firms to allow such firms to comply to the fullest extent permitted by their home country laws and regulations.

D. RULE 4000—THE BOARD SHOULD CLARIFY THE PURPOSE OF DEFINING INSPECTION AUTHORITY WITH REFERENCE TO FORM 2 AND FORM 3.

The Board has proposed amending Rule 4000 governing "Inspections" to provide that "the Board may at any time request that a registered public accounting firm provide to the Board additional information or documents relating to information provided by the firm in any report filed pursuant to Section 2 of these Rules, or relating to information that has otherwise come to the Board's attention."[27] The existing language of Rule 4000 provides that "[e]very registered public accounting firm shall be subject to all such regular and special inspections as the Board may from time to time conduct in order to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the Board's rules, the rules of the Commission, and professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers."[28] To avoid unnecessary confusion and any potential inconsistencies, the Board should revise its proposed amendment to

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[26] PCAOB Release No. 2006-004, at 23 n.33 (stating that the Board can "ultimately put the firm to the choice of providing the information or being subject to a sanction for violating the Board's rules").

[27] PCAOB Release No. 2006-004, at A-11; *see also* PCAOB Release No. 2006-004, at 23.

[28] PCAOB Rule 4000(a).

ensure that the inspection authority described in the amendment, to the extent that it is not duplicative of existing authority, is to be exercised by the Board for the purpose of assessing compliance with "the Act, the Board's rules, the rules of the Commission, and professional standards."

III. PROPOSED FORM 2

A. ITEM 3.2—THE FEE CATEGORIES REQUESTED BY THE BOARD SHOULD BE REVISED TO TRACK THE COMMISSION'S PROXY DISCLOSURE RULES.

Proposed Item 3.2 requires that a registered firm state the percentage of fees attributable to fees billed to issuer audit clients for audit services, other accounting services, tax services, and non-audit services.[29] This Item as proposed is potentially unworkable and imprudent in many respects, including that the proposed Item requests information not currently tracked by firms or issuers. The Board should revise this proposed Item to require that the registered firm provide fee percentage information derived from the firm's issuer clients' most recent proxy statements (or in the case of non-U.S. issuers, from such issuer's most recently filed periodic report containing the fee disclosure information), and the firm's most recently completed fiscal year prior to the March 31 cut-off. Additionally, the Board should clarify that the reported data may reflect a good faith estimate on the part of the registered firm.

The current proposal will impose substantial burdens on registered firms with correspondingly little benefit to the Board or the public. The proposed fee categories are inconsistent with the information currently required by the Commission's proxy disclosure rules.

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[29] PCAOB Release No. 2006-004, at A-18.

In addition, the time period over which the information is requested (April 1 to March 31) is inconsistent with the cut-off for data accumulation of the majority of firms. These inconsistencies may result in extensive and unnecessary effort within firms to coordinate with engagement teams to collect and analyze data. The collection and analysis of data is likely to be imprecise in certain respects, and the requested information may not even accurately reflect the structure of a registered firm's business (for example, if the firm is organized along functional lines).

As an initial matter, the Board should revise the fee percentage categories to track the information required by the Commission's 2003 proxy disclosure rules.[30] The Board suggests that the proposed categories generally correspond with the "categories with respect to which the Commission's rules require issuers to report the amounts paid the issuer's auditor."[31] However, the terms and definitions as used in Form 1 and proposed Form 2 are not fully consistent with the terms and definitions in Schedule 14A of the Commission's proxy rules: The Commission refers to "audit fees," "audit-related fees," "tax fees," and "all other fees," whereas the Board's proposal requires information for "audit services," "other accounting services," "tax services," and "non-audit services."

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30 Strengthening the Commission's Requirements Regarding Auditor Independence, 68 Fed. Reg. 6006 (February 5, 2003).

31 PCAOB Release No. 2006-004, at 4 n.3.

Although the Board has stated that its intent was to conform the definitions of the terms in proposed Item 3.2 to the Commission's definitions,[32] the existing differences between the two sets of definitions will cause confusion and impose an unnecessary compliance burden. Revising the Board's proposal to track the proxy disclosure rules and the guidance related thereto will allow registered firms to use the same mechanism for annual reporting under Form 2 that issuers use to track data. Such revision will reduce the effort required by registered firms to track the requested information, without reducing the value to the Board of the information requested.

Beyond these definitional concerns, however, the Board's fee reporting proposal, where both client and firm data is reported as of the March 31 cut-off date, would create substantial burdens for registered firms. An efficient solution to this problem would be to revise the proposal to require that a registered firm report—as the numerator in the fee percentage calculations—the fee information for each category from the issuers' most recently filed proxy statements prior to submission of a registered firm's Form 2 report. And, the registered firm's revenue data for its most recent fiscal year ending prior to the March 31 cut-off should be used as the denominator for purposes of calculating the fee percentages. Because the proposed reporting period for Form 2 runs from April 1 through March 31[33] and the fiscal years of issuer clients vary, firms are unlikely to have ready access to the information requested by proposed Item 3.2.

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[32] PCAOB Release No. 2003-007, at A-3-vii (noting that in response to comments, the Board's final Rule 1001(a)(vii)(1), the definition of "audit services," "is intended to conform to the category of fees disclosed as 'audit fees' under the SEC's recently revised auditor independence rules").

[33] Proposed General Instruction 4 to Form 2, PCAOB Release No. 2006-004, at A-13.

This suggested revision is a sensible solution to the numerous burdens that the current proposal would cause. Even this proposed alternative formulation will prove burdensome for firms.[34]

In the alternative, the Board should revise the proposal to require a registered firm to provide the fee percentages requested over the firm's most recent fiscal year prior to the March 31 cut-off date, rather than the April 1 to March 31 time period.[35] For example, a registered firm with a fiscal year ending on December 31 should be allowed to provide fee percentage data from the time period January 1 to December 31. While this alternative likely would still impose a significant burden on registered firms to collect from engagement teams the fee data for issuer clients that corresponds to the firm's fiscal year end (as opposed to the clients' fiscal year ends), a registered firm would at least be allowed to use one data point that should be readily available—the firm's own revenue as of the fiscal year end prior to the March 31 cut-off date. Allowing such reporting simultaneously may increase the accuracy of the data reported and reduce the burdens associated with collecting data over a cycle that does not correspond to a fiscal year.

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[34] For instance, information for fees of non-U.S. firms will need to be culled from the reported fee information because the Commission's regulations request data on fees billed to the client, which potentially includes other network firms that may have provided services, not just the registered firm's data.

[35] In addition, for non-U.S. firms, the fee percentage data may be proprietary in nature or confidential under applicable non-U.S. laws and, as such, the Board should consider whether non-U.S. firms should be allowed to submit a confidential treatment request for Item 3.2.

B. ITEM 4.1—THE BOARD SHOULD IDENTIFY THE PERSONNEL WHO "EXERCISED AUTHORITY" TO SIGN AN AUDIT REPORT.

Proposed Item 4.1(b) requires that the registered firm provide "the total number of firm personnel who exercised authority to sign the firm's name to an *audit report* during the reporting period."[36] The meaning of "exercised authority" in this proposed Item is unclear. The Board should clarify that proposed Item 4.1(b) requires that the registered firm identify the total number of individuals who were authorized to sign an audit report rather than the number of individuals who actually exercised such authority by signing a report.

C. ITEM 5.2—THE BOARD SHOULD CLARIFY THE MEANING OF PARTICULAR TERMS RELATING TO AUDIT-RELATED MEMBERSHIPS, AFFILIATIONS, OR SIMILAR ARRANGEMENTS.

Proposed Item 5.2 requires a registered firm to report on an annual basis whether it has any "[a]ffiliation, whether by contract or otherwise, with another entity through or from which the Firm commonly employs or leases personnel to perform *audit services*, or with which the Firm otherwise engages in an alternative practice structure."[37] This provision contains undefined terms that will be a source of confusion to registered firms attempting to fulfill their reporting obligations. For example, we assume that in using the phrase "commonly" employed or leased personnel, the Board intends to capture relationships that are ongoing, frequent, and established, but the Board should confirm that this understanding is correct. In addition, the Board should clarify what is meant by the term "alternative practice structure." Providing

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[36] Proposed Item 4.1 to Form 2, PCAOB Release No. 2006-004, at A-19.

[37] PCAOB Release No. 2006-004, at A-20.

further clarification, including definitions where necessary, will allow registered firms to avoid confusion and to provide the information the Board wants under proposed Item 5.2.

D. ITEM 6.1—THE BOARD SHOULD ALLOW FIRMS TO PROVIDE A RANGE OF THE NUMBER OF PERSONNEL PROVIDING AUDIT SERVICES, RATHER THAN AN EXACT NUMBER.

The precise information requested by the Board in proposed Item 6.1—specific numerical totals of the firm's accountants, certified public accountants, personnel, and personnel who provided audit services during the reporting period—provides the Board with no more significant understanding of the firm's composition than would an estimate or range.[38] Although the Board requests that the numerical totals be current as of the last day of the reporting period, determining the total number of individuals engaged in any of these categories of service, particularly personnel providing audit services, is inherently susceptible to some degree of imprecision. In any registered firm, but especially in large registered firms, individual personnel move between positions and functions. Thus, determining an exact numerical total on any given day is difficult, if not impossible.

These concerns are especially true with respect to Item 6.1(d), which requires the registered firm to provide the precise number of firm personnel who performed audit services during the reporting period, segregated by functional level (for example, partner, senior manager, manager, and staff). The information provided under this proposed Item may be inexact and present an unbalanced view of the firm's composition because individuals who spend only a fraction of their time on "audit services" would be reflected in the numerical total. Accordingly,

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[38] PCAOB Release No. 2006-004, at A-21.

the Board should modify this proposal to provide that non-audit specialists who participate in the performance of audits, such as actuarial, valuation, and tax specialists, are not to be included in the reported data.

If the Board is seeking information regarding the registered firm's leverage in connection with the performance of audit services for issuers, the Board should consider allowing a firm to provide those leverage statistics reflecting the ratio of audit staff and managers to partners, rather than providing the aggregate numbers of personnel by category. Here, too, if this approach is adopted, the Board should clarify that non-audit specialists who participate in the audit need not be included in the reported data.

Given these factors, the Board should revise its proposal to accept an estimate or a range, particularly for Item 6.1(d), which would provide the information the Board needs without imposing unnecessary burdens.

E. PART VII—THE REPORTING REQUIREMENTS FOR CERTAIN RELATIONSHIPS REQUIRE CLARIFICATION.

Proposed Part VII of Form 2, covering annual reporting of "Certain Relationships," is the source of several concerns. Part VII requires that a registered firm provide information about relationships between the firm and certain sanctioned individuals, individuals connected with certain sanctioned firms, and certain sanctioned entities. Proposed Item 7.1 requires that a registered firm state whether it has taken on as an employee, partner, shareholder, principal, or member any individual subject to certain disciplinary proceedings.[39] Proposed Item 7.2 requires

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[39] PCAOB Release No. 2006-004, at A-22.

that a registered firm state whether it has taken on as an employee, partner, shareholder, principal, or member any individual who was a partner, shareholder, principal, member, or proprietor of a public accounting firm that had been subject to certain disciplinary sanctions.[40] Proposed Item 7.3 requires that a registered firm state whether it has become owned or partly owned by an entity subject to certain disciplinary sanction.[41] And, proposed Item 7.4 requires that a registered firm state whether it has entered into an arrangement to receive consulting or other professional services from a sanctioned individual or entity.[42] These proposed requirements are problematic in several respects.

First, proposed Items 7.1, 7.2, 7.3, and 7.4 require a registered firm to state whether it has entered into the above-described relationships.[43] Because a firm's response under these proposed Items will often depend on the fullness of the information provided by an individual or entity, the proposed Items could cause registered firms to be disciplined under the Board's rules in circumstances where the ability to report accurately is beyond their control. The Board should consider revising these Items to require the registered firm to make good faith efforts to ascertain the disciplinary status of an individual or entity at the time the relationship commences. To provide better context to the meaning of "good faith," the Board may also consider providing guidance as to the means a registered firm should use to assess the disciplinary status of an individual or entity.

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[40] *Id.*

[41] *Id.* at A-23.

[42] *Id.*

[43] *Id.* at A-22-23.

Second, proposed Item 7.1 requires reporting where a firm has taken on as an "employee, partner, shareholder, principal, or member" an individual who, within the last five years was the subject of certain sanctions, including under Rule 102(e) of the Commission's Rules of Practice.[44] We acknowledge the importance of this reporting obligation, but encourage the Board to clarify that the requirement applies only to accountants with whom the firm has entered into a relationship. Section 102(e) theoretically applies to a range of professionals beyond accountants who may be or may have been employed by the firm—for example, lawyers, engineers, and brokers—and there is no apparent rationale for requiring a registered firm to report such a relationship with professionals other than accountants to the Board. The Board should also consider modifying proposed Item 7.1 so that the reporting obligation extends to "associated persons" whom the firm has taken on, rather than all employees.

Third, proposed Item 7.2 requires that the firm state whether it has "taken on as an employee, partner, shareholder, principal, or member" any individual who was a "partner, shareholder, principal, member, or proprietor" of a public accounting firm that has been subject to disciplinary sanction.[45] If the individual himself has not been sanctioned, it is unclear how this information is relevant. The proposed rule also could be read to require that the registered firm file a Form 3 report when the firm takes on an individual who was previously associated with a public accounting firm that was subject to disciplinary sanction only after the individual had left the later-sanctioned firm. As the relevance to the Board of this information is attenuated,

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[44] *Id.* at A-22.

[45] *Id.*

the Board should revise its proposal to avoid these types of unintended consequences. In light of these concerns, the Board should delete this requirement from its final Form 2 requirements.[46]

Fourth, proposed Item 7.4 requires that the firm report whether it has "entered into a contractual or other arrangement to receive consulting or other professional services from any individual or entity" subject to disciplinary sanction.[47] This proposed Item suffers from two related flaws—uncertainty over the scope of "consulting or professional services" and questions of relevancy for the reporting of non-audit related professional services. The terms "consulting or professional services" are overbroad—the common understanding of both of these terms can include, for example, human resources consultants or legal counsel engaged to advise the firm on its own affairs. The Board should clarify what services it intends to be covered by "professional services." Moreover, to the extent that the understanding of "consulting" or "professional services" extends beyond the provision of audit-related services, the information requested lacks relevance. The Board should limit this Item to arrangements to provide professional services supporting the direct performance of audits of issuers by the registered firm.

Finally, further clarification from the Board is necessary as to the circumstances under which it is appropriate to report on Form 2 (proposed Items 7.1, 7.2, and 7.4), or file a Form 3

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[46] In the event the Board retains Item 7.2 as proposed, for the reasons noted above, we urge the Board to tailor the reporting obligation for that item to "associated persons" the firm has taken on where such individual came from a public accounting firm that had been subject to certain disciplinary sanctions.

[47] *Id*. at A-23.

(proposed Items 6.1, 6.2, and 7.3), for these events.[48] To the extent that these obligations are duplicative, we urge the Board to delete the triggering obligations from proposed Form 3, as annual reporting of this information on Form 2 is more appropriate.

IV. PROPOSED FORM 3

A. ITEMS 2.1, 3.1, AND 4.1—THE BOARD SHOULD DELETE THE OBLIGATION TO FILE FORM 3 FOR WITHDRAWN AUDIT REPORTS, WITHDRAWN CONSENTS, AND THE UNAUTHORIZED USE OF A FIRM'S REPORT OR NAME.

Proposed Items 2.1 and 3.1 require a registered firm to file a Form 3 report when "[t]he Firm has withdrawn an *audit report* on financial statements, or withdrawn its consent to the use of its name in a report, document, or written communication containing an *issuer's* financial statements, and the *issuer* has failed to comply with a *Commission* requirement to make a timely report concerning the matter pursuant to Item 4.02 of *Commission* Form 8-K."[49] Proposed Item 4.1 requires the registered firm to report when the firm "becomes aware" that an issuer "has made use of the Firm's name without the consent of the Firm."[50] In light of the process outlined by Section 10A(b) of the Securities Exchange Act of 1934, proposed Items 2.1, 3.1, and 4.1 should be deleted as creating duplicative, and possibly conflicting, regulatory schemes.

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[48] *See* PCAOB Release No. 2006-004, at A-22-24. It is not clear why the Board has chosen to require reporting of relationships with individuals connected with certain sanctioned firms only in Form 2. *Id.* The recommendations made here with regard to the certain relationships reporting required by Form 2 are also applicable to the proposed items on Form 3 relating to the same. *See* Proposed Items 2.11-13, 6.1-6.3, PCAOB Release No. 2006-004, at A-33-34, A-38-39.

[49] PCAOB Release No. 2006-004, at A-31-32.

[50] *Id*. at A-36.

The matters covered by proposed Items 2.1, 3.1, and 4.1 are, and should remain, public reporting considerations for issuers, not registered firms. Moreover, there are appropriate processes established for these matters, and the Commission has the authority to oversee these processes. For example, Section 10A(b) requires specific procedures to be followed to identify issues regarding a current audit client, and under certain circumstances, requires reporting the audit client's failure to properly communicate those issues to the Commission.[51] Failure to properly follow the Section 10A(b) process may result in disciplinary action by the Commission. There is no reason to add another layer of regulation for failure to abide by the Section 10A(b) process. In addition to being duplicative in several respects to the Section 10A(b) process, the proposed Items may subvert the process outlined by Section 10A(b) because a firm could feel compelled to report under the Board's requirements even though an issue had not properly worked its way through the Section 10A(b) reporting framework. Importantly, these proposed reporting requirements, by putting the onus on the registered firm to report, could be interpreted by some as implying that the registered firm has done something to require reporting. Yet, at their core, proposed Items 2.1, 3.1, and 4.1 relate to instances where the issuer, not the firm, potentially has acted improperly. Section 10A(b) already covers this type of issuer action, and in this regard, the topics sought to be covered under proposed Items 2.1, 3.1, and 4.1 appear more within the purview of the Commission than the Board.

Similarly, if the issuer is not a current client, a registered firm is not in a position to monitor that former client to determine whether the issuer failed to make a timely 8-K report, whether the issuer has improperly filed an audit report for which the registered firm has

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[51] Securities Exchange Act of 1934, § 10A

withdrawn consent, or whether the issuer has made unauthorized use of the firm's name. Thus, the Board should not propose to subject a registered firm to discipline or criticism under the Board's rules under Items 2.1, 3.1, and 4.1 for the actions of former clients.

The Board should delete these requirements in their entirety, as Section 10A(b) already provides an adequate process for the failure to report unlawful acts of issuers.

B. ITEMS 2.5 THROUGH 2.10 AND ITEM 5.1—THE LEGAL PROCEEDINGS REPORTING REQUIREMENT RAISES SIGNIFICANT ISSUES.

A registered firm's obligation to file a Form 3 special report is triggered under the Board's proposed Form when the firm becomes "aware" that it or certain categories of individuals associated with the firm are involved in certain legal proceedings.[52] Several aspects of this Form 3 proposal raise concerns.

First, the proposal fails to define, and provides no guidance about, when a registered firm is deemed to become "aware" of the existence of certain legal proceedings.[53] Without guidance, a firm will not be able to determine when it will have been deemed by the Board to have been "aware" of the proceedings, and thus, the vagueness of this term could lead to unintentional non-compliance by registered firms of the Form 3 reporting requirements.

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[52] *Id*. at A-32-33, A-36-38.

[53] Similarly, other proposed Items that reference a firm's becoming "aware" of an event do not provide any guidance as to the understanding of the term awareness. *See, e.g.*, Proposed Item 2.4, PCAOB Release No. 2006-004, at A-32.

For example, when a firm becomes involved in a legal proceeding, the firm often will not receive service or other formal notice of the legal proceeding within the fourteen day time period. It is unclear from the proposed Items, however, if a firm will be deemed to be "aware" of a legal proceeding based on a single telephone call from a government investigator, a story on the evening news watched by employees of the firm, or by notification of the legal proceeding to any firm department. When the legal proceeding involves an individual, and not the firm as a whole, the circumstances under which a firm becomes "aware" of the existence of the proceeding will be even more uncertain because no expectation exists that the firm will receive notification of a legal proceeding against an individual. The Board should clarify the circumstances under which a firm's obligation to report the existence of certain legal proceedings is triggered. For example, reporting might be appropriate when senior management of the national office responsible for policy and decision-making of a registered firm is notified that service of process of the legal proceeding has been received.[54]

Second, unlike the comparable provisions in Form 1, the proposal in Items 2.7 and 2.8, requiring the reporting of certain proceedings, is not limited to those proceedings that involve conduct in connection with an "audit report, or comparable report prepared for a client that is not an issuer,"[55] and rather extends to proceedings involving conduct associated with any "professional services." These proposed Items are accordingly overbroad and require the

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[54] *See, e.g.*, 17 C.F.R. § 275.206(4)-4 (defining, in the context of the regulatory framework over investment advisers, "management person" as "a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.")

[55] *See, e.g.*, Form 1, Items 5.1(a)(2) & (3).

reporting of information to the Board that is unrelated to the Board's duties. The Board should revise this proposal to require that registered firms report the commencement of the legal proceedings identified in these Items only if such proceedings involve conduct in connection with an "audit report or comparable report prepared for a client that is not an issuer."

Third, proposed Items 2.6, 2.8 and 2.9 require that the registered firm file a Form 3 if it becomes aware that "a partner, shareholder, principal, owner, member, or manager of the Firm" becomes involved in certain legal proceedings. These proposed items are overbroad as they request information regarding the involvement of many individuals, including individuals without an ownership stake in the firm, in legal proceedings. The Board should consider narrowing the categories of individuals for which this reporting is required. In the alternative, the reporting of the involvement of the individuals noted in the proposal in certain legal proceedings should be an annual reporting requirement on Form 2, rather than a Form 3 requirement.

Fourth, proposed Item 2.6 requires the firm to report if it becomes aware that a partner, shareholder, principal, owner, member, or manager has been charged with any crime arising out of alleged conduct relating to, among other things, "dishonesty" or has been "charged with any crime arising out of alleged conduct that, if proven, would bear materially on the individual's fitness to provide *audit services* to *issuers*."[56] These clauses are overbroad. The term "dishonesty" lacks context and definition, particularly because dishonesty can be considered an element of many crimes, including petty offenses, such as shoplifting. Additionally, whether

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[56] Proposed Item 2.6, PCAOB Release No. 2006-004, at A-32.

particular conduct would "bear materially on the individual's fitness to provide *audit services*" is vague. The Board should delete "dishonesty" and the "other crimes" clause from the list of criminal conduct that independently trigger a Form 3 reporting requirement. If the Board chooses to retain the term "dishonesty," the Board should consider revising the proposed Item to require reporting of conduct that relates to "dishonesty" only in connection with the provision of audit services.

Fifth, proposed Item 5.1(d) requires that the firm provide a brief description of the alleged conduct giving rise to a violation of a statute, rule or legal duty for which a legal proceeding has been initiated.[57] Form 1 requires that an applicant for registration only supply basic information about the proceeding, including only the statutes, rules or other requirements that an individual is charged with having violated.[58] The Board should consider revising this proposed Item to require the same information required to be filed on Form 1 by an applicant for registration, removing the requirement that the registered firm describe the alleged conduct. In the alternative, the Board should allow the registered firm to provide a brief description of the conduct alleged in the complaint. In many cases it will be impossible for the registered firm to describe the conduct alleged beyond what is in the complaint. Moreover, any such description may also unfairly and unnecessarily compromise the firm's or the individual's defense of the legal proceeding.

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[57] *Id*. at A-37.

[58] Form 1, Item 5.1(b).

Finally, proposed Item 5.1(e)'s requirement that, in reporting on certain legal proceedings, the firm report the name of any client that was the recipient of professional services to which any claim or charge relates[59] is burdensome because it is difficult, and at times impossible, to identify, based on the filing of a complaint, the clients who may have received such services. Such disclosure may also violate client confidentiality, particularly as it relates to non-U.S. laws. Form 1 does not require any identification of such clients,[60] and the Board should consider revising the proposed Item on Form 2 to remove this requirement, or at a minimum, confine it to these clients identified in a complaint.

C. ITEMS 2.11 THROUGH 2.13 AND ITEMS 6.1 THROUGH 6.3— THE REPORTING REQUIREMENTS FOR CERTAIN RELATIONSHIPS REQUIRE CLARIFICATION.

As discussed above at Section III(E) with respect to Form 2, the provisions requiring the reporting of certain relationships raise several issues, including the possibility that a registered firm may be held liable under the proposal despite good faith efforts to ascertain the disciplinary status of an individual or entity, and the burdens imposed without any corresponding benefit to the Board or the public by the proposed reporting requirements as they relate to the reporting of certain relationships with individuals and arrangements to receive consulting and other professional services. While we need not repeat our concerns, which apply also to proposed Items 2.11, 2.12, 2.13 and proposed Items 6.1, 6.2, and 6.3 of Form 3, the issues raised above are exacerbated by the fourteen day reporting period required by the Form 3 proposal. A firm may

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59 PCAOB Release No. 2006-004, at A-37.

60 Form 1, Item 5.1(b)(4) (requiring that the registered firm identify the name of the issuer that was the subject of the audit report to which a particular legal proceeding relates).

not have sufficient time within the prescribed period to accurately ascertain the disciplinary status of an individual or entity, or sufficient time to determine that such a relationship exists between the registered firm and the individual or entity.

D. ITEMS 2.14, 2.15, 7.1 AND 7.2—THE BOARD SHOULD LIMIT THE REPORTING OF LICENSING STATUS CHANGES TO REDUCE THE BURDEN ON REGISTERED FIRMS.

Proposed Items 2.14-2.15 and 7.1-7.2 require that the firm file a report when it becomes aware that a license or certification issued to it, among other things, has been terminated or been made subject to conditions or contingencies; when it has obtained a new license; or when there has been a change in a license number.[61] Without clarification, this request likely will prove burdensome, as most major firms simultaneously are licensed in multiple states with licensing requirements that often change in scope and nature. The Board should clarify that events that are broadly applicable to all licensed firms are not considered "conditions" or "contingencies" that trigger a reporting obligation. In this regard, the Board should require reporting only when the registered firm has obtained, terminated or surrendered a license.

This reporting requirement is also made more difficult by the vagueness and uncertainty over when a firm becomes "aware" of such a change in license status. The Board should consider requiring the reporting of licensing status changes only on the annual Form 2 report to reduce the possibility of inadvertent failures to report because the firm was unable to ascertain its own awareness of the change of licensing status within the specific period.

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[61] PCAOB Release No. 2006-004, at A-34, A39-40.

COMMENTS ON PROPOSED SUCCESSOR REGISTRATION RULES

We support the Board's proposal to allow a firm to succeed to a predecessor's registration in certain circumstances without any disruption in registration status, and to allow temporary succession under other circumstances. We have identified two issues—the shortness of the time period for filing and the inability to submit a confidentiality request—with regard to these proposed rules that we believe warrant additional attention by the Board.

I. THE FOURTEEN DAY TIME PERIOD FOR FILING FORM 4 IS UNREASONABLY SHORT AND PRACTICALLY UNWORKABLE.

The Board's proposed rules require that a registered firm file Form 4 within fourteen days after the change of legal form takes effect.[62] Although the Board explains that "the events to which the proposed rules would apply are events for which a firm plans, not unanticipated events to which a firm reacts,"[63] requiring that Form 4 be filed within *fourteen* days after the occurrence of the event does not provide a registered firm sufficient time after the event to properly assess its reporting obligations and complete the form.

Non-U.S. firms are faced with the additional obstacle of determining whether the filing of Form 4 conflicts with obligations under non-U.S. law. The fourteen day reporting requirement is insufficient to allow non-U.S. firms to consult legal counsel to determine the impact of non-U.S. law on the firm's Form 4 requirements.

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62 Proposed Rule 2109, PCAOB Release No. 2006-005, at A-2.

63 PCAOB Release No. 2006-005, at 2.

Although the proposed rules do allow the Board to grant leave to file the form out of time,[64] extending the Board's prescribed time period will alleviate the need for firms to seek Board permission to file out of time. Accordingly, the Board should revise its proposal to allow a more reasonable timeframe, for example forty-five days, after the firm's change in legal status to file Form 4.

II. THE BOARD SHOULD ALLOW REGISTERED FIRMS TO SUBMIT CONFIDENTIAL TREATMENT REQUESTS FOR INFORMATION ON FORM 4.

Proposed Form 4 allows confidential treatment requests to be submitted only for information submitted in certain exhibits to the proposed Form.[65] Proposed Form 4 requests the provision of certain information (for example, information regarding the acquisition) that may need to be kept confidential under non-U.S. law or by the terms of the agreement between predecessor and successor entities. Because certain Form 4 information may require confidential treatment, the Board should revise the proposed Form to allow for the submission of confidential treatment requests related to Form 4 responses, not just exhibits to Form 4.

CONCLUSION

This comment letter identifies those aspects of the Board's proposals that should be clarified or modified to enable the Board to carry out its duties and responsibilities and to ensure that registered firms better understand and are able to comply both with their periodic reporting responsibilities and with registration responsibilities for successor entities. We support the

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[64] Proposed Rule 2108(d), PCAOB Release No. 2006-005, at A-2.

[65] Proposed General Instruction 9 for Form 4, PCAOB Release No. 2006-005, at A-6.

Board's efforts to create a rational, efficient, and effective periodic reporting system, as well as a mechanism for transferring registration status to successor entities. The changes recommended above will allow the public markets to access appropriate information to achieve the goals of the Act.

We appreciate the opportunity to comment on these proposed rules. The issues presented here are very complex and may warrant further discussion. We would welcome the opportunity to further discuss these issues with the Board. If you have any questions or would like to discuss these issues further, please contact Robert Kueppers at (212) 492-4241, Harold Tinkler at (203) 761-3545, or Guy Moore at (203) 761-3226.

Very truly yours,

/s/ Deloitte & Touche LLP

cc: Mark W. Olson, Chairman of the PCAOB
Kayla J. Gillan, Member
Daniel L. Goelzer, Member
Bill Gradison, Member
Charles D. Neimeier, Member

APPENDIX A

Summary of Recommendations

Proposed Provision	Recommendation	Cross-Reference
Proposed Rules		
Proposed Rule 2109 (requiring Form 4 to be filed 14 days after change in legal form)	Revise to extend time period to forty-five days after a firm's change in legal status.	Successor Reg. Rules, Sec. I
Proposed Rule 2202 (annual fee)	Clarify the parameters for the fee calculation and the basis for amount to be charged.	Periodic Rep. Rules, Sec. II(A)
Proposed Rule 2203 (requiring Form 3 to be filed 14 days after triggering event)	Revise to allow 45 days for filing Form 3 reports for U.S. firms and 90 days for filing Form 3 reports for non-U.S. firms.	Periodic Rep. Rules, Sec. I(A)
Proposed Rule 2203 (requiring Form 3 "catch-up" reporting)	Remove; If not removed, limit to information on ongoing relationships and legal proceedings from period of most recent inspection (or previous 6 months for non-U.S. firms), provide period for supplementing the Form 3 catch-up report, and extend deadline to 120 days after effective date of rule.	Periodic Rep. Rules, Sec. I(B)
Proposed Rule 2205 (amendments)	Revise to require amendment when the incorrectly reported or omitted information is qualitatively or quantitatively material to the form; revise to require amendment within 45 days; and clarify what constitutes "awareness" of an error or omission.	Periodic Rep. Rules, Sec. II(B)
Proposed Rule 2207 (document demand by Board)	Revise to provide appropriate safeguards for non-U.S. firms.	Periodic Rep. Rules, Sec. II(C)

Proposed Rule 2300 (confidential treatment requests)	Clarify effect of 2300(b) is not intended to provide further substantive grounds for denying confidential treatment requests; remove requirement that provision of law supporting confidentiality be submitted (or more broadly define the scope of documentation allowed); and further elaborate on functionality of Web-based redaction system.	Periodic Rep. Rules, Sec. II(C)
Proposed Rule 4000 (inspections)	Revise to clarify scope of inspection authority in amendment.	Periodic Rep. Rules, Sec. II(D)
Proposed Form 2		
Proposed Item 3.2 (fee percentages)	Revise to track information required by proxy disclosure rules; allow percentages calculated based on (a) issuers' most recent proxy statements divided by (b) the firm's revenue data for the fiscal year ending prior to the March 31 cut-off date; alternative allow percentages based on (a) the issuer's fee data as of the firm's most recent fiscal year ending prior to the March 31 cut-off date divided by (b) the firm's revenue data for the fiscal year ending prior to the March 31 cut-off date; and clarify that a good faith estimate is acceptable.	Periodic Rep. Rules, Sec. III(A)
Proposed Item 4.1 (audit reports)	Clarify that (b) requires the firm to identify the total number of individuals authorized to sign an audit report.	Periodic Rep. Rules, Sec. III(B)
Proposed Item 5.2 (audit-related memberships, affiliations, and similar arrangements)	Clarify "commonly" employed and "alternative practice structure."	Periodic Rep. Rules, Sec. III(C)
Proposed Item 6.1 (number of firm personnel)	Revise to accept an estimate or a range of personnel; and clarify that personnel performing audit services does not include non-audit specialists. Alternatively, if data regarding leverage is the information desired, revise to allow the firm to report leverage statistics for its audit practice, excluding non-audit specialists.	Periodic Rep. Rules, Sec. III(D)

Proposed Parts VII & VIII (requiring "catch-up" reporting)	Remove; If not removed, limit to information on ongoing relationships and legal proceedings from period of last inspection (or previous 6 months for non-U.S. firms) and provide period for supplementing the Form 3 catch-up report.	Periodic Rep. Rules, Sec. I(B)
Proposed Part VII (certain relationships)	Revise to require a good faith effort to ascertain the disciplinary status of an individual or entity; clarify that 7.1 applies only to accountants (if retained, limit to "associated persons"); remove 7.2 (if retained, limit to "associated persons"); limit 7.4 to audit-related professional services; and clarify the relationship between Form 2 and Form 3 reporting requirements for certain relationships.	Periodic Rep. Rules, Sec. III(E)
Proposed Form 3		
Proposed General Instruction 3 (requiring Form 3 to be filed 14 days after triggering event)	Revise to allow 45 days for filing for U.S. firms and 90 days for filing for non-U.S. firms.	Periodic Rep. Rules, Sec. I(A)
Proposed Item 2.1 (withdrawn audit reports, withdrawn consent)	Remove. Public reporting is, and should remain, a consideration of issuers.	Periodic Rep. Rules, Sec. IV(A)
Proposed Item 3.1 (withdrawn audit reports, withdrawn consent)	Remove. Public reporting is, and should remain, a consideration of issuers.	Periodic Rep. Rules, Sec. IV(A)
Proposed Item 4.1 (unauthorized use of firm name)	Remove. Public reporting is, and should remain, a consideration of issuers.	Periodic Rep. Rules, Sec. IV(A)

Proposed Items 2.5—2.10 (certain legal proceedings)	Clarify when a firm becomes "aware" of a legal proceeding (*e.g.* when senior management is notified of service of process); limit to proceedings arising from or relating to conduct in connection with the provision of audit or comparable reports for non-issuers; remove "dishonesty" and other crimes bearing materially on fitness; and narrow categories of individuals for which reporting is required (or, in the alternative, revise to make annual report on Form 2 rather than a Form 3 requirement).	Periodic Rep. Rules, Sec. IV(B)
Proposed Items 2.11—2.13 (certain relationships)	Remove; If not removed, revise to require a good faith effort to ascertain the disciplinary status of an individual or entity; clarify that 2.11 applies only to accountants; limit 2.13 to audit-related professional services; and clarify the relationship between Form 2 and Form 3 reporting requirements for certain relationships.	Periodic Rep. Rules, Sec. IV(C)
Proposed Items 2.14 & 2.15 (licensing)	Revise to make Form 2 annual reporting requirement and clarify "conditions" and "contingencies."	Periodic Rep. Rules, Sec. IV(D)
Proposed Item 5.1 (certain legal proceedings)	Limit description of conduct to Form 1 description (or, alternatively, to conduct alleged in complaint) and remove identification of clients requirement.	Periodic Rep. Rules, Sec. IV(B)
Proposed Items 6.1—6.3 (certain relationships)	Remove; If not removed, revise to require a good faith effort to ascertain the disciplinary status of an individual or entity, clarify that 2.11 applies only to accountants, limit 2.13 to audit-related professional services, and clarify the relationship between Form 2 and Form 3 reporting requirements for certain relationships.	Periodic Rep. Rules, Sec. IV(C)
Proposed Items 7.1 & 7.2 (licensing)	Revise to make annual reporting and clarify "conditions" and "contingencies."	Periodic Rep. Rules, Sec. IV(D)

Proposed Form 4		
Proposed General Instruction 9	Revise to allow confidential treatment requests for information provided in Form 4.	Successor Reg. Rules, Sec. II