

File No. PCAOB-2003-09  
Consists of 99 Pages

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

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Form 19b-4

Proposed Rules

By

Public Company Accounting Oversight Board

In accordance with Rule 19b-4 under the  
Securities Exchange Act of 1934

1. Text of the Proposed Rule

(a) Pursuant to the provisions of Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule on Withdrawal from Registration, including a related form. The proposed rule and instructions to the form are attached as Exhibit A.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Board

(a) The Board approved the proposed rule, including the related form, and authorized it for filing with the SEC, at its Open Meeting on September 29, 2003. No other action by the Board is necessary for the filing of the proposed rule.

(b) Questions regarding this rule filing may be directed to Gordon Seymour, Acting General Counsel (202-207-9034; seymourg@pcaobus.org); or Michael Stevenson, Associate General Counsel (202-207-9054; stevensonm@pcaobus.org).

3. Board's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule

(a) Purpose

Section 102 of the Act makes it unlawful for any person that is not a public accounting firm registered with the Board to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer. The Board has previously adopted, and the Commission has approved, rules governing the process by which a public accounting firm becomes registered with the Board. The proposed rule

would govern the process by which a firm, once registered, may withdraw from registration.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

4. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule provides a process by which a public accounting firm, once registered with the Board, may seek to withdraw from registration if it chooses to do so.

5. Board's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

The Board released the proposed rule, including the instructions to the related form, for public comment on July 28, 2003. See Exhibit 2(a)(1). The Board received three written comment letters in response to the proposal. See Exhibits 2(a)(2) and 2(a)(3).

The Board has carefully considered all comments it has received. In response to the written comments received, the Board has clarified and modified certain aspects of the proposed rule and the form. The Board's response to the comments it received and the changes made to the rule and the form in response to these comments are summarized in Exhibit 3 to this filing.

6. Extension of Time Period for Commission Action

The Board does not consent to an extension of the time period specified in Section 19(b)(2) of the Securities Exchange Act of 1934.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Based on Rules of Another Board or of the Commission

The proposed rule is not based on the rules of another board or of the Commission.

9. Exhibits

Exhibit A – Text of Proposed Rule and Instructions to Related Form

Exhibit 1 – Form of Notice of Proposed Rule and Instructions to Related Form for Publication in the Federal Register

Exhibit 2(a)(1) – PCAOB Release No. 2003-014 (July 28, 2003)

Exhibit 2(a)(2) – Alphabetical List of Comments

Exhibit 2(a)(3) – Written Comments on the Rule and Instructions to Related Form Proposed in PCAOB Release No. 2003-014

Exhibit 3 – PCAOB Release No. 2003-016 (September 29, 2003)

10. Signatures

Pursuant to the requirements of the Act and the Securities Exchange Act of 1934, as amended, the Board has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Public Company Accounting Oversight Board

By: \_\_\_\_\_  
William J. McDonough  
Chairman

**Exhibit A – Text of Proposed Rule and Instructions to Related Form****SECTION 2. REGISTRATION AND REPORTING****Part 1 – Registration of Public Accounting Firms****Rule 2107. Withdrawal from Registration****(a) Request for Leave to Withdraw**

Subject to the limitation described in paragraph (e), a registered public accounting firm's registration with the Board shall be deemed withdrawn if the firm requests leave to withdraw by filing a completed Form 1-WD and

(1) the Board grants leave to withdraw, or

(2) the Board does not, within 60 days of receipt of the request, order that withdrawal of the firm's registration be delayed.

**(b) Form 1-WD**

(1) A request for leave to withdraw shall be filed on Form 1-WD in accordance with the instructions contained therein. A completed Form 1-WD shall include, among other things, a statement signed by an authorized partner or officer of the firm certifying that the firm is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

(2) The contents of a completed Form 1-WD shall be non-public. The Board shall publicly disclose the identity of any firm as to which a request for leave to withdraw is pending and the date that the Board received a completed Form 1-WD.

**(c) Effect of Filing**

(1) Beginning on the date of Board receipt of a completed Form 1-WD, the firm that filed the Form 1-WD shall not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period, unless it first withdraws its Form 1-WD.

(2) Beginning on the fifth day following the Board's receipt of a completed Form 1-WD, and continuing for as long as the Form 1-WD is pending

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(i) the firm may satisfy the annual reporting requirement by submitting a report stating that a completed Form 1-WD has been filed and is pending;

(ii) any annual fee assessed shall be zero;

(iii) the Board shall have the discretion to forego any regular inspection that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b); and

(iv) the firm's registration status shall be designated as "registered – withdrawal request pending," and the firm shall not publicly represent its registration status without specifying it as "registered – withdrawal request pending."

#### **(d) Board Action**

Within 60 days of Board receipt of a completed Form 1-WD, the Board may order that withdrawal of registration be delayed for a period of up to eighteen months from the date of such receipt if the Board determines that such withdrawal would be inconsistent with the Board's responsibilities under the Act, including its responsibilities to conduct –

(1) inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers; or

(2) investigations or disciplinary proceedings with respect to any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of the Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.

#### **(e) Automatic Delay of Withdrawal for Pending Disciplinary Proceedings**

If, on the 60th day after the Board's receipt of a Form 1-WD or at the conclusion of any period for which the Board has ordered that withdrawal be delayed, there is pending any Board disciplinary proceeding against the firm that filed the Form 1-WD or against any associated person of that firm, or there is pending any Commission or court review of a Board sanction against such firm or

person, the requested withdrawal from registration shall not take effect before the completion of all such disciplinary proceedings and reviews, unless the Board orders otherwise.

**(f) Withdrawal of Form 1-WD**

A registered public accounting firm that has submitted a Form 1-WD may withdraw the form at any time by filing with the Board a written notice of intent to withdraw the Form 1-WD along with any annual fee and annual report that the firm would have been required to submit during the period that the Form 1-WD was pending if not for the provisions of paragraph (c)(2).

**(g) Withdrawal Voided for Material Inaccuracies or Omissions**

If the Board determines, within three years after the date a firm's registration is deemed withdrawn, that there are reasonable grounds to believe that a firm that has withdrawn from registration filed with the Board a Form 1-WD that was materially incomplete or materially inaccurate on the date of filing, such firm's registration shall be reinstated, effective retroactively to the date the registration was deemed withdrawn.

**FORM 1-WD**  
**REQUEST FOR LEAVE TO WITHDRAW FROM REGISTRATION**

**GENERAL INSTRUCTIONS**

1. The definitions in the *Board's* rules apply to this form. Italicized terms in the instructions to this form are defined in the *Board's* rules. See Rule 1001.
2. Any registered public accounting firm seeking to withdraw from registration with the *Board* must file this form with the *Board*.
3. In addition to these instructions, the *Board's* Rule 2107 governs applications for leave to withdraw from registration. Please read Rule 2107 and the instructions carefully before completing this form.
4. Unless otherwise directed by the *Board*, a registered public accounting firm seeking to withdraw from registration must submit this form to the *Board* electronically by completing the Web-based version of Form 1-WD. The date of such submission shall be deemed the date of *Board* receipt of the Form. The registered public accounting firm must also submit an original hard copy of the form with manual signatures in Item 3.1 and Item 5.1, with such signatures dated not later than the date of electronic submission.

5. Pursuant to Rule 2107, any Form 1-WD filed with the *Board* shall be non-public. A registered public accounting firm may submit with Form 1-WD a request for *Board* notification in the event that the *Board* is requested by subpoena or other legal process to disclose the Form 1-WD. The *Board* will make reasonable attempts to honor any such request, although the *Board* will make public the fact that the firm has requested to withdraw from registration.

6. Information submitted as part of this form must be in the English language.

## **PART I – IDENTITY OF THE REGISTERED PUBLIC ACCOUNTING FIRM**

### Item 1.1 Name of the Firm Requesting Leave to Withdraw

State the legal name of the firm requesting leave to withdraw; if different, also state the name or names under which the firm (or any predecessor) issues *audit reports*, or has issued any *audit report* during the period of the firm's registration with the *Board*.

### Item 1.2 Firm Contact Information

State the physical address (and, if different, mailing address) of the firm's headquarters office. State the telephone number and facsimile number of the firm's headquarters office.

### Item 1.3 Primary Contact and Signatories

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

## **PART II – DESCRIPTION OF ONGOING REGULATORY OR LAW ENFORCEMENT PROCEEDINGS**

### Item 2.1 Description of Ongoing Regulatory or Law Enforcement Proceedings

Identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part (1) conduct of the firm or (2) *audit*-related conduct of any of the firm's associated persons. For each such proceeding, state –

a. The identity of the federal, state, or local authority conducting the proceeding;

- b.      The caption or other identifying information of the proceeding;
- c.      The date that the firm or a partner or officer of the firm first became aware of the proceeding;
- d.      The firm's understanding of the current status of the proceeding;  
and
- e.      The conduct of the firm and the firm's associated persons that the proceeding addresses.

### **PART III – CERTIFICATION OF NONPARTICIPATION IN AUDITS**

#### **Item 3.1 Statement of Nonparticipation in Audits**

Furnish a statement, dated and signed on behalf of the firm by an authorized partner or officer of the firm, in the following form –

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

Note: Other than the insertion of the name of the firm the statement must be in the exact words contained in this instruction.

### **Part IV – REASONS FOR SEEKING LEAVE TO WITHDRAW (Optional)**

#### **Item 4.1 Description of Reasons for Seeking Leave to Withdraw**

Describe, if you choose to do so, the reason or reasons that the firm seeks leave to withdraw from registration.

### **PART V – SIGNATURE OF FIRM SEEKING LEAVE TO WITHDRAW**

#### **Item 5.1 Signature of Authorized Partner or Officer**

The request for leave to withdraw from registration must be signed on behalf of the firm by an authorized partner or officer of the firm. The signer must certify that he or she has reviewed the application; that the application is, based on the signer's knowledge, complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf

of the firm. The signature must be accompanied by the title of the signer and the date of the signature.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. PCAOB-2003-09)

[Date]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule  
on Withdrawal from Registration

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on October 14, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") the proposed rule, including a related form, described in Items I, II, and III below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule and the instructions to the related form from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule

On September 29, 2003, the Board adopted a rule, including a related form, concerning withdrawal from registration (PCAOB Rule 2107). The proposed rule text and the instructions to the related form are set out below.

## **SECTION 2. REGISTRATION AND REPORTING**

### **Part 1 – Registration of Public Accounting Firms**

#### **Rule 2107. Withdrawal from Registration**

##### **(a) Request for Leave to Withdraw**

Subject to the limitation described in paragraph (e), a registered public accounting firm's registration with the Board shall be deemed withdrawn if the firm requests leave to withdraw by filing a completed Form 1-WD and

- (1) the Board grants leave to withdraw, or
- (2) the Board does not, within 60 days of receipt of the request, order that withdrawal of the firm's registration be delayed.

##### **(b) Form 1-WD**

(1) A request for leave to withdraw shall be filed on Form 1-WD in accordance with the instructions contained therein. A completed Form 1-WD shall include, among other things, a statement signed by an authorized partner or officer of the firm certifying that the firm is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

(2) The contents of a completed Form 1-WD shall be non-public. The Board shall publicly disclose the identity of any firm as to which a request for leave to withdraw is pending and the date that the Board received a completed Form 1-WD.

##### **(c) Effect of Filing**

(1) Beginning on the date of Board receipt of a completed Form 1-WD, the firm that filed the Form 1-WD shall not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period, unless it first withdraws its Form 1-WD.

(2) Beginning on the fifth day following the Board's receipt of a completed Form 1-WD, and continuing for as long as the Form 1-WD is pending

—

(i) the firm may satisfy the annual reporting requirement by submitting a report stating that a completed Form 1-WD has been filed and is pending;

(ii) any annual fee assessed shall be zero;

(iii) the Board shall have the discretion to forego any regular inspection that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b); and

(iv) the firm's registration status shall be designated as "registered – withdrawal request pending," and the firm shall not publicly represent its registration status without specifying it as "registered – withdrawal request pending."

**(d) Board Action**

Within 60 days of Board receipt of a completed Form 1-WD, the Board may order that withdrawal of registration be delayed for a period of up to eighteen months from the date of such receipt if the Board determines that such withdrawal would be inconsistent with the Board's responsibilities under the Act, including its responsibilities to conduct –

(1) inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers; or

(2) investigations or disciplinary proceedings with respect to any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of the Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.

**(e) Automatic Delay of Withdrawal for Pending Disciplinary Proceedings**

If, on the 60th day after the Board's receipt of a Form 1-WD or at the conclusion of any period for which the Board has ordered that withdrawal be delayed, there is pending any Board disciplinary proceeding against the firm that filed the Form 1-WD or against any associated person of that firm, or there is pending any Commission or court review of a Board sanction against such firm or person, the requested withdrawal from registration shall not take effect before the

completion of all such disciplinary proceedings and reviews, unless the Board orders otherwise.

**(f) Withdrawal of Form 1-WD**

A registered public accounting firm that has submitted a Form 1-WD may withdraw the form at any time by filing with the Board a written notice of intent to withdraw the Form 1-WD along with any annual fee and annual report that the firm would have been required to submit during the period that the Form 1-WD was pending if not for the provisions of paragraph (c)(2).

**(g) Withdrawal Voided for Material Inaccuracies or Omissions**

If the Board determines, within three years after the date a firm's registration is deemed withdrawn, that there are reasonable grounds to believe that a firm that has withdrawn from registration filed with the Board a Form 1-WD that was materially incomplete or materially inaccurate on the date of filing, such firm's registration shall be reinstated, effective retroactively to the date the registration was deemed withdrawn.

**FORM 1-WD  
REQUEST FOR LEAVE TO WITHDRAW FROM REGISTRATION**

**GENERAL INSTRUCTIONS**

1. The definitions in the *Board's* rules apply to this form. Italicized terms in the instructions to this form are defined in the *Board's* rules. See Rule 1001.
2. Any *registered public accounting firm* seeking to withdraw from registration with the *Board* must file this form with the *Board*.
3. In addition to these instructions, the *Board's* Rule 2107 governs applications for leave to withdraw from registration. Please read Rule 2107 and the instructions carefully before completing this form.
4. Unless otherwise directed by the *Board*, a *registered public accounting firm* seeking to withdraw from registration must submit this form to the *Board* electronically by completing the Web-based version of Form 1-WD. The date of such submission shall be deemed the date of *Board* receipt of the Form. The registered public accounting firm must also submit an original hard copy of the form with manual signatures in Item 3.1 and Item 5.1, with such signatures dated not later than the date of electronic submission.
5. Pursuant to Rule 2107, any Form 1-WD filed with the *Board* shall be non-public. A registered public accounting firm may submit with Form 1-WD a

request for *Board* notification in the event that the *Board* is requested by subpoena or other legal process to disclose the Form 1-WD. The *Board* will make reasonable attempts to honor any such request, although the *Board* will make public the fact that the firm has requested to withdraw from registration.

6. Information submitted as part of this form must be in the English language.

## **PART I – IDENTITY OF THE REGISTERED PUBLIC ACCOUNTING FIRM**

### Item 1.1 Name of the Firm Requesting Leave to Withdraw

State the legal name of the firm requesting leave to withdraw; if different, also state the name or names under which the firm (or any predecessor) issues *audit reports*, or has issued any *audit report* during the period of the firm's registration with the *Board*.

### Item 1.2 Firm Contact Information

State the physical address (and, if different, mailing address) of the firm's headquarters office. State the telephone number and facsimile number of the firm's headquarters office.

### Item 1.3 Primary Contact and Signatories

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

## **PART II – DESCRIPTION OF ONGOING REGULATORY OR LAW ENFORCEMENT PROCEEDINGS**

### Item 2.1 Description of Ongoing Regulatory or Law Enforcement Proceedings

Identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part (1) conduct of the firm or (2) *audit*-related conduct of any of the firm's associated persons. For each such proceeding, state –

a. The identity of the federal, state, or local authority conducting the proceeding;

b. The caption or other identifying information of the proceeding;

- c. The date that the firm or a partner or officer of the firm first became aware of the proceeding;
- d. The firm's understanding of the current status of the proceeding;  
and
- e. The conduct of the firm and the firm's associated persons that the proceeding addresses.

### **PART III – CERTIFICATION OF NONPARTICIPATION IN AUDITS**

#### Item 3.1 Statement of Nonparticipation in *Audits*

Furnish a statement, dated and signed on behalf of the firm by an authorized partner or officer of the firm, in the following form –

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

Note: Other than the insertion of the name of the firm the statement must be in the exact words contained in this instruction.

### **Part IV – REASONS FOR SEEKING LEAVE TO WITHDRAW (Optional)**

#### Item 4.1 Description of Reasons for Seeking Leave to Withdraw

Describe, if you choose to do so, the reason or reasons that the firm seeks leave to withdraw from registration.

### **PART V – SIGNATURE OF FIRM SEEKING LEAVE TO WITHDRAW**

#### Item 5.1 Signature of Authorized Partner or Officer

The request for leave to withdraw from registration must be signed on behalf of the firm by an authorized partner or officer of the firm. The signer must certify that he or she has reviewed the application; that the application is, based on the signer's knowledge, complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the firm. The signature must be accompanied by the title of the signer and the date of the signature.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule and instructions to the related form. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose Of, and Statutory Basis for, the Proposed Rule

(a) Purpose

Section 102 of the Act makes it unlawful for any person that is not a public accounting firm registered with the Board to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer. The Board has previously adopted, and the Commission has approved, rules governing the process by which a public accounting firm becomes registered with the Board. The proposed rule will govern the process by which a firm, once registered, may withdraw from registration. The rule and the instructions to the related form are discussed below.

**Rule 2107 – Withdrawal from Registration**

Rule 2107 consists of six paragraphs. Paragraph (a), "Request for Leave to Withdraw," describes in the most fundamental terms what must happen for a firm to withdraw from registration. To seek to withdraw, a firm must file with the

Board a completed Form 1-WD requesting leave to withdraw. The requested withdrawal may take effect either through Board action (if the Board expressly grants leave to withdraw) or through Board inaction (if the Board does not, within 60 days of receipt of the Form 1-WD, order that withdrawal be delayed).

Because paragraph (a) is subject to the limitation in paragraph (e), however, withdrawal will not take effect through Board inaction if the firm that filed the Form 1-WD, or any associated person of that firm, is a party to a disciplinary proceeding pending before the Board, or to any Commission or court review of a Board disciplinary sanction. In that circumstance, paragraph (e) operates automatically to delay withdrawal of the firm's registration until full and final completion of all such proceedings.

Paragraph (b) concerns Form 1-WD. Paragraph (b)(1) provides that Form 1-WD must be filed in accordance with the instructions. Paragraph (b)(1) also provides that a completed Form 1-WD must include a specific statement, signed by an authorized partner or officer of the firm, certifying that the firm is not performing, and will not perform, certain functions with respect to audits. Specifically, the certifying person must state that the firm "is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period." Under the rule, a Form 1-WD that lacked this certification would not be complete and would not be sufficient to start the withdrawal process.

Paragraph (b)(2) describes which aspects of a firm's request for leave to withdraw will be public. Under the rule, the Board would publicly disclose the identity of any firm that filed a completed Form 1-WD and would disclose the date of the Board's receipt of that form. The completed Form 1-WD, however, would be non-public and would be kept confidential by the Board. Aside from basic identifying information and the certification of nonparticipation in audits, a completed Form 1-WD will contain only a description of any known ongoing regulatory or law enforcement investigations or proceedings involving the firm or any of its associated persons. The Board does not believe there is any reason to require firms to make such information public in order to seek withdrawal from registration. Moreover, making such information public could hinder ongoing law enforcement efforts.

Paragraph (c) describes the effect of filing a Form 1-WD beyond just triggering Board consideration of whether to delay withdrawal. Paragraph (c)(1) provides that, beginning on the date of Board receipt of the Form 1-WD, the firm may not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report with respect to an issuer, other than to issue a consent to the use of an audit report for a prior period, unless the firm first withdraws the Form 1-WD. The Board believes this provision is necessary in order to avoid the risk that the Board would grant a pending request for leave to withdraw at a time when the firm is in fact engaged in conduct for which registration is required. A firm may, however, withdraw a pending Form 1-WD

pursuant to paragraph (f) and thereby free itself to engage again in audit work for which registration is required.

The Board recognizes that a firm that files a Form 1-WD, and is therefore prohibited from engaging in work for which registration is required, is in a fundamentally different position from other registered firms as long as the Form 1-WD is pending. In light of that fact, paragraph (c)(2) would minimize various burdens and costs of registration beginning after a brief five-day delay for administrative and processing purposes. Beginning on the fifth day after Board receipt of a completed Form 1-WD, the firm's registration-related burdens would be minimized in three ways throughout the period in which the request for leave to withdraw is pending. First, the rule will allow the firm to satisfy the annual reporting requirement by submitting a report merely stating that a completed Form 1-WD has been filed and is pending. Second, any annual fee assessed after that date against the firm shall be zero. Third, the Board could, in its discretion, forego any regular inspection of the firm that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b).<sup>1/</sup>

The Board also believes, however, that a firm that has filed a Form 1-WD, and is therefore not subject to regular inspection, should not publicly characterize its registration status with the Board in a way that might, intentionally or unintentionally, create the impression that it is subject to the same regulatory processes as other registered firms. For that reason, paragraph (c)(2) provides a

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<sup>1/</sup> Any regular inspection that was commenced sooner than the fifth day after the Board receipt of Form 1-WD could continue to completion. The Board would also retain the option of ordering a special inspection.

special registration designation for such a firm – "registered – withdrawal request pending" – and prohibits such a firm from publicly representing its registration status without specifying that status as "registered – withdrawal request pending."

Five distinct events could terminate the period in which the provisions of paragraph (c)(2) would apply. First, the Board could affirmatively grant leave to withdraw at any time. Second, 60 days could elapse from Board receipt of the Form 1-WD without the Board taking any action, in which case, unless paragraph (e) applies, the firm's registration would be withdrawn. Third, the firm could withdraw the Form 1-WD pursuant to paragraph (f), in which case the firm would resume normal registration status, not subject to the special conditions of paragraph (c)(2). Fourth, the firm could be subject to a disciplinary proceeding during the period covered by paragraph (c)(2), and a Board order in that proceeding could revoke the firm's registration. Fifth, a period for which the Board ordered withdrawal delayed pursuant to paragraph (d) (whether or not extended by a disciplinary proceeding) could end, in which case, if the firm's registration had not been revoked in a disciplinary proceeding, the registration would be withdrawn.

Paragraph (d) provides that the Board may order that withdrawal of a firm's registration be delayed for a period of up to eighteen months from the date of the Board's receipt of a completed Form 1-WD. Under paragraph (d), the Board could order such a delay only if it acted within 60 days of receipt of the completed Form 1-WD and only if it determined that allowing withdrawal before

the Board completed certain processes would be inconsistent with the Board's inspection, investigative, or disciplinary responsibilities under the Act.

There are legitimate reasons, in the public interest and for the protection of investors, that the Board may choose to delay a firm's withdrawal in certain circumstances. For example, if a firm views itself as being at risk of an imminent Board sanction, such as revocation of its registration, the firm might seek to avoid the taint of that sanction by seeking to withdraw before revocation occurs. A firm might seek to withdraw to avoid an imminent inspection covering a period with respect to which the firm has some concerns about its conduct. A firm might seek to withdraw rather than cooperate, or require its associated persons to cooperate, with a Board investigation. These examples – which are only examples and not a limitation on the Board's discretion – illustrate the need for the Board to exercise judgment in determining whether to allow prompt withdrawal or whether to delay withdrawal to allow the Board to carry out its inspection, investigative, or disciplinary responsibilities under the Act.

Paragraph (d) imposes an eighteen-month limitation on the length of time that the Board may delay a firm's withdrawal. That provision, however, is subject to an exception in paragraph (e) if the Board has commenced a disciplinary action against the firm or one of its associated persons before the end of the period for which the Board ordered that withdrawal be delayed.

Paragraph (e) would operate to delay withdrawal of registration automatically in certain circumstances without the Board having to issue an order. The only condition that gives rise to an automatic delay under paragraph

(e) is a pending disciplinary proceeding (including pending Commission or court review of a Board disciplinary sanction) against the firm or an associated person of the firm. There are, however, two distinct points in time when that condition, if it exists, would trigger the automatic delay in paragraph (e). First, if a disciplinary proceeding is pending on the 60th day after Board receipt of the Form 1-WD, withdrawal is automatically delayed. Second, if the Board has ordered withdrawal delayed pursuant to paragraph (d) at a time when no disciplinary proceeding was pending, but such a proceeding is pending at the end of the period prescribed in the Board's order delaying withdrawal, withdrawal is automatically delayed beyond the end of that prescribed period.

If an automatic delay were triggered under paragraph (e), it would continue in effect until all relevant disciplinary proceedings (including any proceedings against the firm and any and all proceedings against associated persons of the firm) were finally concluded, unless the Board orders otherwise. The automatic delay would continue not only through the period of any final Board action, but also through any review of the Board's action by the Commission or the courts, and through any Board action on remand and any review of that Board action.

Paragraph (f) provides that a registered public accounting firm may withdraw a Form 1-WD at any time. To effect withdrawal of the form, the firm must submit a written notice of withdrawal accompanied by (1) any annual fee that would have been due while the form was pending, if not for the operation of paragraph (c)(2), and (2) a complete version of any annual report that would

have been due while the form was pending, if not for the operation of paragraph (c)(2).

Paragraph (g) provides that if a firm files a Form 1-WD that, through misstatement or omission, misleads the Board as to a material point, and the Board discovers the misstatement or omission within three years after the firm's registration was deemed withdrawn, the Board can void the withdrawal of the firm's registration. For example, if a firm failed to identify in its Form 1-WD certain law enforcement investigations that are required to be disclosed on the form, the Board could void the withdrawal, reinstate the firm's registration, and conduct any appropriate investigation just as it could have done if the firm had never withdrawn. The ability to void a withdrawal for filing a materially misleading Form 1-WD is a necessary component of the withdrawal process, since the Board's decision about withdrawal depends in part upon whether the circumstances call for the Board to conduct investigative or other steps in the public interest or for the protection of investors. Under the rule, if the Board voids a withdrawal, the firm's registration shall be reinstated retroactive to the date the registration was deemed withdrawn.

### **Form 1-WD**

The rule also consists of instructions to PCAOB Form 1-WD, which is the form to be used by registered public accounting firms to request leave to withdraw from registration. Form 1-WD consists of general instructions and five parts. Each of the parts of the form is explained in more detail below.

**Part I – Identity of the Registered Public Accounting Firm**

Part I of the Form requires basic identifying information. For item 1.1, the firm must state its legal name and any other names under which the firm or any predecessor of the firm issues audit reports or has issued audit reports during the period of the firm's registration. Item 1.2 requires the firm to provide the physical address (and, if different, the mailing address), telephone number, and facsimile number of the firm's headquarters office. Item 1.3 requires the firm to identify a partner or other authorized officer of the firm who will serve as the firm's primary contact with the Board concerning the request to withdraw registration. For that person, and for any other person whose signature appears in Part III or Part IV of the form, item 1.3 requires the firm to provide a name, title, physical business address (and, if different, a business mailing address), telephone number, facsimile number, and e-mail address.

**Part II – Description of Ongoing Regulatory or Law Enforcement Proceedings**

Item 2.1 of the form requires the firm to identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part any conduct of the firm or any audit-related conduct of the firm's associated persons. The firm must identify the authority conducting the proceeding, supply a caption or other identifying information for the proceeding, state the date that the firm or a partner or officer of the firm first became aware of the proceeding, describe the firm's

understanding of the current status of the proceeding, and describe the conduct of the firm and the firm's associated persons that the proceeding addresses.

### **Part III – Certification of Nonparticipation in Audits**

Item 3.1 requires a representation by an authorized partner or officer of the firm, on behalf of the firm, in the following form (substituting only the name of the firm where indicated in brackets) –

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

As required by General Instruction number 4, a paper original of the form bearing a manual signature as to Item 3.1 must be submitted as well as the electronic submission of the form. The manual signature must be dated not later than the date of the electronic submission.

### **Part IV – Reasons for Seeking Leave to Withdraw (Optional)**

Item 4.1 allows the withdrawing firm to describe the reason or reasons the firm seeks leave to withdraw from registration. The item is optional; a withdrawing firm can decide whether or not to provide the information in this item.

### **Part V – Signature of Firm Seeking Leave to Withdraw**

Item 5.1 requires that the form be manually signed on behalf of the firm by an authorized partner or officer of the firm who certifies that he or she has reviewed the application and that, based on his or her knowledge, the application is complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the

circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the firm. Item 5.1 also requires that the signature be dated and accompanied by the title of the signer. As required by General Instruction number 4, a paper original of the form bearing a manual signature as to Item 5.1 must be submitted as well as the electronic submission of the form. The manual signature must be dated not later than the date of the electronic submission.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule provides a process by which a public accounting firm, once registered with the Board, may seek to withdraw from registration if it chooses to do so.

C. Board's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

The Board released the proposed rule and instructions to the related form for public comment in PCAOB Release No. 2003-014 (July 28, 2003). A copy of PCAOB Release No. 2003-014 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's web site at [www.pcaobus.org](http://www.pcaobus.org). The Board received three written comments. The Board has clarified and modified certain aspects of the proposed rule and the instructions to the related form in response to comments it received, as discussed below.

One commenter asked the Board to clarify that the time period specified in the rule referred to calendar days, not business days. Partially in response to this comment, the Board adopted PCAOB Rule 1002, as described in PCAOB Release No. 2003-015 (September 29, 2003). Rule 1002 specifies that prescribed periods in the Board's rules of 7 or fewer days mean business days, and longer periods mean calendar days.

A commenter suggested that any information that the Board makes publicly available about a firm should cease to be publicly available at some point after withdrawal. The commenter suggested three years, which the commenter noted is consistent with the AICPA SEC Practice Section practice, and which allows the information to remain public for as long as financial statements the firm has audited might still be included in an issuer's filings. In response to the comment, the Board's adopting release stated that the Board plans to adopt a practice of eliminating online access to a firm's application and annual reports three years after withdrawal.

With respect to the Rule's provision allowing the Board to delay a firm's withdrawal from registration, the Board initially proposed that such delay could be as long as two years. A commenter suggested that two years was too long a period to delay withdrawal if no disciplinary proceeding is pending. After considering the comment, the Board has reduced to eighteen months the maximum period for which the Board could delay withdrawal in the absence of a pending disciplinary proceeding.

As initially proposed, the Rule set no time limit on the Board's ability to void a registration withdrawal on the basis of material misstatements or omissions in the firm's Form 1-WD. At the suggestion of a commenter, the final rule adopted by the Board imposes a three-year limitation on the Board's ability to void a registration withdrawal.

With respect to Form 1-WD, one commenter suggested that a firm should be required to report only those matters that it has not previously disclosed either in its registration application in or in its annual or other periodic reporting.<sup>2/</sup> The Board agrees that a withdrawing firm should not have to repeat information it has previously furnished the Board. Accordingly, the Board's release adopting the Rule and Form 1-WD makes clear that a firm may answer Part II of Form 1-WD with respect to a proceeding that the firm has previously reported by identifying the proceeding as still ongoing, incorporating previously reported information by reference, and providing the firm's current understanding of the proceeding's status.

A commenter sought clarification of whether item 2.1(d) of Form 1-WD, requesting the firm's understanding of the current status of the proceeding, seeks a short answer or a detailed description. In the release adopting the Rule and Form 1-WD, the Board responded to the comment by stating that Form 1-WD does not seek detailed descriptions under this item. A short description of the status of the proceeding (e.g., under investigation, case pending, etc.) is sufficient. The commenter also asked for clarification of the level of detail sought

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<sup>2/</sup> The Board has not yet adopted rules requiring annual or periodic reporting, although it anticipates doing so in the future.

in item 2.1(e), and the Board made clear in the adopting release that, in responding to item 2.1(e), a general description of the case will be sufficient.

A commenter suggested that Form 1-WD should afford a firm the option of stating the reason it seeks to withdraw. In response to the comment, the Board provided that option by adding Item 4.1 to Form 1-WD.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents the Commission will:

(a) by order approve such proposed rule; or

(b) institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the requirements of Title I of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule between the Commission and any

person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All submissions should refer to File No. PCAOB-2003-09 and should be submitted within [ ] days.

By the Commission.

Secretary





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Stevenson, Associate General Counsel (202/207-9054;  
stevensonm@pcaobus.org).

\* \* \*

Pursuant to Section 102 of the Sarbanes-Oxley Act of 2002 (the "Act"), the Board has previously adopted rules governing the process by which public accounting firms register with the Board.<sup>1/</sup> The Board is now proposing a rule to govern the process by which registered firms may withdraw from registration. Under the proposed rule, a registered firm may seek to withdraw at any time by filing Form 1-WD. Withdrawal, however, is not automatic. The Board may order that withdrawal be delayed while the Board carries out a relevant inspection, investigation, or disciplinary proceeding. The Board may delay a requested withdrawal for up to two years, and that period shall automatically be extended to cover any period necessary to complete a disciplinary proceeding commenced before the end of the two-year period.

The mere filing of a completed Form 1-WD would, however, have the almost immediate effect of minimizing most burdens and costs associated with registration. In addition, while the request for leave to withdraw is pending, the firm may not engage in the preparation or issuance of, or play a substantial role in preparing or furnishing, an audit report for a U.S. public company,<sup>2/</sup> other than to issue a consent to the use of an audit report for a prior period. The proposed rule also provides that a firm that has filed a Form 1-WD may not publicly hold itself out as registered with the Board without specifying that its registration status is "registered – withdrawal request pending."

The Board seeks the views of interested persons on the proposed registration withdrawal rule. Section A of this release describes the substance of the proposed rule. Section B of this release describes how comments and views may be submitted to the

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<sup>1/</sup> See Registration System for Public Accounting Firms, PCAOB Release No. 2003-007 (May 6, 2003).

<sup>2/</sup> This release uses the term "U.S. public companies" as shorthand for the companies that are "issuers" under the Act and the Board's rules. This includes domestic public companies, whether listed on an exchange or not, and foreign private issuers that have either registered, or are in the process of registering, a class of securities with the Commission or are otherwise subject to Commission reporting requirements.



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Board. The Board's proposal consists of one rule (PCAOB Rule 2107) and a form (PCAOB Form 1-WD). The text of the rule, the instructions to the form, and a detailed discussion of the rule and the requirements of the form are appendices 1, 2, and 3 hereto.

A. Overview of the Proposed Rule Relating to Withdrawal from Registration

1. Firms May Withdraw from Registration, But the Board May Delay the Effective Date of Withdrawal.

Under proposed Rule 2107, a registered public accounting firm may at any time submit to the Board a request for leave to withdraw its registration. A request to withdraw must be submitted on Form 1-WD. The filing of the Form 1-WD will have the effect of acting as a notice of withdrawal, with withdrawal becoming effective on the 61st day after the request is filed, unless the Board orders that withdrawal be delayed, or unless a Board disciplinary proceeding is pending against the firm or any of its associated persons.

There are legitimate reasons, in the public interest and for the protection of investors, that the Board may choose to delay a firm's withdrawal in certain circumstances. For example, if a firm views itself as being at risk of an imminent Board sanction, such as revocation of its registration, the firm might seek to avoid the taint of that sanction by seeking to withdraw before revocation occurs. A firm might seek to withdraw to avoid an imminent inspection covering a period with respect to which the firm has some concerns about its conduct. A firm might seek to withdraw rather than cooperate, or require its associated persons to cooperate, with a Board investigation. These examples – which are only examples and not a limitation on the Board's discretion – illustrate the need for the Board to exercise judgment in determining whether to allow prompt withdrawal or whether to delay withdrawal to allow the Board to carry out its inspection, investigative, or disciplinary responsibilities under the Act.

The rule imposes a two-year limitation on the length of time that the Board may delay a firm's withdrawal unless a disciplinary proceeding has been commenced and is pending at the end of the specified period. If such a proceeding is pending, whether before a hearing officer, the Board, or the Commission or a court reviewing a Board sanction, then the period of delay of the withdrawal would automatically extend until completion of all such proceedings and reviews, including on and after any remand to the Board.



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2. The Content of a Filed Form 1-WD Will Be Nonpublic, But the Fact That a Firm Seeks to Withdraw Will Be Public.

Proposed Form 1-WD is relatively short and simple. It requires basic identifying information, a description of any known ongoing regulatory or law enforcement investigations or proceedings involving the firm or any of its associated persons, and a certification that the firm is not participating in any audit (as defined in Board Rule 1001(a)(v)) and will not participate in any audit while the Form 1-WD is pending. Apart from identifying information, the Board does not believe there is any reason to require firms to make such information public in order to seek withdrawal from registration. Moreover, some of the information, if made public, could adversely affect ongoing law enforcement efforts. Accordingly, the content of a filed Form 1-WD will be nonpublic.

The Board will, however, publicly disclose the fact that a firm has filed a Form 1-WD. That information, along with the date the Form 1-WD was filed, will be publicly disclosed on the Board's Web site during the period that the request for leave to withdraw is pending.

3. Even If the Board Delays Withdrawal, the Filing of a Form 1-WD Will Have the Effect of Minimizing the Burdens and Costs Associated with Registration.

While the Board may delay a firm's withdrawal for reasons like those described in Section 1 above, there are certain burdens and costs associated with being registered that will be minimized while the firm's request for leave to withdraw is pending. Specifically, beginning on the fifth day following the filing of a Form 1-WD, three burdens will be significantly reduced. First, any annual fee assessed after that date with respect to the firm shall be zero. Second, the firm may satisfy the annual reporting requirement by submitting a report stating that a completed Form 1-WD has been filed



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and is pending.<sup>3/</sup> Third, the Board may, in its discretion, forego any regular inspection of the firm that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b).<sup>4/</sup>

Because of these reduced burdens, a firm that has filed a Form 1-WD will be differently situated than other registered firms with respect to the Board's regulatory processes. Accordingly, the proposed rule would provide a special registration designation for such firms: "registered – withdrawal request pending." In order to minimize the risk that such a firm might, intentionally or unintentionally, create the public impression that it is subject to the same regulatory processes as other registered firms, the proposed rule prohibits a firm that has filed a Form 1-WD from publicly representing its registration status without specifying that that status is "registered – withdrawal request pending."

4. A Firm May Not Participate in Audits While Its Form 1-WD is Pending.

The proposed rule provides that, beginning on the date of Board receipt of the Form 1-WD, the firm may not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report for a U.S. public company, other than to issue a consent to the use of an audit report for a prior period, unless the firm first withdraws the Form 1-WD. This restriction is necessary to avoid the risk that the Board would grant a pending request for leave to withdraw at a time when the firm is in fact engaged in conduct for which registration is required.

5. A Firm May Withdraw Its Form 1-WD.

A firm that has filed a Form 1-WD may withdraw the form at any time up until the time that its registration is deemed withdrawn. To do so, however, the firm must pay any annual fee and submit in full any report that would have been due during the period that the Form 1-WD was pending, if not for the provision of the rule that operates to minimize those obligations during that period.

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<sup>3/</sup> Section 102(d) of the Act imposes certain reporting requirements on registered public accounting firms. The Board anticipates adopting rules relating to such reporting.

<sup>4/</sup> Any regular inspection that was commenced sooner than the fifth day after the filing of Form 1-WD could continue to completion. The Board would also retain the option of ordering a special inspection.



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6. The Board May Void a Withdrawal and Reinstate a Firm's Registration on the Ground that the Firm Filed a Materially Inaccurate or Materially Incomplete Form 1-WD.

If a firm files a Form 1-WD that, through misstatement or omission, misleads the Board as to a material point, and the Board later discovers the misstatement or omission, the Board could, under the proposed rule, void the withdrawal of the firm's registration. For example, if a firm failed to identify in its Form 1-WD certain law enforcement investigations that are required to be disclosed on the form, the Board could void the withdrawal, reinstate the firm's registration, and conduct any appropriate investigation just as it could have done if the firm had never withdrawn. The ability to void a withdrawal for filing a materially misleading Form 1-WD is a necessary component of the withdrawal process, since the Board's decision about whether to delay withdrawal depends in part upon whether the circumstances call for the Board to conduct investigative or other steps in the public interest or for the protection of investors.

B. Opportunity for Public Comment

Interested persons are encouraged to submit their views to the Board. Written comments should be sent to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, D.C. 20006-2803. Comments may also be submitted by e-mail to [comments@pcaobus.org](mailto:comments@pcaobus.org) or through the Board's Web site at [www.pcaobus.org](http://www.pcaobus.org). All comments should refer to PCAOB Rulemaking Docket Matter No. 007 in the subject or reference line and should be received by the Board no later than 5:00 PM (EDT) on August 18, 2003.



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On the 28th day of July, in the year 2003, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour  
Acting Secretary

July 28, 2003

APPENDICES –

1. Proposed Rule Relating to Withdrawal from Registration
2. Proposed Form 1-WD
3. Section-by-Section Analysis of Proposed Registration Rules and Form



## **Appendix 1 – Proposed Rule Relating to Withdrawal from Registration**

### **RULES OF THE BOARD**

#### **SECTION 2. REGISTRATION AND REPORTING**

##### **Part 1 – Registration of Public Accounting Firms**

###### **Rule 2107. Withdrawal from Registration**

###### **(a) Request for Leave to Withdraw**

Subject to the limitation described in paragraph (e), a registered public accounting firm's registration with the Board shall be deemed withdrawn if the firm requests leave to withdraw by filing a completed Form 1-WD and

- (1) the Board grants leave to withdraw, or
- (2) the Board does not, within 60 days of receipt of the request, order that withdrawal of the firm's registration be delayed.

###### **(b) Form 1-WD**

(1) A request for leave to withdraw shall be filed on Form 1-WD in accordance with the instructions contained therein. A completed Form 1-WD shall include, among other things, a statement signed by an authorized partner or officer of the firm certifying that the firm is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

(2) The contents of a completed Form 1-WD shall be non-public. The Board shall publicly disclose the identity of any firm as to which a request for leave to withdraw is pending and the date that the Board received a completed Form 1-WD.

###### **(c) Effect of Filing**

(1) Beginning on the date of Board receipt of a completed Form 1-WD, the firm that filed the Form 1-WD shall not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report, other than to



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issue a consent to the use of an audit report for a prior period, unless it first withdraws its Form 1-WD.

(2) Beginning on the fifth day following the Board's receipt of a completed Form 1-WD, and continuing for as long as the Form 1-WD is pending –

(i) the firm may satisfy the annual reporting requirement by submitting a report stating that a completed Form 1-WD has been filed and is pending;

(ii) any annual fee assessed shall be zero;

(iii) the Board shall have the discretion to forego any regular inspection that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b); and

(iv) the firm's registration status shall be designated as "registered – withdrawal request pending," and the firm shall not publicly represent its registration status without specifying it as "registered – withdrawal request pending."

**(d) Board Action**

Within 60 days of Board receipt of a completed Form 1-WD, the Board may order that withdrawal of registration be delayed for a period of up to two years from the date of such receipt if the Board determines that such withdrawal would be inconsistent with the Board's responsibilities under the Act, including its responsibilities to conduct –

(1) inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers; or

(2) investigations or disciplinary proceedings with respect to any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of the Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of



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audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.

**(e) Automatic Delay of Withdrawal for Pending Disciplinary Proceedings**

If, on the 60th day after the Board's receipt of a Form 1-WD or at the conclusion of any period for which the Board has ordered that withdrawal be delayed, there is pending any Board disciplinary proceeding against the firm that filed the Form 1-WD or against any associated person of that firm, or there is pending any Commission or court review of a Board sanction against such firm or person, the requested withdrawal from registration shall not take effect before the completion of all such disciplinary proceedings and reviews, unless the Board orders otherwise.

**(f) Withdrawal of Form 1-WD**

A registered public accounting firm that has submitted a Form 1-WD may withdraw the form at any time by filing with the Board a written notice of intent to withdraw the Form 1-WD along with any annual fee and annual report that the firm would have been required to submit during the period that the Form 1-WD was pending if not for the provisions of paragraph (c)(2).

**(g) Withdrawal voided for material inaccuracies or omissions**

If the Board determines, at any time, that there are reasonable grounds to believe that a firm that has withdrawn from registration filed with the Board a Form 1-WD that was materially incomplete or materially inaccurate on the date of filing, such firm's registration shall be reinstated, effective retroactively to the date the registration was deemed withdrawn.



## Appendix 2 – Proposed Form 1-WD

### **FORM 1-WD – REQUEST FOR LEAVE TO WITHDRAW FROM REGISTRATION**

#### GENERAL INSTRUCTIONS

1. The definitions in the *Board's* rules apply to this form. Italicized terms in the instructions to this form are defined in the *Board's* rules. See Rule 1001.
2. Any *registered public accounting firm* seeking to withdraw from registration with the *Board* must file this form with the *Board*.
3. In addition to these instructions, the *Board's* Rule 2107 governs applications for leave to withdraw from registration. Please read Rule 2107 and the instructions carefully before completing this form.
4. Unless otherwise directed by the *Board*, a registered public accounting firm seeking to withdraw from registration must submit this form to the *Board* electronically by completing the Web-based version of Form 1-WD. [Web site details to be inserted before registration system is operational.] The date of such submission shall be deemed the date of Board receipt of the Form. The registered public accounting firm must also submit an original hard copy of the form with manual signatures in Item 3.1 and Item 4.1, with such signatures dated not later than the date of electronic submission.
5. Pursuant to Rule 2107, any Form 1-WD filed with the *Board* shall be non-public. A registered public accounting firm may submit with Form 1-WD a request for *Board* notification in the event that the *Board* is requested by subpoena or other legal process to disclose the Form 1-WD. The *Board* will make reasonable attempts to honor any such request, although the *Board* will make public the fact that the firm has requested to withdraw from registration.
6. Information submitted as part of this form must be in the English language.

#### **PART I – IDENTITY OF THE REGISTERED PUBLIC ACCOUNTING FIRM**

##### Item 1.1 Name of the Firm Requesting Leave to Withdraw

State the legal name of the firm requesting leave to withdraw; if different, also state the name or names under which the firm (or any predecessor) issues *audit reports*, or has issued any *audit report* during the period of the firm's registration with the *Board*.



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#### Item 1.2 Firm Contact Information

State the physical address (and, if different, mailing address) of the firm's headquarters office. State the telephone number and facsimile number of the firm's headquarters office.

#### Item 1.3 Primary Contact and Signatories

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

### **PART II – DESCRIPTION OF ONGOING REGULATORY OR LAW ENFORCEMENT PROCEEDINGS**

#### Item 2.1 Description of Ongoing Regulatory or Law Enforcement Proceedings

Identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part (1) conduct of the firm or (2) *audit*-related conduct of any of the firm's associated persons. For each such proceeding, state –

- a. The identity of the federal, state, or local authority conducting the proceeding;
- b. The caption or other identifying information of the proceeding;
- c. The date that the firm or a partner or officer of the firm first became aware of the proceeding;
- d. The firm's understanding of the current status of the proceeding;  
and
- e. The conduct of the firm and the firm's associated persons that the proceeding addresses.



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### **PART III – CERTIFICATION OF NONPARTICIPATION IN AUDITS**

#### Item 3.1 Statement of Nonparticipation in *Audits*

Furnish a statement, dated and signed on behalf of the firm by an authorized partner or officer of the firm, in the following form –

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

Note: Other than the insertion of the name of the firm the statement must be in the exact words contained in this instruction.

### **PART IV – SIGNATURE OF FIRM SEEKING LEAVE TO WITHDRAW**

#### Item 4.1 Signature of Authorized Partner or Officer

The request for leave to withdraw from registration must be signed on behalf of the firm by an authorized partner or officer of the firm. The signer must certify that he or she has reviewed the application; that the application is, based on the signer's knowledge, complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the firm. The signature must be accompanied by the title of the signer and the date of the signature.



### **Appendix 3 – Section-by-Section Analysis of Proposed Rules Relating to Withdrawal from Registration and Form 1-WD**

The Board is proposing a rule (PCAOB Rule 2107) and a form (PCAOB Form 1-WD) relating to the process of withdrawal from registration. The rule and the form are discussed below.

#### **Proposed Rule Relating to Withdrawal from Registration**

##### **Rule 2107 – Withdrawal from Registration**

Rule 2107 consists of six paragraphs. Paragraph (a), "Request for Leave to Withdraw," describes in the most fundamental terms what must happen for a firm to withdraw from registration. To seek to withdraw, a firm must file with the Board a completed Form 1-WD requesting leave to withdraw. The requested withdrawal may take effect either through Board action (if the Board expressly grants leave to withdraw) or through Board inaction (if the Board does not, within 60 days of receipt of the Form 1-WD, order that withdrawal be delayed).

Because paragraph (a) is subject to the limitation in paragraph (e), however, withdrawal will not take effect through Board inaction if the firm that filed the Form 1-WD, or any associated person of that firm, is a party to a disciplinary proceeding pending before the Board, or to any Commission or court review of a Board disciplinary sanction. In that circumstance, paragraph (e) operates automatically to delay withdrawal of the the firm's registration until full and final completion of all such proceedings.

Paragraph (b) concerns Form 1-WD. Paragraph (b)(1) provides that Form 1-WD must be filed in accordance with the instructions. Paragraph (b)(1) also



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provides that a completed Form 1-WD must include a specific statement, signed by an authorized partner or officer of the firm, certifying that the firm is not performing, and will not perform, certain functions with respect to audits. Specifically, the certifying person must state that the firm "is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period." Under the proposed rule, a Form 1-WD that lacked this certification would not be complete and would not be sufficient to start the withdrawal process.

Paragraph (b)(2) addresses what aspects of a firm's request for leave to withdraw will be public. Under the proposed rule, the Board would publicly disclose the identity of any firm that filed a completed Form 1-WD and would disclose the date of the Board's receipt of that form. The completed Form 1-WD, however, would be non-public and would be kept confidential by the Board. Aside from basic identifying information and the certification of nonparticipation in audits, a completed Form 1-WD will contain only a description of any known ongoing regulatory or law enforcement investigations or proceedings involving the firm or any of its associated persons. The Board does not believe there is any reason to require firms to make such information public in order to seek



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withdrawal from registration. Moreover, making such information public could hinder ongoing law enforcement efforts.

Paragraph (c) describes the effect of filing a Form 1-WD beyond just triggering Board consideration of whether to delay withdrawal. Paragraph (c)(1) provides that, beginning on the date of Board receipt of the Form 1-WD, the firm may not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report with respect to an issuer, other than to issue a consent to the use of an audit report for a prior period, unless the firm first withdraws the Form 1-WD. The Board believes this provision is necessary in order to avoid the risk that the Board would grant a pending request for leave to withdraw at a time when the firm is in fact engaged in conduct for which registration is required. A firm may, however, withdraw a pending Form 1-WD pursuant to paragraph (f) and thereby free itself to engage again in audit work for which registration is required.

The Board recognizes that a firm that files a Form 1-WD, and is therefore prohibited from engaging in work for which registration is required, is in a fundamentally different position from other registered firms as long as the Form 1-WD is pending. In light of that fact, proposed paragraph (c)(2) would minimize various burdens and costs of registration beginning after a brief five-day delay for administrative and processing purposes. Beginning on the fifth day after Board



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receipt of a completed Form 1-WD, the firm's registration-related burdens would be minimized in three ways throughout the period in which the request for leave to withdraw is pending. First, the proposed rule would allow the firm to satisfy the annual reporting requirement by submitting a report merely stating that a completed Form 1-WD has been filed and is pending. Second, any annual fee assessed after that date against the firm shall be zero. Third, the Board could, in its discretion, forego any regular inspection of the firm that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b).<sup>5/</sup>

The Board also believes, however, that a firm that has filed a Form 1-WD and is therefore not subject to regular inspection, should not publicly characterize its registration status with the Board in a way that might, intentionally or unintentionally, create the impression that it is subject to the same regulatory processes as other registered firms. For that reason, proposed paragraph (c)(2) provides a special registration designation for such a firm – "registered – withdrawal request pending" – and prohibits such a firm from publicly representing its registration status without specifying that status as "registered – withdrawal request pending."

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<sup>5/</sup> Any regular inspection that was commenced sooner than the fifth day after the Board receipt of Form 1-WD could continue to completion. The Board would also retain the option of ordering a special inspection.



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Five distinct events could terminate the period in which the provisions of paragraph (c)(2) would apply. First, the Board could affirmatively grant leave to withdraw at any time. Second, 60 days could elapse from Board receipt of the Form 1-WD without the Board taking any action, in which case, unless paragraph (e) applies, the firm's registration would be withdrawn. Third, the firm could withdraw the Form 1-WD pursuant to paragraph (f), in which case the firm would resume normal registration status, not subject to the special conditions of paragraph (c)(2). Fourth, the firm could be subject to a disciplinary proceeding during the period covered by paragraph (c)(2), and a Board order in that proceeding could revoke the firm's registration. Fifth, a period for which the Board ordered withdrawal delayed pursuant to paragraph (d) (whether or not extended by a disciplinary proceeding) could end, in which case, if the firm's registration had not been revoked in a disciplinary proceeding, the registration would be withdrawn.

Paragraph (d) provides that the Board may order that withdrawal of a firm's registration be delayed for a period of up to two years from the date of the Board's receipt of a completed Form 1-WD. Under proposed paragraph (d), the Board could order such a delay only if it acted within 60 days of receipt of the completed Form 1-WD and only if it determined that allowing withdrawal before



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the Board completed certain processes would be inconsistent with the Board's inspection, investigative, or disciplinary responsibilities under the Act.

There are legitimate reasons, in the public interest and for the protection of investors, that the Board may choose to delay a firm's withdrawal in certain circumstances. For example, if a firm views itself as being at risk of an imminent Board sanction, such as revocation of its registration, the firm might seek to avoid the taint of that sanction by seeking to withdraw before revocation occurs. A firm might seek to withdraw to avoid an imminent inspection covering a period with respect to which the firm has some concerns about its conduct. A firm might seek to withdraw rather than cooperate, or require its associated persons to cooperate, with a Board investigation. These examples – which are only examples and not a limitation on the Board's discretion – illustrate the need for the Board to exercise judgment in determining whether to allow prompt withdrawal or whether to delay withdrawal to allow the Board to carry out its inspection, investigative, or disciplinary responsibilities under the Act.

Proposed paragraph (d) imposes a two-year limitation on the length of time that the Board may delay a firm's withdrawal. That provision, however, is subject to an exception in paragraph (e) if the Board has commenced a disciplinary action against the firm or one of its associated persons before the end of the period for which the Board ordered that withdrawal be delayed.



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Proposed paragraph (e) would operate to delay withdrawal of registration automatically in certain circumstances without the Board having to issue an order. The only condition that gives rise to an automatic delay under paragraph (e) is a pending disciplinary proceeding (including pending Commission or court review of a Board disciplinary sanction) against the firm or an associated person of the firm. There are, however, two distinct points in time when that condition, if it exists, would trigger the automatic delay in paragraph (e). First, if a disciplinary proceeding is pending on the 60th day after Board receipt of the Form 1-WD, withdrawal is automatically delayed. Second, if the Board has ordered withdrawal delayed pursuant to paragraph (d) at a time when no disciplinary proceeding was pending, but such a proceeding is pending at the end of the period prescribed in the Board's order delaying withdrawal, withdrawal is automatically delayed beyond the end of that prescribed period.

If an automatic delay were triggered under paragraph (e), it would continue in effect until all relevant disciplinary proceedings (including any proceedings against the firm and any and all proceedings against associated persons of the firm) were finally concluded, unless the Board orders otherwise. The automatic delay would continue not only through the period of any final Board action, but also through any review of the Board's action by the



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Commission or the courts, and through any Board action on remand and any review of that Board action.

Proposed paragraph (f) provides that a registered public accounting firm may withdraw a Form 1-WD at any time. To effect withdrawal of the form, the firm must submit a written notice of withdrawal accompanied by (1) any annual fee that would have been due while the form was pending, if not for the operation of paragraph (c)(2), and (2) a complete version of any annual report that would have been due while the form was pending, if not for the operation of paragraph (c)(2).

Proposed paragraph (g) provides that if a firm files a Form 1-WD that, through misstatement or omission, misleads the Board as to a material point, and the Board later discovers the misstatement or omission, the Board can void the withdrawal of the firm's registration. For example, if a firm failed to identify in its Form 1-WD certain law enforcement investigations that are required to be disclosed on the form, the Board could void the withdrawal, reinstate the firm's registration, and conduct any appropriate investigation just as it could have done if the firm had never withdrawn. The ability to void a withdrawal for filing a materially misleading Form 1-WD is a necessary component of the withdrawal process, since the Board's decision about withdrawal depends in part upon whether the circumstances call for the Board to conduct investigative or other



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steps in the public interest or for the protection of investors. Under the proposed rule, if the Board voids a withdrawal, the firm's registration shall be reinstated retroactive to the date the registration was deemed withdrawn.

### **Form 1-WD**

The proposed rule also consists of instructions to PCAOB Form 1-WD, which is the form to be used by registered public accounting firms to request leave to withdraw from registration. Form 1-WD consists of general instructions and four parts. Each of the parts of the form is explained in more detail below.

### **Part I – Identity of the Registered Public Accounting Firm**

Part I of the Form requires basic identifying information. For item 1.1, the firm must state its legal name and any other names under which the firm or any predecessor of the firm issues audit reports or has issued audit reports during the period of the firm's registration. Item 1.2 requires the firm to provide the physical address (and, if different, the mailing address), telephone number, and facsimile number of the firm's headquarters office. Item 1.3 requires the firm to identify a partner or other authorized officer of the firm who will serve as the firm's primary contact with the Board concerning the request to withdraw registration. For that person, and for any other person whose signature appears in Part III or Part IV of the form, item 1.3 requires the firm to provide a name, title, physical business



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address (and, if different, a business mailing address), telephone number, facsimile number, and e-mail address.

## **Part II – Description of Ongoing Regulatory or Law Enforcement Proceedings**

Item 2.1 of the form requires the firm to identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part any conduct of the firm or any audit-related conduct of the firm's associated persons. The firm must identify the authority conducting the proceeding, supply a caption or other identifying information for the proceeding, state the date that the firm or a partner or officer of the firm first became aware of the proceeding, describe the firm's understanding of the current status of the proceeding, and describe the conduct of the firm and the firm's associated persons that the proceeding addresses.

## **Part III – Certification of Nonparticipation in Audits**

Item 3.1 requires a representation by an authorized partner or officer of the firm, on behalf of the firm, in the following form (substituting only the name of the firm where indicated in brackets) –

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.



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As required by General Instruction number 4, a paper original of the form bearing a manual signature as to Item 3.1 must be submitted as well as the electronic submission of the form. The manual signature must be dated not later than the date of the electronic submission.

#### **Part IV – Signature of Firm Seeking Leave to Withdraw**

Item 4.1 requires that the form be manually signed on behalf of the firm by an authorized partner or officer of the firm who certifies that he or she has reviewed the application and that, based on his or her knowledge, the application is complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the firm. Item 4.1 also requires that the signature be dated and accompanied by the title of the signer. As required by General Instruction number 4, a paper original of the form bearing a manual signature as to Item 4.1 must be submitted as well as the electronic submission of the form. The manual signature must be dated not later than the date of the electronic submission.



## Exhibit 2(a)(2)

Tab Number	Comment Source
1	American Institute of Certified Public Accountants , SEC Practice Section, Author: <i>Robert J. Kueppers, Chair, SECPS Executive Committee</i> , August 18, 2003
2	The Institut der Wirtschaftsprüfer (German Institute of Public Auditors) Author: <i>Klaus-Peter Naumann, Chief Executive Officer</i> , August 18, 2003
3	PricewaterhouseCoopers LLP, August 18, 2003



August 18, 2003

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington, DC 20006-2803

**Re: PCAOB Rulemaking Docket Matter No. 007**

Members and Staff of the Public Company Accounting Oversight Board:

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 (“PCAOB” or the “Board”) proposed rules regarding the withdrawal from registration by public accounting firms. The AICPA is the largest professional association of certified public accountants in the United States, with more than 350,000 members in business, industry, public practice, government and education. The AICPA bylaws require, among other things, that all members that engage in the practice of public accounting with a firm auditing one or more SEC clients as defined by AICPA Council are required to be members of the SECPS. There are approximately 1,100 firms that are members of the SECPS, which consists of approximately 750 firms that audit registrants that file financial statements with the U.S. Securities and Exchange Commission (the “Commission”) and approximately 350 firms that have joined voluntarily. All of the Section’s member firms are U.S. domiciled accounting firms. Neither the AICPA nor the SECPS has the jurisdictional authority to require firms domiciled outside the U.S. to join as members.

With the enactment of the Sarbanes-Oxley Act of 2002 (the “Act”), SECPS member firms that audit issuers will be required to register with and follow the rules of the Board. The SECPS seeks to assist its member firms in fulfilling its responsibilities required under the Act. To that extent, the SECPS appreciates the opportunity to comment on the proposed rules regarding the withdrawal from registration by public accounting firms.

Overall, the SECPS is supportive of proposed Rule 2107, *Withdrawal from Registration*. However, we believe that the proposed rule could be clarified and improved in several respects and offer the following comments:

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- Paragraph (a), *Request for Leave to Withdrawal* – The proposal states that absent the Board granting a leave to withdrawal or ordering that withdrawal be delayed, a firm shall be deemed withdrawn after 60 days. The Section questions why the PCAOB review period for deregistration (60 days) is longer than the review period for registration (45 days). We respectfully request that the review period for both registration and deregistration be the same – 45 days.

It is also not clear whether 60 days refers to calendar or business days, but we presume it is on a calendar day basis. We suggest that the rule be clarified to indicate that it is on a calendar day basis.

- Paragraph (c), *Effect of Filing* – The proposal, in subparagraph (2), outlines certain conditions that will take effect beginning on the fifth day following the Board’s receipt of a completed Form 1-WD. The Section questions why these conditions don’t take effect on the next business day following the filing of a completed Form 1-WD. For instance, according to the proposed rule, beginning on the fifth day following the Board’s receipt of a completed Form 1-WD, any annual fee assessed shall be zero. Accordingly, a firm may be required to submit an annual fee to the PCAOB because the fee is due within 3 days of filing the Form 1-WD. Otherwise, the conditions indicate that the annual fee would be zero if the Form 1-WD had been completed two days earlier.

Another condition states that the firm’s registration status is not designated as “registered-withdrawal request pending” until five days following the Board’s receipt of a completed Form 1-WD. The Section believes that it is in the public interest that the firm’s registration status be modified to “registered – withdrawal request pending” on the next business day following the filing of a Form 1-WD.

Accordingly, the Section recommends that the conditions outlined in subparagraph (2) take effect on the next business day following the filing of a completed Form 1-WD. The Section-by-Section Analysis states that the five-day requirement was put in place for “administrative and processing purposes”; however, given advances in technology together with the sophisticated web-based registration system the Board has put in place, the SECPS believes there is no reason why the conditions could not take effect on the next business day.

If the PCAOB believes the five-day requirement is still necessary, we suggest that the rule be clarified to indicate that it is on a business day basis.

- Paragraph (d), *Board Action* – The proposal states that withdrawal of registration may be delayed for a period of up to two years if the Board determines that withdrawal would be inconsistent with the Board’s responsibilities, such as its responsibility to conduct

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inspections. The proposal is unclear as to the specific factors the Board would consider, and the Section recommends that those factors be clearly outlined to ensure consistency in application by the Board and to ensure that firms know what is expected in this regard. For instance, is it to be presumed that the Board would deny a request for withdrawal of registration until it had performed inspections (regular or special) covering all years in which the firm audited issuers? As an example, if a firm underwent an inspection in 2004, received a PCAOB inspection report in 2005, and withdrew from performing audits of issuers in 2005 and simultaneously requested withdrawal from PCAOB registration, would the Board deny the withdrawal application so that the Board could perform a special inspection of the 2005 issuer audit(s)? Alternatively, if a firm underwent an inspection in 2004, received a PCAOB inspection report in 2005, withdrew from performing audits of issuers in 2005, and requested withdrawal from PCAOB registration in 2006, would the Board deny the withdrawal application so that the Board could perform a special inspection of the 2005 issuer audit(s) even though those issuer(s) were subsequently audited by a PCAOB-registered firm without requiring prior year restatement? As previously stated, the Section recommends that the factors causing a two-year delay of withdrawal of registration be clearly outlined.

- Paragraph (f), *Withdrawal voided for material inaccuracies or omissions* – The proposed rule states that the Board can retroactively void a firm’s withdrawal if it learns that the firm had filed materially incomplete or materially inaccurate information on the date of filing a Form 1-WD. While the Section agrees that the Board should be permitted to void a withdrawal from registration in this regard, the Section believes that a time period should be provided under which the Board would be permitted to retroactively void such withdrawal from registration. For instance, the Section recommends that a concept similar to a statute of limitations be established. The Section recommends that the Board be permitted to void a withdrawal from registration for a period not to exceed three years. The Section believes a three-year period is reasonable since such firms may have opined on a SEC registrant’s financial statements, and those financial statements may be included for a period up to three years in the SEC registrant’s SEC filings.

The Section has three other comments that are not addressed in Rule 2107 but are pertinent to the request for withdrawal from registration, as follows:

- Once a firm has withdrawn from registration, the proposed rule does not indicate the time period under which the firm’s publicly available information that is maintained on the PCAOB’s website and in the PCAOB files will remain public. The SECPS currently maintains public files of its member firms, which includes firms’ annual reports to the Section, firms’ most recent peer review reports, among other information. The SECPS has a policy stating “Public files of a firm whose membership has been terminated, either by resignation or by action of the SECPS Executive Committee, will be available for public inspection for a period not to exceed three years from the date of such termination.”

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The Section recommends that the PCAOB adopt a similar policy. The Section believes it is reasonable to maintain such information for a period not to exceed three years because SECPS member firms may have opined on a SEC registrant's financial statements, and those financial statements may be included for a period up to three years in the SEC registrant's filings with the Commission. The Section does not consider it necessary or relevant to maintain the public file information for a period exceeding three years. Accordingly, the Section recommends that the PCAOB adopt a policy whereby public information of firms that have withdrawn from registration be publicly available for a period not to exceed three years.

- The proposed rule does not address the process that a firm would go through if it withdraws from registration, but later wishes to re-register. The Section assumes that the firm would have to go through the same initial registration process, but this fact pattern is not explicitly addressed in the proposed rule. On the other hand, the Section questions whether going through the same initial registration process is prudent and necessary, particularly if not much time had elapsed since the firm's withdrawal and there had been no significant changes in the firm that might impact its registration application. Accordingly, the Section recommends that the PCAOB's proposed rule contain guidance for firms that withdraw from registration but later wish to re-register.
- The PCAOB, in its July 18, 2003 document titled "Frequently Asked Questions Regarding Registration with the Board" ("FAQ"), stated that some firms that have no public company clients may wish to register so that they will be in a position to obtain clients. The document also stated that the "Board does not encourage the registration of firms that have no public company clients and are not actively seeking to develop a public company clientele" and that "the Board may consider requiring de-registration of firms that, for an extended period, do not audit, or play a substantial role in the audit of, any public company and do not engage in any other activity that requires registration." The Section noted that the proposed rule does not contain a provision outlining the conditions under which the Board would initiate de-registration of such firms. The Section believes that firms should be permitted to register and remain registered with the Board even though they have no public company clients. While such firms may not be involved in public company audits, they may be seeking to obtain work in this area. If such firms were not already registered with the Board, it could be perceived as a barrier-to-entry in the public company market. The Board, in its FAQ, indicated that while registration is permitted, it is not encouraged, and such firms could be de-registered on the Board's own initiative. If this remains the intent of the Board, the Section recommends that the proposed rule contain guidance as to when firms could expect such de-registration, and whether registered firms will be permitted to challenge such de-registration.

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### CONCLUSION

We acknowledge the enormous effort put forth by the members and staff of the PCAOB to implement the provisions of the Act. The effective registration and de-registration of public accounting firms is critical to the Board's mission to oversee the audits of public companies. We appreciate the opportunity to provide comments concerning the withdrawal from registration by public accounting firms. We are firmly committed to working with the PCAOB in accomplishing the timely and effective implementation of the Act, and would welcome the opportunity to meet with you to clarify any of our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Kueppers". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Robert J. Kueppers  
Chair  
SECPS Executive Committee

INSTITUT  
DER  
WIRTSCHAFTSPRÜFER

**IDW**

August 18, 2003

Office of the Secretary  
PCAOB  
1666 K Street, N.W.  
Washington, D.C.20006-2803  
USA

Dear Sirs

**Re.: PCAOB Rulemaking Docket Matter No. 005  
Proposed Rules on Investigations and Adjudications**

**PCAOB Rulemaking Docket Matter No. 006  
Proposed Rules on Inspections of Public Accounting Firms**

**PCAOB Rulemaking Docket Matter No. 007  
Proposed Rule on Withdrawal from Registration**

The Institut der Wirtschaftsprüfer [German Institute of Public Auditors] (IDW) is pleased to have the opportunity to comment on the PCAOB's proposals (the Proposed Rules on Investigations and Adjudications, Inspections of Public Accounting Firms and Withdrawal from Registration) for oversight over non-U.S. accounting firms that audit the financial statements of U.S. public companies. We would like to assure you that, as noted in previous correspondence, we share U.S. concerns regarding investor confidence and support the objectives of the Sarbanes-Oxley Act, if not all of the individual provisions of the Act or the rules or proposed rules for its implementation. We agree with the PCAOB's stated commitment to finding ways of accomplishing the goals of the Sarbanes-Oxley Act in respect of inspections of registered public accounting firms without subjecting non-U.S. firms to unnecessary burdens or conflicting requirements.

We understand that the next meeting of representatives of the PCAOB with representatives of the EU Commission will take place in September 2003 and presume that this meeting will continue and enhance the dialogue that has been taking place

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between the EU Commission and the PCAOB on issues of mutual concern in relation to the Sarbanes-Oxley Act. In this context, we are pleased to note the PCAOB's commitment to dialogue between the PCAOB and its foreign counterparts in item 6 of Docket No. 5 and item 7 in Docket No. 6.

In our opinion, the proposed dialogue on the currently proposed rules is absolutely necessary because the German legal system differs so significantly from that of the U.S., that implementation in Germany of certain provisions of the Sarbanes-Oxley Act, in particular, numerous aspects of the proposed rules relating to inspection, investigation and adjudications would be legally impossible and implementation of others would place extremely onerous burdens on German public accounting firms.

However, we would like to express our disappointment that the PCAOB did not seek to follow the recommendations of ECOFIN and the European Commission to provide an exemption for registration with the PCAOB for public accounting firms in the European Union as would have been permitted under Section 106. (c) of the Sarbanes-Oxley Act. We would like to point out that such an exemption based upon the recognition of the establishment of appropriate enforcement and oversight mechanisms by national governments and regulatory authorities in the European Union would have obviated the need for complex dialogue on the many difficult implementation issues associated with the proposals noted above.

Given the major adjustments that we believe are necessary due to the impact of the proposed rules on German public accounting firms we will limit our comments to general concerns arising from the proposed rules by addressing the major problem categories by means of examples. These examples do not purport to be an extensive or complete list of all such matters, but are intended as an illustration of the complexity of the issues that must be taken into consideration.

### **Confidentiality and Consent to Waiver by Client**

In Germany the auditing profession is subject to professional confidentiality obligations set forth in the legislation governing the profession and audits of financial statements. This legislation prevents our members from providing the PCAOB, as a third party, access to any or all facts and circumstances with which they are entrusted or of which they become aware during the course of their professional work. The German Penal Code makes undue disclosure by an accountant a criminal offence [§ 203 Strafgesetzbuch]. Furthermore, the contract between a public accountant and the client carries an implied duty of confidentiality.

The confidentiality restrictions can only be waived with consent of the client; data security restrictions (see the treatment of data security below) would require the con-

sent of all those whose data is affected. For such consent by a client to be valid, the client must have a proper understanding of the scope of the information, the disclosure of which he or she is permitting. The PCAOB does not propose to limit the scope of information to which it has access, but rather intends to exercise its discretionary powers. Consequently, the courts in Germany would view this “proper understanding” test as not having been met.

Furthermore, client waivers of confidentiality restrictions do not in any way diminish the testimonial or documentary privileges of the public accountant (see below).

### **Testimonial and Documentary Privilege**

The German public accountant is afforded the right to refuse to testify in civil, criminal and tax proceedings (testimonial privilege). Similarly, legislation (§ 97 Strafprozessordnung) prohibits the seizure of his working papers in criminal proceedings to the extent that the public accountant has exercised his right to refuse to testify. German civil procedure is similarly restrictive. Some of these restrictions on criminal proceedings and civil procedure are in part based upon requirements of the German Constitution and its interpretation by the German constitutional court and cannot be changed by an act of the Federal Parliament alone.

The rules allowing the PCAOB to call persons to testify also pose a problem. An employer in Germany is unlikely to be able to force an employee to testify unless this matter has been specifically addressed in the contract of employment. A further relevant factor is that in German employment law certain questions, mainly concerning criminal convictions, could be deemed inadmissible and therefore an employee may opt not to answer or may give a false answer. In such cases the law prohibits the employee from being exposed to any negative consequences from such refusal or false answer. A further factor is that in the event that a works council operates within a firm approval of that body is required before an employer can question its employees.

Hence, even if the legal confidentiality requirements were to be circumvented in some way, it is likely that data security legislation will prevent German public accounting firms from making information and documents available to the PCAOB.

## Data Security

In Germany, data protection legislation was amended in 2001 in order to implement the EC Directive 95/46/EC. A transfer of data under the German Data Protection Act would be deemed to have occurred if data were made available to the PCAOB either as part of the registration documentation or by permitting the PCAOB to conduct inspections on the firms' premises. Public accounting firms hold personal data relating to their staff, their clients, their clients' staff and third party individuals e.g. customers and suppliers of their clients.

Any consent to exception would be needed from every individual affected, and specifically not only the corporate clients. Further legal restrictions apply; the consent must be freely given, specific and informed. These definitions are subject to legal interpretation. Furthermore, consent must be express and in writing. This would create an extremely onerous obligation for public accounting firms.

Even if consent were to be obtained from those affected, the German courts may well not interpret such consent as having been freely given, due to the employee-employer relationship.

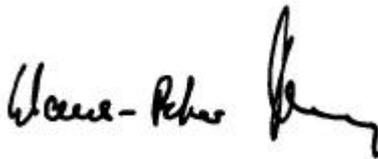
Considerations of personal interest, privacy rights and the overriding concept of "legitimate interest" sensitive data, employee confidentiality, business secrecy and employment law liability complicate the matter further.

The German Data Protection Act only permits the processing of personal data required to meet German legal obligations. Foreign legal obligations are not recognized in this legislation. It should be noted that data security legislation in Germany is based on the German Constitution and jurisprudence.

Since the PCAOB is not in a position to deal with the intricacies of investigations or inspections within a German legal context, we believe that it would be in the interest of the SEC and the PCAOB to engage in constructive dialogue with both the European Commission and German authorities, regulators and oversight bodies to see whether arrangements of mutual benefit could be established.

We hope that our comments will be useful in your assessment of the nature and extent of the problems involved in applying in a German legal context what are essentially rules and statutes designed for a U.S. legal environment. Consequently, we believe it to be in our mutual interest that the PCAOB give the concerns we have due consideration. We would be pleased to be of assistance in these matters.

Yours truly

A handwritten signature in black ink, appearing to read "Klaus-Peter Naumann". The signature is written in a cursive style with a prominent initial "K".

Klaus-Peter Naumann  
Chief Executive Officer

495/541



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**PricewaterhouseCoopers**  
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August 18, 2003

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

Re: PCAOB Rulemaking Docket Matter No. 007, Release No. 2003-014

Dear Mr. Secretary,

PricewaterhouseCoopers appreciates the opportunity to comment on the Board's *Proposed Rule on Withdrawal from Registration*, as set forth in Release No. 2003-014, dated July 28, 2003 ("Release").<sup>1</sup> We support the efforts of the Public Company Accounting Oversight Board (the "Board") to restore investor confidence. We have reviewed the proposed rules of the Board and have a number of observations and proposals that we feel will help support the overall objectives of the Board. In connection with the rulemaking process, it is important to understand the impact of registration not only on the U.S. firm of PricewaterhouseCoopers LLP, but on each of our foreign member firms as well.

Foreign public accounting firms in particular may decide that the nature of the professional services that they provide no longer requires that they be registered. It is also possible that they may elect to cease these activities in light of the expense and other burdens of U.S. registration. Similarly, the regulator in a territory may reach an agreement of mutual recognition with the Board that would no longer require the firm to be registered with the Board. In any case, a firm should be able to accomplish withdrawal and relieve itself of the costs and burdens of registration as quickly and efficiently as possible. Particularly in light of the sensitivities surrounding regulation of non-U.S. accounting firms under Sarbanes-Oxley, the Board should not seek to continue its regulatory oversight over withdrawing firms any longer than is absolutely necessary.

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<sup>1</sup> PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International, Ltd., each of which is a separate and independent legal entity.



In light of the foregoing considerations, we offer the following comments:

- Proposed Rule 2107(d) unduly prolongs the potential period in which withdrawing firms can remain subject to Board inspections and disciplinary actions. It allows the Board to delay withdrawal for up to two years after filing of the Form 1-WD withdrawal form if the Board believes withdrawal “would be inconsistent” with the Board’s responsibilities under the Sarbanes-Oxley Act. The Board appears to believe that allowing a firm to voluntarily cease U.S. public company audit activities and withdraw from U.S. regulation altogether would be inappropriate if it prevented the Board from investigating and punishing the firm first. While we do not entirely agree with the logic of this position, we accept that in certain circumstances the Board may need to be able to commence or continue disciplinary proceedings against firms before they de-register. However, we think the Board should be able to make a determination whether to undertake such a proceeding in less than two years.
  - Accordingly, we recommend that the two-year maximum delay period be shortened to six months, unless the Board initiates an investigation or disciplinary proceedings within that period. The Board can easily complete any inspection it believes appropriate, and should be able to determine whether or not there is any need for further investigative or disciplinary action, within that period.
  - The Board should also provide a place in Form 1-WD for a firm to explain its reasons for withdrawing and why the Board should not delay such withdrawal. In the case of foreign firms, it is likely that the reasons for withdrawal will relate to the burden and expense of registration and not avoidance of any investigation or disciplinary action. This would enable the Board to make the threshold determination whether to delay more quickly.
  - Proposed Rule 2107(c)(2)(iii) should be revised to provide that regular inspections are suspended from the date of filing of the Form 1-WD. Such inspections would seem to be unnecessary because, by definition, the withdrawing firm will have ceased issuing SEC issuer audit reports or playing a substantial role in connection with audits of SEC issuers. Accordingly, such inspections would provide little benefit to investors or the public, yet would involve substantial cost and time burdens on the firm.<sup>2</sup>

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<sup>2</sup> We note that the Board’s release regarding proposed inspection rules indicates that the inspection rules as applied to foreign public accounting firms could be subject to adjustment based on dialogues with the Board’s foreign counterparts. (PCAOB Release No. 2003-013, at 10.) Similarly, the Board should take



- Withdrawal should not be delayed based on matters relating to “associated persons” of the withdrawing firm, where the associated person is itself another registered accounting firm or is primarily associated with a registered accounting firm. There is no reason to reserve the right to investigate or discipline such associated persons as a condition to withdrawal of another firm. Rules 2107(d) and (e) should be modified to carve out such associated persons.
- In Form 1-WD, Part II, the withdrawing firm should be permitted to incorporate by reference information regarding pending proceedings contained in its registration application or in its annual report. The Form should only require the withdrawing firm to report new matters or update previously provided information. Furthermore, the type of information requested in Item 2.1 of Form 1-WD should be parallel to the information provided Items 5.1 and 5.2 in Form 1 at the time of registration. If a withdrawing firm provides the same information as is required in Items 5.1 and 5.2 of Form 1, the Board would be able to determine what proceedings were new; the rules, laws or standards that such proceedings related to and the relevant parties. It seems overly burdensome to require information in the request to withdraw that is not required in the registration process.
- Specifically, proposed Items 2.1.c., 2.1.d. and 2.1.e. should not be included in Form 1-WD, as the type of information requested therein is not required to be provided in Form 1 for registration. However, should the Board still include these items, they should clarify them as follows:
  - Item 2.1.c. should only require the reporting of when the firm was officially notified (through service or other means) of the proceedings. It may not be possible to accurately determine when the firm or a partner or officer of the firm first became aware of the proceeding.
  - Item 2.1.d. should be clarified. It is unclear whether the Board is requesting a short answer (i.e. that the case is pending, stayed, or has been adjudicated) or whether the Board is requesting a more detailed explanation.
  - Item 2.1.e. should be clarified. It is currently unclear whether the Board is requesting a recital of the alleged facts of the case or only a general description of the case.
- Also in Part II of Form 1-WD, the withdrawing firm should be required to provide legal proceeding information only about itself, not its associated persons. A firm would have to conduct a current survey of all associated persons in order to satisfy

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into account the potential impact on foreign firms of ongoing inspection requirements even after they have filed a notice of withdrawal.



this requirement. This can be time-consuming and expensive. As noted above, it is likely that many foreign firms (or even small domestic firms) will seek to withdraw in order to eliminate the costs and burdens of registration. The Board should not impose undue additional costs on them in order for them to avail themselves of this option.

- As suggested above, even if the Board elects to require associated person information, it should exclude associated persons that are themselves registered accounting firms or primarily associated with another registered accounting firm.

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





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Pursuant to Section 102 of the Act, the Board has previously adopted rules governing the process by which public accounting firms register with the Board.<sup>1/</sup> The Board is now adopting a rule to govern the process by which registered firms may withdraw from registration. Under the rule, a registered firm may seek to withdraw at any time by filing Form 1-WD. Withdrawal, however, is not automatic. The Board may order that withdrawal be delayed while the Board carries out a relevant inspection, investigation, or disciplinary proceeding. The Board may delay a requested withdrawal for up to eighteen months, and that period shall automatically be extended to cover any period necessary to complete a disciplinary proceeding commenced before the end of the eighteen month period.

The mere filing of a completed Form 1-WD would, however, have the almost immediate effect of minimizing most burdens and costs associated with registration. In addition, while the request for leave to withdraw is pending, the firm may not engage in the preparation or issuance of, or play a substantial role in preparing or furnishing, an audit report for a U.S. public company,<sup>2/</sup> other than to issue a consent to the use of an audit report for a prior period. The rule also provides that a firm that has filed a Form 1-WD may not publicly hold itself out as registered with the Board without specifying that its registration status is "registered – withdrawal request pending."

To implement its mechanism for registration withdrawal, the Board has adopted one rule (PCAOB Rule 2107) and a form (PCAOB Form 1-WD). The text of the rule, the instructions to the form, and a detailed discussion of the rule and the requirements of the form are appendices 1, 2, and 3 hereto. Section A of this release provides a general overview of the rule and form. Section B of this release describes the changes made to the rule and form in response to public comments.

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<sup>1/</sup> See Registration System for Public Accounting Firms, PCAOB Release No. 2003-007 (May 6, 2003).

<sup>2/</sup> This release uses the term "U.S. public companies" as shorthand for the companies that are "issuers" under the Act and the Board's rules. This includes domestic public companies, whether listed on an exchange or not, and foreign private issuers that have either registered, or are in the process of registering, a class of securities with the Commission or are otherwise subject to Commission reporting requirements.



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A. Overview of the Rule Relating to Withdrawal from Registration

Under Rule 2107, a registered public accounting firm may at any time submit to the Board a request for leave to withdraw its registration. A request to withdraw must be submitted on Form 1-WD. The filing of the Form 1-WD will have the effect of acting as a notice of withdrawal, with withdrawal becoming effective on the 61st day after the request is filed, unless the Board orders that withdrawal be delayed, or unless a Board disciplinary proceeding is pending against the firm or any of its associated persons.

The rule imposes an eighteen-month limitation on the length of time that the Board may delay a firm's withdrawal unless a disciplinary proceeding has been commenced and is pending at the end of the specified period. If such a proceeding is pending, whether before a hearing officer, the Board, or the Commission or a court reviewing a Board sanction, then the period of delay of the withdrawal would automatically extend until completion of all such proceedings and reviews, including on and after any remand to the Board.

Form 1-WD is relatively short and simple. It requires basic identifying information, a description of any known ongoing regulatory or law enforcement investigations or proceedings involving the firm or any of its associated persons, and a certification that the firm is not participating in any audit (as defined in Board Rule 1001(a)(v)) and will not participate in any audit while the Form 1-WD is pending. The content of a filed Form 1-WD will be nonpublic, except that the Board will publicly disclose the fact that a firm has filed a Form 1-WD.

While the Board may delay a firm's withdrawal, beginning on the fifth day following the filing of a Form 1-WD, certain burdens of being a registered firm will be significantly reduced. First, any annual fee assessed after that date with respect to the firm shall be zero. Second, the firm may satisfy the annual reporting requirement by submitting a report stating that a completed Form 1-WD has been filed and is pending.<sup>3/</sup> Third, the Board may, in its discretion, forego any regular inspection of the firm that

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<sup>3/</sup> Section 102(d) of the Act imposes certain reporting requirements on registered public accounting firms. The Board anticipates adopting rules relating to such reporting.



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would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b).<sup>4/</sup> The rule will provide a special registration designation for such firms: "registered – withdrawal request pending." In order to minimize the risk that such a firm might, intentionally or unintentionally, create the public impression that it is subject to the same regulatory processes as other registered firms, the rule prohibits a firm that has filed a Form 1-WD from publicly representing its registration status without specifying that that status is "registered – withdrawal request pending."

The rule provides that, beginning on the date of Board receipt of the Form 1-WD, the firm may not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report for a U.S. public company, other than to issue a consent to the use of an audit report for a prior period, unless the firm first withdraws the Form 1-WD.<sup>5/</sup> Finally, if a firm files a Form 1-WD that, through misstatement or omission, misleads the Board as to a material point, and the Board later discovers the misstatement or omission, the Board could, under the rule, void the withdrawal of the firm's registration for three years after the firm's registration is deemed withdrawn.

The Board's rules adopted today are substantially similar to the rules proposed by the Board on July 28, 2003. The operation of those rules was summarized in more detail in PCAOB Release No. 2003-014 (July 28, 2003).

#### B. Public Comment Process and Board Responses

The Board proposed a rule and form on registration withdrawal, and released them for public comment, on July 28, 2003. The Board received 3 written comment letters.<sup>6/</sup> In response to these comments, the Board's final rules both clarify and modify

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<sup>4/</sup> Any regular inspection that was commenced sooner than the fifth day after the filing of Form 1-WD could continue to completion. The Board would also retain the option of ordering a special inspection.

<sup>5/</sup> A firm that has filed a Form 1-WD may, subject to certain conditions being met, withdraw the form at any time up until the time that its registration is deemed withdrawn.

<sup>6/</sup> The Board's responses to the comments are discussed in more detail in the section-by-section analysis in Appendix B. The comment letters are available on



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several aspects of the proposal. Specifically, the Board has revised the original proposal by –

- Limiting to three years the period of time in which the Board may void a withdrawal for material inaccuracies or omissions in the withdrawal filing;
- Limiting to 18 months the maximum period for which the Board could delay a firm's withdrawal in the absence of a pending disciplinary proceeding; and
- Adding a new part IV to the instructions to Form 1-WD that allows a firm to describe a reason that it seeks to withdraw.

\* \* \*

On the 29th day of September, in the year 2003, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour  
Acting Secretary

September 29, 2003

APPENDICES –

1. Rule Relating to Withdrawal from Registration
2. Form 1-WD
3. Section-by-Section Analysis of Rule and Form 1-WD

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the Board's Web site – [www.pcaobus.org](http://www.pcaobus.org) – and will be attached to the Board's Form 19b-4, to be filed with the Commission.



## **Appendix 1 – Rule Relating to Withdrawal from Registration**

### **RULES OF THE BOARD**

#### **SECTION 2. REGISTRATION AND REPORTING**

##### **Part 1 – Registration of Public Accounting Firms**

###### **Rule 2107. Withdrawal from Registration**

###### **(a) Request for Leave to Withdraw**

Subject to the limitation described in paragraph (e), a registered public accounting firm's registration with the Board shall be deemed withdrawn if the firm requests leave to withdraw by filing a completed Form 1-WD and

- (1) the Board grants leave to withdraw, or
- (2) the Board does not, within 60 days of receipt of the request, order that withdrawal of the firm's registration be delayed.

###### **(b) Form 1-WD**

(1) A request for leave to withdraw shall be filed on Form 1-WD in accordance with the instructions contained therein. A completed Form 1-WD shall include, among other things, a statement signed by an authorized partner or officer of the firm certifying that the firm is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

(2) The contents of a completed Form 1-WD shall be non-public. The Board shall publicly disclose the identity of any firm as to which a request for leave to withdraw is pending and the date that the Board received a completed Form 1-WD.

###### **(c) Effect of Filing**

(1) Beginning on the date of Board receipt of a completed Form 1-WD, the firm that filed the Form 1-WD shall not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report, other than to



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issue a consent to the use of an audit report for a prior period, unless it first withdraws its Form 1-WD.

(2) Beginning on the fifth day following the Board's receipt of a completed Form 1-WD, and continuing for as long as the Form 1-WD is pending –

(i) the firm may satisfy the annual reporting requirement by submitting a report stating that a completed Form 1-WD has been filed and is pending;

(ii) any annual fee assessed shall be zero;

(iii) the Board shall have the discretion to forego any regular inspection that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b); and

(iv) the firm's registration status shall be designated as "registered – withdrawal request pending," and the firm shall not publicly represent its registration status without specifying it as "registered – withdrawal request pending."

**(d) Board Action**

Within 60 days of Board receipt of a completed Form 1-WD, the Board may order that withdrawal of registration be delayed for a period of up to eighteen months from the date of such receipt if the Board determines that such withdrawal would be inconsistent with the Board's responsibilities under the Act, including its responsibilities to conduct –

(1) inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers; or

(2) investigations or disciplinary proceedings with respect to any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of the Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.



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Appendix 1 – Rule Relating to Withdrawal from Registration

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**(e) Automatic Delay of Withdrawal for Pending Disciplinary Proceedings**

If, on the 60th day after the Board's receipt of a Form 1-WD or at the conclusion of any period for which the Board has ordered that withdrawal be delayed, there is pending any Board disciplinary proceeding against the firm that filed the Form 1-WD or against any associated person of that firm, or there is pending any Commission or court review of a Board sanction against such firm or person, the requested withdrawal from registration shall not take effect before the completion of all such disciplinary proceedings and reviews, unless the Board orders otherwise.

**(f) Withdrawal of Form 1-WD**

A registered public accounting firm that has submitted a Form 1-WD may withdraw the form at any time by filing with the Board a written notice of intent to withdraw the Form 1-WD along with any annual fee and annual report that the firm would have been required to submit during the period that the Form 1-WD was pending if not for the provisions of paragraph (c)(2).

**(g) Withdrawal Voided for Material Inaccuracies or Omissions**

If the Board determines, within three years after the date a firm's registration is deemed withdrawn, that there are reasonable grounds to believe that a firm that has withdrawn from registration filed with the Board a Form 1-WD that was materially incomplete or materially inaccurate on the date of filing, such firm's registration shall be reinstated, effective retroactively to the date the registration was deemed withdrawn.



## Appendix 2 – Form 1-WD

### **FORM 1-WD – REQUEST FOR LEAVE TO WITHDRAW FROM REGISTRATION**

#### GENERAL INSTRUCTIONS

1. The definitions in the *Board's* rules apply to this form. Italicized terms in the instructions to this form are defined in the *Board's* rules. See Rule 1001.
2. Any *registered public accounting firm* seeking to withdraw from registration with the *Board* must file this form with the *Board*.
3. In addition to these instructions, the *Board's* Rule 2107 governs applications for leave to withdraw from registration. Please read Rule 2107 and the instructions carefully before completing this form.
4. Unless otherwise directed by the *Board*, a *registered public accounting firm* seeking to withdraw from registration must submit this form to the *Board* electronically by completing the Web-based version of Form 1-WD. The date of such submission shall be deemed the date of *Board* receipt of the Form. The registered public accounting firm must also submit an original hard copy of the form with manual signatures in Item 3.1 and Item 5.1, with such signatures dated not later than the date of electronic submission.
5. Pursuant to Rule 2107, any Form 1-WD filed with the *Board* shall be non-public. A registered public accounting firm may submit with Form 1-WD a request for *Board* notification in the event that the *Board* is requested by subpoena or other legal process to disclose the Form 1-WD. The *Board* will make reasonable attempts to honor any such request, although the *Board* will make public the fact that the firm has requested to withdraw from registration.
6. Information submitted as part of this form must be in the English language.

#### **PART I – IDENTITY OF THE REGISTERED PUBLIC ACCOUNTING FIRM**

##### Item 1.1 Name of the Firm Requesting Leave to Withdraw

State the legal name of the firm requesting leave to withdraw; if different, also state the name or names under which the firm (or any predecessor) issues *audit reports*, or has issued any *audit report* during the period of the firm's registration with the *Board*.



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### Item 1.2 Firm Contact Information

State the physical address (and, if different, mailing address) of the firm's headquarters office. State the telephone number and facsimile number of the firm's headquarters office.

### Item 1.3 Primary Contact and Signatories

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

## **PART II – DESCRIPTION OF ONGOING REGULATORY OR LAW ENFORCEMENT PROCEEDINGS**

### Item 2.1 Description of Ongoing Regulatory or Law Enforcement Proceedings

Identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part (1) conduct of the firm or (2) *audit*-related conduct of any of the firm's associated persons. For each such proceeding, state –

- a. The identity of the federal, state, or local authority conducting the proceeding;
- b. The caption or other identifying information of the proceeding;
- c. The date that the firm or a partner or officer of the firm first became aware of the proceeding;
- d. The firm's understanding of the current status of the proceeding; and



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e. The conduct of the firm and the firm's associated persons that the proceeding addresses.

### **PART III – CERTIFICATION OF NONPARTICIPATION IN AUDITS**

#### Item 3.1 Statement of Nonparticipation in *Audits*

Furnish a statement, dated and signed on behalf of the firm by an authorized partner or officer of the firm, in the following form –

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

Note: Other than the insertion of the name of the firm the statement must be in the exact words contained in this instruction.

### **Part IV – REASONS FOR SEEKING LEAVE TO WITHDRAW (Optional)**

#### Item 4.1 Description of Reasons for Seeking Leave to Withdraw

Describe, if you choose to do so, the reason or reasons that the firm seeks leave to withdraw from registration.

### **PART V – SIGNATURE OF FIRM SEEKING LEAVE TO WITHDRAW**

#### Item 5.1 Signature of Authorized Partner or Officer

The request for leave to withdraw from registration must be signed on behalf of the firm by an authorized partner or officer of the firm. The signer must certify that he or she has reviewed the application; that the application is, based on the signer's knowledge, complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the firm. The signature must be accompanied by the title of the signer and the date of the signature.



### **Appendix 3 – Section-by-Section Analysis of Rule Relating to Withdrawal from Registration and Form 1-WD**

The Board is adopting a rule (PCAOB Rule 2107) and a form (PCAOB Form 1-WD) relating to the process of withdrawal from registration. The rule and the form are discussed below.

#### **Rule Relating to Withdrawal from Registration**

##### **Rule 2107 – Withdrawal from Registration**

Rule 2107 consists of six paragraphs. Paragraph (a), "Request for Leave to Withdraw," describes in the most fundamental terms what must happen for a firm to withdraw from registration. To seek to withdraw, a firm must file with the Board a completed Form 1-WD requesting leave to withdraw. The requested withdrawal may take effect either through Board action (if the Board expressly grants leave to withdraw) or through Board inaction (if the Board does not, within 60 days of receipt of the Form 1-WD, order that withdrawal be delayed).

Because paragraph (a) is subject to the limitation in paragraph (e), however, withdrawal will not take effect through Board inaction if the firm that filed the Form 1-WD, or any associated person of that firm, is a party to a disciplinary proceeding pending before the Board, or to any Commission or court review of a Board disciplinary sanction. In that circumstance, paragraph (e) operates automatically to delay withdrawal of the firm's registration until full and final completion of all such proceedings.



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One commenter suggested that the relevant time period in paragraph (a) be shortened from 60 to 45 days. The commenter also asked the Board to clarify that the number of days in this part of the rule are calendar days, not business days. After considering this comment, the Board has decided to leave this period at 60 calendar days.<sup>1/</sup> Sixty days corresponds to the analogous time period that the SEC uses for broker-dealers that seek to withdraw from registration,<sup>2/</sup> and the Board and its staff will need a sufficient period of time to consider carefully -- including, in appropriate circumstances, conducting a special inspection of the firm -- before ordering a delay of withdrawal.

Paragraph (b) concerns Form 1-WD. Paragraph (b)(1) provides that Form 1-WD must be filed in accordance with the instructions. Paragraph (b)(1) also provides that a completed Form 1-WD must include a specific statement, signed by an authorized partner or officer of the firm, certifying that the firm is not performing, and will not perform, certain functions with respect to audits. Specifically, the certifying person must state that the firm "is not currently, and will not during the pendency of its request for

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<sup>1/</sup> Under PCAOB Rule 1002, adopted by the Board today and described in PCAOB Release No. 2003-015 (September 29, 2003), prescribed periods in the Board's rules of 7 or fewer days mean business days, and longer periods mean calendar days. While the Board's time computation rule was proposed to apply only to adjudications, the Board has decided to adopt it as a general rule, applicable to all Board-prescribed time periods.

<sup>2/</sup> See 17 C.F.R. § 240.15b6-1(b).



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leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period." Under the rule, a Form 1-WD that lacked this certification would not be complete and would not be sufficient to start the withdrawal process.

Paragraph (b)(2) addresses what aspects of a firm's request for leave to withdraw will be public. Under the rule, the Board would publicly disclose the identity of any firm that filed a completed Form 1-WD and would disclose the date of the Board's receipt of that form. The completed Form 1-WD, however, would be non-public and would be kept confidential by the Board. Aside from basic identifying information and the certification of nonparticipation in audits, a completed Form 1-WD will contain only a description of any known ongoing regulatory or law enforcement investigations or proceedings involving the firm or any of its associated persons. The Board does not believe there is any reason to require firms to make such information public in order to seek withdrawal from registration. Moreover, making such information public could hinder ongoing law enforcement efforts.

One commenter suggested that any information that the Board makes publicly available about a firm should cease to be publicly available at some point after withdrawal. The commenter suggested three years, which the commenter noted is



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consistent with the AICPA SEC Practice Section practice, and which allows the information to remain public for as long as financial statements the firm has audited might still be included in an issuer's filings. While the Board does not believe the rule needs to address this issue, the Board plans to adopt a practice of eliminating online access to a firm's application and annual reports three years after withdrawal.

Paragraph (c) describes the effect of filing a Form 1-WD beyond just triggering Board consideration of whether to delay withdrawal. Paragraph (c)(1) provides that, beginning on the date of Board receipt of the Form 1-WD, the firm may not engage in the preparation or issuance of, or play a substantial role in the preparation or furnishing of, an audit report with respect to an issuer, other than to issue a consent to the use of an audit report for a prior period, unless the firm first withdraws the Form 1-WD. The Board believes this provision is necessary in order to avoid the risk that the Board would grant a pending request for leave to withdraw at a time when the firm is in fact engaged in conduct for which registration is required. A firm may, however, withdraw a pending Form 1-WD pursuant to paragraph (f) and thereby free itself to engage again in audit work for which registration is required.

The Board recognizes that a firm that files a Form 1-WD, and is therefore prohibited from engaging in work for which registration is required, is in a fundamentally different position from other registered firms as long as the Form 1-WD is pending. In



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light of that fact, paragraph (c)(2) would minimize various burdens and costs of registration beginning after a brief five-day delay for administrative and processing purposes. Beginning on the fifth day after Board receipt of a completed Form 1-WD,<sup>3/</sup> the firm's registration-related burdens would be minimized in three ways throughout the period in which the request for leave to withdraw is pending. First, the rule will allow the firm to satisfy the annual reporting requirement by submitting a report merely stating that a completed Form 1-WD has been filed and is pending. Second, any annual fee assessed after that date against the firm shall be zero. Third, the Board could, in its discretion, forego any regular inspection of the firm that would otherwise commence pursuant to Rule 4003(a) or Rule 4003(b).<sup>4/</sup>

One commenter suggested that the rule provide that regular inspections be suspended entirely while a request for withdrawal is pending, beginning on the date the request to withdraw is received. While the Board's rule does not require the Board to proceed with a regular inspection, the Board believes that it should retain the discretion

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<sup>3/</sup> One commenter questioned the five-day delay under paragraph (c) of the rule and suggested that the effect of filing a Form 1-WD should be immediate. The five-day period provides the Board and its staff with a minimal period to verify by manual review that the submitted form is in fact a completed form and therefore entitles the filer to the effects in the paragraph of the rule. As reflected above, under Rule 1002, the five-day period in this rule will mean five business days.

<sup>4/</sup> Any regular inspection that was commenced sooner than the fifth day after the Board receipt of Form 1-WD could continue to completion. The Board would also retain the option of ordering a special inspection.



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to do a regular inspection, if one is warranted. Given the Board's inherently limited resources, the Board does not anticipate performing regular inspections of firms with withdrawal requests pending, absent unusual circumstances.<sup>5/</sup>

The Board also believes, however, that a firm that has filed a Form 1-WD and is therefore not subject to regular inspection, should not publicly characterize its registration status with the Board in a way that might, intentionally or unintentionally, create the impression that it is subject to the same regulatory processes as other registered firms. For that reason, paragraph (c)(2) provides a special registration designation for such a firm – "registered – withdrawal request pending" – and prohibits such a firm from publicly representing its registration status without specifying that status as "registered – withdrawal request pending."

Five distinct events could terminate the period in which the provisions of paragraph (c)(2) would apply. First, the Board could affirmatively grant leave to withdraw at any time. Second, 60 days could elapse from Board receipt of the Form 1-WD without the Board taking any action, in which case, unless paragraph (e) applies,

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<sup>5/</sup> Likewise, the Board does not believe it needs to revise its rules to grant the Board discretion to forego a regular inspection immediately upon filing of a Form 1-WD. If a withdrawing firm files its Form 1-WD within five days of the commencement of a scheduled regular inspection, the Board, as a practical matter, has the discretion to delay any inspection that would otherwise begin in the five-day period after the Form 1-WD was filed, and then to forego the inspection altogether on the fifth day, if no inspection is warranted.



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the firm's registration would be withdrawn. Third, the firm could withdraw the Form 1-WD pursuant to paragraph (f), in which case the firm would resume normal registration status, not subject to the special conditions of paragraph (c)(2). Fourth, the firm could be subject to a disciplinary proceeding during the period covered by paragraph (c)(2), and a Board order in that proceeding could revoke the firm's registration. Fifth, a period for which the Board ordered withdrawal delayed pursuant to paragraph (d) (whether or not extended by a disciplinary proceeding) could end, in which case, if the firm's registration had not been revoked in a disciplinary proceeding, the registration would be withdrawn.

Paragraph (d) provides that the Board may order that withdrawal of a firm's registration be delayed for a period of up to eighteen months from the date of the Board's receipt of a completed Form 1-WD. Under paragraph (d), the Board could order such a delay only if it acted within 60 days of receipt of the completed Form 1-WD and only if it determined that allowing withdrawal before the Board completed certain processes would be inconsistent with the Board's inspection, investigative, or disciplinary responsibilities under the Act.

There are legitimate reasons, in the public interest and for the protection of investors, that the Board may choose to delay a firm's withdrawal in certain circumstances. For example, if a firm views itself as being at risk of an imminent Board



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sanction, such as revocation of its registration, the firm might seek to avoid the taint of that sanction by seeking to withdraw before revocation occurs. A firm might seek to withdraw to avoid an imminent inspection covering a period with respect to which the firm has some concerns about its conduct. A firm might seek to withdraw rather than cooperate, or require its associated persons to cooperate, with a Board investigation. These examples – which are only examples and not a limitation on the Board's discretion – illustrate the need for the Board to exercise judgment in determining whether to allow prompt withdrawal or whether to delay withdrawal to allow the Board to carry out its inspection, investigative, or disciplinary responsibilities under the Act.

Paragraph (d) imposes an eighteen-month limitation on the length of time that the Board may delay a firm's withdrawal. That provision, however, is subject to an exception in paragraph (e) if the Board has commenced a disciplinary action against the firm or one of its associated persons before the end of the period for which the Board ordered that withdrawal be delayed.

Several commenters asked for clarification of the reasons the Board might delay withdrawal. One commenter suggested that the rule should make clear what factors the Board will consider in determining whether to delay withdrawal. Another commenter suggested that withdrawal should not be delayed because of matters relating to an associated person if that associated person is itself another registered firm or is



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primarily associated with another registered firm. After considering these comments, the Board has decided not to seek to add to, or create exceptions to, the general standard in the rule. While the circumstance cited by the commenter would certainly be relevant to the Board's determination, in light of the varied circumstances that may warrant a delay in withdrawal, the general standard should preserve flexibility for the Board to delay withdrawal in circumstances where withdrawal would be inconsistent with the Board's statutory mandate.

One commenter indicated that they believed the two-year period provided for in the Board's proposed rules was too long and suggested that the Board shorten the period to six months, unless the Board has initiated an investigation or a disciplinary proceeding. Under the Board's rules, however, the Board will make an initial determination within 60 days of whether a delay in withdrawal is required. The time period in paragraph (d) provides a maximum amount of time withdrawal can be delayed after this period without the Board initiating a disciplinary proceeding against the firm or one of its associated persons. The Board has, however, decided to shorten this period to eighteen months in the interests of seeking to assure withdrawing firms that their withdrawal will take no longer than absolutely necessary.

Paragraph (e) would operate to delay withdrawal of registration automatically in certain circumstances without the Board having to issue an order. The only condition



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that gives rise to an automatic delay under paragraph (e) is a pending disciplinary proceeding (including pending Commission or court review of a Board disciplinary sanction) against the firm or an associated person of the firm. There are, however, two distinct points in time when that condition, if it exists, would trigger the automatic delay in paragraph (e). First, if a disciplinary proceeding is pending on the 60th day after Board receipt of the Form 1-WD, withdrawal is automatically delayed. Second, if the Board has ordered withdrawal delayed pursuant to paragraph (d) at a time when no disciplinary proceeding was pending, but such a proceeding is pending at the end of the period prescribed in the Board's order delaying withdrawal, withdrawal is automatically delayed beyond the end of that prescribed period.

If an automatic delay were triggered under paragraph (e), it would continue in effect until all relevant disciplinary proceedings (including any proceedings against the firm and any and all proceedings against associated persons of the firm) were finally concluded, unless the Board orders otherwise. The automatic delay would continue not only through the period of any final Board action, but also through any review of the Board's action by the Commission or the courts, and through any Board action on remand and any review of that Board action.

Paragraph (f) provides that a registered public accounting firm may withdraw a Form 1-WD at any time. To effect withdrawal of the form, the firm must submit a written



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notice of withdrawal accompanied by (1) any annual fee that would have been due while the form was pending, if not for the operation of paragraph (c)(2), and (2) a complete version of any annual report that would have been due while the form was pending, if not for the operation of paragraph (c)(2).

Paragraph (g) provides that if a firm files a Form 1-WD that, through misstatement or omission, misleads the Board as to a material point, and the Board discovers the misstatement or omission within three years after the firm's registration was deemed withdrawn,<sup>6/</sup> the Board can void the withdrawal of the firm's registration. For example, if a firm failed to identify in its Form 1-WD certain law enforcement investigations that are required to be disclosed on the form, the Board could void the withdrawal, reinstate the firm's registration, and conduct any appropriate investigation just as it could have done if the firm had never withdrawn. The ability to void a withdrawal for filing a materially misleading Form 1-WD is a necessary component of the withdrawal process, since the Board's decision about withdrawal depends in part upon whether the circumstances call for the Board to conduct investigative or other steps in the public interest or for the protection of investors. Under the rule, if the Board voids a withdrawal, the firm's registration shall be reinstated retroactive to the date the registration was deemed withdrawn.

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<sup>6/</sup> The three-year limitation on this provision was added at the suggestion of a commenter.



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One commenter asked the Board to address the process for re-registration after withdrawal, and suggested the Board consider a more streamlined procedure than the initial registration. In light of the varied circumstances in which firms may withdraw from registration, the Board believes that firms that have withdrawn should submit the same registration application as any other firm seeking to register.

Finally, one commenter expressed disagreement with the statement in "Frequently Asked Questions Regarding Registration with the Board," (July 18, 2003) that the Board might consider requiring the deregistration of firms that, for an extended period, have no audit clients and do not engage in any other activity requiring registration. This commenter asked the Board to explain more about when firms could expect such de-registration, what the process would be, and whether firms could challenge it. While the Board recognizes the commenter's concern, this release is not the appropriate place to address this issue further. Rule 2107 is solely about voluntary withdrawals from registration; any procedure for an involuntary de-registration would be the subject of a separate rulemaking.

### **Form 1-WD**

The rule also consists of instructions to PCAOB Form 1-WD, which is the form to be used by registered public accounting firms to request leave to withdraw from



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registration. Form 1-WD consists of general instructions and five parts. Each of the parts of the form is explained in more detail below.

### **Part I – Identity of the Registered Public Accounting Firm**

Part I of the Form requires basic identifying information. For item 1.1, the firm must state its legal name and any other names under which the firm or any predecessor of the firm issues audit reports or has issued audit reports during the period of the firm's registration. Item 1.2 requires the firm to provide the physical address (and, if different, the mailing address), telephone number, and facsimile number of the firm's headquarters office. Item 1.3 requires the firm to identify a partner or other authorized officer of the firm who will serve as the firm's primary contact with the Board concerning the request to withdraw registration. For that person, and for any other person whose signature appears in Part III or Part IV of the form, item 1.3 requires the firm to provide a name, title, physical business address (and, if different, a business mailing address), telephone number, facsimile number, and e-mail address.

### **Part II – Description of Ongoing Regulatory or Law Enforcement Proceedings**

Item 2.1 of the form requires the firm to identify all ongoing federal, state, or local investigative, disciplinary, regulatory, criminal, or other law enforcement proceedings that are known to the firm, including to any of the firm's partners or officers, and that address in whole or in part any conduct of the firm or any audit-related conduct of the



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firm's associated persons. The firm must identify the authority conducting the proceeding, supply a caption or other identifying information for the proceeding, state the date that the firm or a partner or officer of the firm first became aware of the proceeding, describe the firm's understanding of the current status of the proceeding, and describe the conduct of the firm and the firm's associated persons that the proceeding addresses.

One commenter suggested the information required in Part II should parallel the information required of a registering firm on Form 1. Because of the different purposes of the two forms, however, some of the information required in Form 1 (such as convictions or other completed proceedings) may not be relevant to withdrawal. Conversely, the information required by Form 1 would not include certain information that is relevant to withdrawal, such as information on ongoing investigations of the firm and its associated persons.

The same commenter also suggested limiting the information required on Form 1-WD to only information on proceedings involving the firm, rather than also including proceedings relating to an associated person. As to associated persons, however, Form 1-WD seeks only information on proceedings that involve audit-related conduct of any of the firm's associated persons. Such proceedings are likely to be relevant to the



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Board's consideration of the firm's withdrawal request, and the Board has therefore decided to retain this part of the form.

This same commenter also suggested that a firm should be required to report only those matters that it has not previously disclosed either in its registration application in or in its annual or other periodic reporting.<sup>7/</sup> The Board agrees that a withdrawing firm should not have to repeat information it has previously furnished the Board. Accordingly, when appropriate, a firm may answer Part II of Form 1-WD with respect to a proceeding that the firm has previously reported by identifying the proceeding as still ongoing, incorporating previously reported information by reference, and providing the firm's current understanding of the proceeding's status.

Finally, the same commenter suggested that the Board eliminate parts (c) - (e) of item 2.1 because those same items were not part of Form 1, or, in the alternative, clarify or modify those parts of item 2.1 in certain respects. The Board does not believe these paragraphs should be deleted. As noted above, Form 1-WD serves different purposes from those served by Form 1 and, accordingly, different information is required. As to item 2.1(c), the commenter suggested using the date the firm was officially notified of the proceeding, rather than when the firm or a partner or officer of the firm first "became aware" of the proceeding. In some cases, however, a firm may be aware of an ongoing

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<sup>7/</sup> The Board has not yet adopted rules requiring annual or periodic reporting, although it anticipates doing so in the future.



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investigation, because one of its partners or officers is aware, and may not yet have been officially notified of the proceeding. Moreover, because this item is limited to partners and officers of the firm, the Board does not believe it will be burdensome.

The commenter also sought clarification of whether item 2.1(d), requesting the firm's understanding of the current status of the proceeding, seeks a short answer or a detailed description. The Board does not seek detailed descriptions under this item. A short description of the status of the proceeding (e.g., under investigation, case pending, etc.) is sufficient. Finally, the commenter asked for clarification of the level of detail sought in item 2.1(e). In responding to item 2.1(e), a general description of the case will be sufficient.

### **Part III – Certification of Nonparticipation in Audits**

Item 3.1 requires a representation by an authorized partner or officer of the firm, on behalf of the firm, in the following form (substituting only the name of the firm where indicated in brackets) –

On behalf of [name of firm], I certify that [name of firm] is not currently, and will not during the pendency of its request for leave to withdraw be, engaged in the preparation or issuance of, or playing a substantial role in the preparation or furnishing of, an audit report, other than to issue a consent to the use of an audit report for a prior period.

As required by General Instruction number 4, a paper original of the form bearing a manual signature as to Item 3.1 must be submitted as well as the electronic submission



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of the form. The manual signature must be dated not later than the date of the electronic submission.

#### **Part IV – Reasons for Seeking Leave to Withdraw (Optional)**

Item 4.1 allows the withdrawing firm to describe the reason or reasons the firm seeks leave to withdraw from registration. The item is optional; a withdrawing firm can decide whether or not to provide the information in this item. As suggested by a commenter, Item 4.1 has been added because it is conceivable that some explanations could in fact help to expedite the Board's decision process on withdrawal requests.

#### **Part V – Signature of Firm Seeking Leave to Withdraw**

Item 5.1 requires that the form be manually signed on behalf of the firm by an authorized partner or officer of the firm who certifies that he or she has reviewed the application and that, based on his or her knowledge, the application is complete and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which such statements were made, not misleading, and that the signer is authorized to execute the application on behalf of the firm. Item 5.1 also requires that the signature be dated and accompanied by the title of the signer. As required by General Instruction number 4, a paper original of the form bearing a manual signature as to Item 5.1 must be submitted



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as well as the electronic submission of the form. The manual signature must be dated not later than the date of the electronic submission.