

American Institute of Certified Public Accountants

July 2, 2003

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Securities and Exchange Commission (Release No. 34-47990; File No. PCAOB - 2003-03); Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules Relating to Registration System

Members and Staff of the Commission:

The SEC Practice Section ("SECPS" or the "Section") of the American Institute of Certified Public Accountants ("AICPA") respectfully submits the following written comments on the Public Company Accounting Oversight Board's ("PCOAB" or the "Board") proposed rules relating to its registration for public accounting firms. The SECPS sent a comment letter to the Board on its *Proposal of Registration System for Public Accounting Firms*, PCAOB Rulemaking Docket Matter No. 001 (March 7, 2003), on March 31, 2003. The Board received many comments on its proposed rules, many of which were addressed in the Board's proposed registration system that was submitted to the Commission for approval. However, in this letter, we have identified those aspects of the Board's rules that we continue to believe should be clarified or modified.

Need for Flexibility in Initial Registration

In our comment letter to the Board, we indicated that complying with the registration reporting requirements will be challenging for SECPS member firms. Registering with the Board is a new undertaking for public accounting firms, few of which, if any, have previously sought to compile much of the information that would be required under the Board's rules. The Board, in adopting its final registration rules, acknowledged this to some extent by modifying some of the information it was requesting (such as requesting firm financial information in the Board's annual report form instead of the registration form); however, the Section continues to believe that it is consistent with the public interest and the Sarbanes-Oxley Act of 2002 (the "Act") for the initial registration system to be flexible as possible.

As defined in the Act, "Beginning 180 days after the date of the determination of the Commission under section 101(d), it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer." Since the Commission certified that the Board was appropriately organized on April 25, 2003, public accounting firms must be registered with the Board by October 22, 2003, or immediately cease any activities with respect to audit reports of public companies. During the period between April 25, 2003 and June 30, 2003, there have been no final rules on registration. Accordingly, firms can not submit an application to the Board and begin the registration process. To compress the registration process even further, firms must submit an application to the Board no later than September 7, 2003 to provide the Board with its 45-day review period. Therefore, even if the Commission approves the Board's registration rules on an expedited basis, the final rules governing the registration application will have been effective for only three-months

before the October 22, 2003 registration deadline, or less than two-months before the September 7, 2003 registration application submission deadline.

Accordingly, we recommend that the Commission adopt a rule that allows for an initial, provisional registration in the event the Board requests that an accounting firm supplement its application, a firm is responding to such a supplemental request, or the Board is still considering an application, at the time of the October 22, 2003 registration deadline. Such a provisional registration could expire on April 19, 2004, the deadline for the registration of non-U.S. public accounting firms. The SECPS hopes the Commission recognizes and grants some flexibility regarding the registration process for firms that have taken good-faith efforts to submit its application to the Board and respond to any supplemental requests from the Board. Otherwise, if no flexibility is granted, failure for firms to meet such tight and difficult deadlines will have catastrophic effects on firms and their public company clients.

Need to Consider Confidentiality and Privacy Issues

In our comment letter to the Board, we recommended that the Board be cognizant of confidentiality and privacy issues with respect to the registration form. The Board addressed some of our concerns; however, there remains certain issues with some of the information that is requested in the Board's registration system. In addition, since the Board modified certain of its registration rules from its original proposal, there are additional issues that have arisen. Accordingly, the SECPS recommends the Commission consider the following before approving the Board's registration system:

- Public Availability of Applications and Reports (Rule 2300)

For information that the Board has granted confidential treatment, the Board has stated that it will provide that information to the Commission or to comply with a subpoena validly issued by a court or other body of competent jurisdiction. The SECPS clearly understands and supports the close relationship between the Board and the Commission; however, we remain concerned that without more protection there will be an increased likelihood that the information will lose its confidential character. There is nothing in the current rule that suggests that the Commission would be bound by the Board's confidentiality determination. The Commission has its own procedures for affording information confidential treatment. The Commission should clarify whether: (1) the Board will automatically request confidential treatment by the Commission; or (2) the Board will notify the applicant that it has disclosed information to the Commission, permitting the applicant itself to request confidential treatment from the Commission directly. In the event of a request under the Freedom of Information Act ("FOIA") for information already given to the Commission, the final rule should also require the Board to assist the Commission in determining how to respond to the FOIA request. At a minimum, the Commission should clarify that an applicant or registrant will be provided with a notice that a FOIA request has been made so it may challenge the request.

- Listing of Certain Proceedings Involving the Applicant's Audit Practice (Form I, Part V)

As set forth in the Act, each public accounting firm shall submit, as part of its application for registration, "information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report." While the Act requires applicants to submit information about proceedings involving audit reports, the Board's proposal seeks to expand upon the Act by requiring applicants to provide information about proceedings that are no longer pending and about proceedings not related to the firm's audits of issuers. For instance, with respect to criminal proceedings, the Board's rule would require disclosure of a myriad of misdemeanor matters - all entirely unrelated to the issuance of audit reports. The Section

recommends that the Commission modify the rule so that it adheres to the requirements of the Act and would only require disclosure of such information in connection with any audit report. Otherwise, if the Commission does not change the Board's rule, the Section recommends that the Board grant automatic confidential treatment in those areas where the Board's requirements exceed those of the Act.

- Roster of Associated Accountants (Form 1, Part VII)

The Board's proposed registration system would require disclosure of all accountants associated with the firm who participate in or contribute to the preparation of audit reports. While the Section supports the request for such information, we believe that the Board should afford confidential treatment, without a request from the applicant, to all of the information requested in Part VII. Certified public accountants have the responsibility of upholding the public trust, which means that they may make decisions in connection with their audits that are contrary to those of their public company clients. Publicizing such a list could expose the accountants to harassment that might stem from their relationships with particular clients. Publicizing such a list could also serve as a source of information for which employment firms and others could use for their own personal benefits. Affording the roster with automatic confidential treatment would help ensure the safety of individual employees, without depriving the Board of information it needs to fulfill its statutory obligations.

- Consents of Applicant (Form 1, Part VIII)

The Board's proposed registration system would require each firm to secure consents from what would appear to be virtually every professional employed by or contracting with the firm. Failure to obtain each and every person's consent could cause the firm to be in violation of the registration requirement. The Section recommends that the Commission make clear that it expects a public accounting firm to make reasonable, good-faith efforts to secure consents. So long as a public accounting firm makes such efforts, a firm's registration application should not be denied as a result of an inadvertent, or de minimis, failure to obtain each and every person's consent.

The Section appreciates the opportunity to comment on the proposed rule, and acknowledges the enormous effort put forth by members and staff of the PCAOB to implement the provisions of the Act. The effective registration of public accounting firms is critical to the Board's mission to oversee the audits of public companies. The Section believes that the recommendations suggested herein will enhance the proposed requirements, and help to ensure that the Board's registration process is successful.

Respectfully submitted,

Robert J. Kueppers
Chair
SECPS Executive Committee