

## PricewaterhouseCoopers LLP

July 2, 2003

Office of the Secretary  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0609.

*Re: Public Company Accounting Oversight Board Proposed Rules Relating to Registration System; Release No. 34-4799; File No. PCAOB-2003-03.*

Dear Mr. Secretary,

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act") and the Securities and Exchange Commission's (the "Commission") notice published June 11, 2003, PricewaterhouseCoopers ("PwC") submits the following limited comments on the Public Company Accounting Oversight Board's (the "PCAOB") rules relating to the registration system for public accounting firms (the "Rules"). The Rules are set forth in the PCAOB's May 6, 2003 release, *Registration System for Public Accounting Firms; PCAOB Release No. 2003-007* (the "Release").

PwC commends the very significant effort by the PCAOB in developing the registration system, culminating in the Rules currently before the Commission. PwC supports the objectives of the proposed registration system and believes the Rules reflect a conscientious and carefully thought out effort by the PCAOB to implement the registration program. PwC has been engaging constructively with the staff of the PCAOB to work out interpretive and logistical issues arising from the Rules and to ensure a smooth registration process, and the Staff has been extremely cooperative and constructive in addressing concerns that we have raised. Accordingly, PwC is raising with the Commission only those issues that we believe to be of the utmost importance at this stage of the process and in light of the upcoming deadline for completion of the registration process.

With that background, these issues include:

- The definition of "person associated with a public accounting firm" in proposed Rule 1001(p)(i) could be interpreted in an overbroad manner to include employees of unregistered public accounting firms as "associated persons" of an applicant, where the unregistered public accounting firm is associated with the applicant. If such persons are included within the scope of the registration rules, applicants would be required to obtain information about and consents from persons over whom they have no direct control, and in circumstances that could violate non-U.S. local laws.
- Form 1, Part V requires an applicant to provide information about past and pending criminal proceedings involving individuals associated with the applicant. PwC is concerned about the impact of reporting sensitive information about our personnel, especially the intrusion into privacy and potential damage to reputation that could result from this requirement. PwC believes that disclosure of criminal proceedings against individuals should be limited to proceedings related to audit reports, as provided in the Act.
- PwC also believes that certain categories of information required under the PCAOB's application form should be subject to blanket protections of confidentiality, without the need for an applicant to demonstrate the propriety of protecting confidentiality in

individual circumstances. This information consists of the names of individual accountants, all information regarding proceedings against individuals, and information about non-public proceedings against public accounting firms. All of these categories should be kept confidential to protect the parties involved.

- Because of the legal structure of investment company groups, the fee information about investment companies should be reported on an aggregate basis for fund sponsors, not on a fund-by-fund basis. Requiring disaggregated fund by fund information for purposes of the application will produce less useful and potentially misleading information for the PCAOB due to the potential for multiple counting of the same fees.

## COMMENTS

### **A. The Rules should be clarified to make clear that proposed Rule 1001(p)(i) does not reach employees of unregistered foreign firms associated with applicants for registration.**

The term "person associated with a public accounting firm," as defined in proposed Rule 1001(p)(i), should not reach the employees of unregistered foreign public accounting firms that are associated with applicants for registration. In expanding upon the statutory language set forth in Section 2(a)(9)(a) of the Act, the PCAOB has (perhaps unintentionally) created a need for clarification regarding whether an employee of a foreign public accounting firm that does not register with the PCAOB might still fall within this definition. The Commission should ask the PCAOB to clarify this definition.<sup>1</sup>

If U.S. applicants for registration are required to include employees of foreign public accounting firms within the class of "persons associated with a public accounting firm," then under the Rules the applicant will have to provide information regarding criminal and other proceedings involving such persons (Form 1, Part V) and consent from each such person (Form 1, Part VIII). To obtain such information for employees of foreign firms who might fall within the definition would be highly burdensome, if not impossible. Applicants will have no direct power to compel employees of non-applicants to execute consents or to disclose criminal proceedings. In addition to lacking direct control over such individuals, in some cases, as recognized by the PCAOB,<sup>2</sup> PwC's attempting to compel these individuals to execute consents or disclose criminal proceedings may violate non-U.S. local laws.<sup>3</sup>

PwC estimates that there will be a substantial number of associated foreign public accounting firms that provide services related to audits by PwC's U.S. firm, but are not themselves required or expected to register. It is simply impracticable in the short period of time allowed for the registration process for PwC to obtain legal analyses as to whether it is even allowed to seek the requisite information under non-U.S. local law or to attempt to obtain the consents from each affected employee. Nor would it serve any regulatory purpose to deny registration to an applicant because employees of foreign associated firms (whom the applicant does not control) fail to provide consents.

Rule 1001(p)(i) defines "associated persons" to include "accountants and professional employees" of the applicant. This definition might be construed to cover accountants who perform work in connection with an audit report, even if they are not employees of the registering firm. Thus, many accountants employed by foreign public accounting firms who provide services related to a registered firm's audit could fall within this definition. The PCAOB excluded persons associated with registered foreign firms from the definition. But it did not address the impact of the definition on persons associated with non-registering foreign firms. Therefore, no negative inference should be drawn from the exclusion of persons associated with registering firms, and the Rule should be interpreted to treat

persons associated with non-registering firms in the same manner as those associated with registering firms.<sup>4</sup>

Expanding the scope to include persons who are employees of non-registering public accounting firms is inconsistent with the statutory structure for regulating foreign firms. Section 106 of the Act reflects careful congressional determinations to limit the scope of the PCAOB's jurisdiction over non-U.S. firms. It does not require registration of all foreign accounting firms. Unlike Section 102, which governs registration of firms generally, the only requirement imposed on non-registering firms is a requirement to secure consents to produce workpapers from firms that provide opinions or material services in connection with an audit. If Rule 1001(p)(i) is interpreted to cover employees of these non-registering firms, that will represent an extension of the PCAOB's regulatory scope beyond that intended by Congress.

#### **B. Disclosure of certain criminal proceedings could harm individual firm personnel while not materially advancing the PCAOB's ability to carry out its responsibilities.**

Part V of proposed Form 1 requires the applicant to provide detailed information about past and pending civil, criminal and administrative proceedings of both the firm and its personnel.<sup>5</sup> PwC has no issue with obtaining and disclosing most of this information, and PwC has begun the process of gathering it. PwC is concerned, however, about the impact of requiring disclosure of criminal proceedings of its personnel without regard to whether such proceedings relate to an audit report or involve a crime that bears any reasonable relation to an assessment of an accounting firm's qualifications to be registered by the PCAOB. To disclose such sensitive information about an individual intrudes on the individual's privacy and, if made public, could be highly damaging to the individual's reputation.

The PCAOB's primary duty is the registration and oversight of *accounting firms*, not individual accountants. The PCAOB's purpose is to "oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports" for public companies.<sup>6</sup> Information regarding criminal proceedings involving individual associated persons should be required only to the extent that such information, separately or in the aggregate, is relevant to the qualifications or fitness of the *accounting firm* to be registered.

The Act itself contemplated that information regarding criminal proceedings was relevant only to the extent it related to an audit report. Form 1, on the other hand, places no limits on the types of criminal proceedings that must be disclosed. Accordingly, Form 1 requires disclosure, on an individual-by-individual, case-by-case basis, of individual convictions for all criminal offenses. This includes such offenses as drug crimes, drunk driving, and domestic offenses. It includes misdemeanors as well as felonies. The disclosure of such sensitive information (which may not previously have been on the public record, especially where the case is pending and, therefore, by definition may not result in a conviction) could be seriously prejudicial to the individual concerned. Requiring such disclosure would invade the privacy of individuals and has the potential for unnecessarily damaging their reputations and causing collateral consequences. Even if such information may be on the public record in individual courts, collecting such information into a single, publicly accessible database dramatically increases the potential for public dissemination of this information and the resulting harmful consequences.

We do not believe that the disclosure of such broad categories of information is relevant to PwC's qualifications, as an organization, to be a registered accounting firm. We believe that this category of information should be limited - as contemplated by the Act - to criminal

proceedings in connection with an audit report. However, to the extent that the Commission thinks that the Rules need to go beyond the requirements of the Act, PwC would not object to requiring disclosure of certain types of felony offenses, such as fraud, other financial crimes or perjury, even if they do not involve audit reports, as originally contemplated by the PCAOB.<sup>7</sup> Inclusion of such matters might be appropriate if the PCAOB established that they were relevant to an individual's honesty and trustworthiness and therefore might be indirectly relevant to the organization's qualifications to audit public companies.<sup>8</sup>

It is important to note that state licensing applications for individual accountants often do request broad information about criminal convictions and proceedings. This may be appropriate information for the state to consider in deciding whether an individual has the character and fitness to be licensed to engage in a profession requiring personal integrity. The connection between such information about individuals and a large accounting firm's institutional qualifications, on the other hand, is extremely attenuated.

Accordingly, we submit that Form 1 should be revised to limit the categories of criminal offenses for which individuals must provide information. Because the registration extends to the firm, not its individual associated persons, and to the firm's fitness as a whole to audit public companies, we believe it would be appropriate to limit the criminal proceedings information to that related to audit reports. That is the most direct and relevant connection between a criminal offense and the PCAOB's regulatory mission.

However, to the extent that the Commission thinks that the Rules need to go beyond the requirements of the Act, such disclosure could be required for felony offenses that relate to the applicant's or an individual's fitness to work on audits of issuer clients. To that end, as discussed above, "honesty" related offenses, such as fraud, forgery, embezzlement, and perjury, which resulted in criminal convictions, could be captured.

### **C. Certain categories of information should be accorded blanket confidential treatment.**

PwC recognizes and supports the presumptions of public disclosure of registration information found in the Act and the Rules. A registering firm's application, however, is likely to include certain types of information that do not belong in the public domain. In particular, the application form requires disclosure of information about individuals that could be misused, and we think that protections should be adopted to limit the opportunity for such misuse. Because of the burdens associated with seeking confidential treatment, the PCAOB should grant blanket exemptions in certain limited circumstances.

First, we believe that the names of our accountants should be kept confidential. To the extent that such disclosure does not violate non-U.S. local laws, we have no objection to providing the names of our U.S. accountants (and for registering foreign firms, those partners and managers that participate in the audits of issuers) to the PCAOB for its own use in connection with carrying out its responsibilities.

In publishing such names and information, however, the PCAOB could cause risk to the identified individuals. One can envision a host of potential abuses of such easily accessible information about individuals. At a minimum, a public database of the names of accountants at PwC or other accounting firms could be misused by mass mailers, headhunters or other commercial organizations. Given the Board's objectives, disclosure of such data seems unnecessary to its mandate; when weighed against the privacy interests at stake here, this requirement should be moderated.

The PCAOB need not disclose such information in order to carry out its responsibilities. If an investor has an issue with respect to the firm or an issuer, for example, that investor can lodge a complaint with the PCAOB and the PCAOB will have the necessary information related to the firm and personnel to investigate any such complaint.

Second, we believe all information regarding proceedings against individuals should be kept confidential in all cases. By publishing information on proceedings against individuals, the PCAOB will be further penalizing the individuals who must report such information. Such treatment is unfair and unjust. If the Commission concludes that information relating to proceedings against specific individuals should be made public, public availability of information relating to proceedings against individuals should be limited to criminal proceedings related to audit reports and "honesty" related offenses that resulted in a conviction, as discussed above in section B.

Finally, we believe that non-public proceedings related to public accounting firms should be granted blanket confidential treatment. General Instruction 6 to proposed Form 1 suggests that requests for confidential treatment concerning non-public disciplinary proceedings will normally be granted.<sup>9</sup> We agree with the PCAOB, and suggest that, in light of the burden to make such individual requests, the PCAOB give blanket confidential treatment to this category of information. The confidentiality of such proceedings protects both the public accounting firm and the other parties involved. All proceedings that are by their nature confidential should be kept confidential.

**D. Fee information about investment companies should be reported on an aggregate basis for fund sponsors, not a fund-by-fund basis.**

The definition of "issuer" in proposed Rule 1001(i)(iii) treats individual investment companies as separate issuers. However, for investment company issuers, the fees disclosed in (c)-(e) of Items 2.1 and 2.2 of proposed Form 1 should be aggregated and reported on a consolidated basis for all investment companies within a particular mutual fund group.

Requiring disaggregated fund issuer-by-fund issuer information for purposes of the application will produce less useful and potentially misleading information for the PCAOB due to the potential for multiple counting of the same fees. As the proposed rules are written, the PCAOB will receive voluminous information about individual fund issuers that we believe has very limited value. This is largely due to the legal structure of investment companies and the manner in which they currently file information with the Commission.

Items 2.1 and 2.2 of proposed Form 1 contain a unique requirement for investment companies: inclusion of fees billed to an advisor or affiliate of the advisor if that advisor or affiliate also provides services to the fund. If fees are provided at the trust or individual fund issuer level, we believe it will be more difficult and time consuming for the PCAOB to ascertain the nature and size of the relationship between a public accounting firm and a mutual fund complex because the fees billed to an advisor or affiliate that provides services to an issuer will appear in multiple locations and effectively be "double counted."

Accordingly, PwC asks the Commission to require that the fee information for registered investment companies need be gathered only at the sponsor level. This will provide the PCAOB with information about the relative size of a public accounting firm's relationship with a fund complex. We believe that this information will provide the PCAOB with more meaningful information than if the fees were disclosed at the trust or individual fund issuer level.<sup>10</sup>

We hope that our commentary will be helpful to the Commission and its staff. 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

cc: Public Company Accounting Oversight Board

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- <sup>1</sup> PwC understands that the PCAOB is considering this issue and may provide clarification on whether Rule 1001(p)(i) encompasses employees of non-registering foreign accounting firms. If the PCAOB does issue such an interpretation, then this comment will be moot.
  - <sup>2</sup> See Release, p. 18.
  - <sup>3</sup> The PCAOB proposed Rule 2105 to compensate for this problem. Rule 2105 provides that an applicant may withhold information from its application for registration if submission of such information would violate a non-U.S. law. The PCAOB also gave foreign firms an additional 180 days to determine whether or not such disclosures violated local law. U.S. firms dealing with employees of foreign associated persons do not have the same extension and, therefore, under the current proposed definition, may have to determine in the next two to three months whether such disclosures would violate the laws of any of the foreign jurisdictions in which such firms may have associated persons.
  - <sup>4</sup> The PCAOB expanded the statutory definition in Section 2(a)(9) of the Act. It deleted the word "other" before "professional employee." The PCAOB decided that the term "associated person" should not be limited to employees of the registered accounting firm itself. The PCAOB expressly excluded persons "primarily associated with another registered public accounting firm" from the definition. It did not address persons who are associated with a foreign accounting firm that is not itself registered. See Release, p. A3-xii.
  - <sup>5</sup> Section 102(b)(2)(F) of the Act provides that the PCAOB should request "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." Relying on Section 102(b)(2)(H), the PCAOB expanded this to include all criminal proceedings that resulted in a judgment against an associated person within the prior 5 years.
  - <sup>6</sup> Act, § 101(a); see also Rule 2106(a).
  - <sup>7</sup> In the PCAOB's initial proposal for a registration system, the PCAOB proposed to require more limited disclosures related to proceedings. In its March 7, 2003 release, the PCAOB proposed that the applicant list any proceeding in which the applicant or associated person was the defendant, if such proceeding was a criminal, civil government actions or private civil action, but only if any such proceedings related to audit reports. *Proposal of Registration System for Public Accounting Firms; PCAOB Release No. 2003-1, Items 5.1-5.4, p. A2-vii to A2-xiii.* To the extent that a proceeding did not relate to an audit report, then the applicant would list any proceeding involving the "applicant, or any proprietor, partner, principal, shareholder, or officer of the applicant" if the proceeding arose "out of such person's conduct as an accountant" or if that person "was censured or fined with respect to, was permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from, or

was barred or suspended permanently or temporarily from engaging in, the practice of accounting or auditing" or if the proceeding

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1. involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, obstruction of justice, or any substantially equivalent activity however denominated by the laws of the relevant non-U.S. jurisdiction, or conspiracy to commit any such offense;
2. involves the larceny, theft, robbery, burglary, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or any substantially equivalent activity however denominated by the laws of the relevant non- U.S. jurisdiction; or
3. involves the violation of section 152, 1341, 1342, 1343, 1348, 1349, 1512, 1513, 1519, 1520 or chapter 25 or 47 of title 18 of the United States Code or a violation of a substantially equivalent non-U.S. statute."

*Id.* at Item 5.5, p. A2-xiii.

- [8](#) The approach of the National Association of Securities Dealers (the "NASD") is illustrative. NASD requires all broker-dealers that are members to report if there is a written customer complaint involving allegations of theft, misappropriation of funds or securities, or forgery involving such member or any associated person. NASD Manual, Rule 3070(a)(2) (amend. May 21, 2003). The NASD also requires reporting of an indictment, conviction, guilty or no contest plea to crimes relating to the sale of securities, bribery, perjury, extortion, forgery, and fraudulent concealment, among others - in effect, activities that may be probative of the broker-dealer's honesty and fair dealing in the capital markets. NASD Rule 3070(a)(5).
- [9](#) General Instruction 6 provides, in part, that "[the] PCAOB will normally grant confidential treatment requests for information concerning non-public disciplinary proceedings."
- [10](#) For a more detailed discussion of the issues related to investment companies, see PwC's Comment Letter dated March 31, 2003, on the PCAOB's proposed rules, at pp. 22-25.