e

r **Ernst & Young LLP**
5 Times Square
New York, New York 10036

r Phone: (212) 773-3000
www.ey.com

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Ronald S. Boster
Acting Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

PCAOB Rulemaking Docket Matter No. 001, Proposal of Registration System for Public Accounting Firms

Dear Mr. Boster:

Ernst & Young is pleased to submit comments on the proposal of the Public Company Accounting Oversight Board ("PCAOB") implementing the accounting firm registration requirements of Sections 102 and 106 of the Sarbanes-Oxley Act ("the Act"). We are submitting this comment letter not only on behalf of Ernst & Young LLP, a United States accounting and professional services firm, but also on behalf of practices that are affiliated with Ernst & Young throughout the world as members of Ernst & Young Global.[1]

We support the objectives of the Act and believe that investors and the markets will benefit from enhanced audit quality, improvements in financial reporting and corporate governance, and other investor protection measures that are the Act's hallmarks. The PCAOB's registration proposal, in our view, fairly and reasonably tracks most aspects of the statutory mandate applicable to public accounting firms. The proposal is a significant step in establishing a new regulatory regime for the auditors of SEC registrants. It appropriately reflects the fact that U.S. investors have a right to rely on high-quality financial statement audits no matter where the audit is performed. Particularly in view of the series of recent financial frauds in the U.S., the PCAOB should have mechanisms to ensure adherence by foreign public accounting firms to high standards of quality, ethics and independence.

To achieve these goals, the PCAOB's rules must of course be workable, and to work effectively the rules must take into consideration foreign law constraints. The PCAOB must recognize the limitations imposed by foreign law and should ensure that foreign regulators, many of whom have developed or are in the process of developing their own sophisticated and rigorous regulatory regimes, become partners in global regulation of the profession. Many of our comments below are addressed to this issue.

[1] The Ernst & Young global network comprises a group of independent professional services practices operating in more than 130 countries. Some of the practices have ownership or operational links with others, but otherwise the practices are autonomous. They are legally separate from one another. Each practice is separately owned and managed and they have no liability for one another's acts.

In addition, we believe that several elements of the registration requirements are burdensome for both U.S. and foreign accounting firms, without attendant investor benefit. The amount of information that would be required to be filed is enormous, and it is not clear why the PCAOB needs to collect all of it. For example, the requirement that the accounting firms provide the name, license, and other information of every "accountant" – a term which is defined as including every person in the firm with an undergraduate accounting degree, whether they work on audits of public companies or not – would result in the filing of tens of thousands of names by the major accounting firms. This seems excessive, particularly in view of the high turnover rate among our staff and the fact that partners, not staff, have signature authority for financial statement opinions. In addition, many of the information requests are particularly burdensome for many foreign firms, which have not traditionally maintained information in the categories – such as the required fee information – established under the proposed rules. We believe that the requirements could be streamlined to avoid information overload, which would be in the interests of both the firms and the PCAOB.

These issues are discussed further below.

A. **Foreign firm registration issues**

1. <u>The SEC's long-standing use of bilateral agreements</u>: The securities markets have become increasingly globalized in recent years, and the SEC has a well-recognized need to gather information from outside the U.S. in many of its enforcement investigations. The SEC has approached this issue by negotiating bilateral agreements with foreign regulators, and its experience is highly relevant to the PCAOB's rule proposal.

   Since 1982, the SEC has entered into more than 30 information-sharing arrangements with foreign regulators. This approach has been ratified and facilitated by Congress. In 1988, the SEC proposed, and Congress passed, the International Securities Enforcement Cooperation Act (enacted as Section 6 of the Insider Trading and Securities Fraud Enforcement Act, adding Section 21(a)(2) to the Exchange Act). The Act empowered the SEC to assist a foreign regulator by conducting a formal investigation upon the request of the regulator without regard to whether there was a possible violation of the United States laws. In turn, many foreign regulators have obtained the authority to gather information at the SEC's request even though a possible violation of the U.S.'s laws, and not the foreign jurisdiction's laws, is the subject of the investigation. More recently, in May 2002, the International Organization of Securities Commissions ("IOSCO") adopted the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information. *See* http://www.iosco.org/library/pubdocs/pdf/ IOSCOPD126.pdf. Like the memoranda of understanding entered into between the SEC and many foreign regulators, the IOSCO multilateral MOU will assist in international cooperation and information-sharing.

   The reasons for this cooperative approach are several-fold. First, the SEC lacks the ability to serve subpoenas outside the United States. *See* Section 21(b) of the Exchange Act. Second, as discussed further below, foreign countries often have confidentiality, bank secrecy, or other laws that inhibit or preclude governmental information-gathering efforts. Third, international law generally recognizes jurisdictional limitations. As set forth in the Restatement (Third) of Foreign Relations Law of the United States, a jurisdiction may not exercise authority to enforce law extraterritorially where it would be unreasonable to do so, and where two jurisdictions have conflicting laws "the two states should consult with each other." *See* § 403 ("Limitations on Jurisdiction to Prescribe"), comment e; § 431 ("Jurisdiction to Enforce") (1987). Fourth, most countries have relied upon the principle of "positive comity," which acknowledges mutual respect for the laws and regulations of other states.

The PCAOB's proposed rules fail to reflect adequately these long-standing efforts at international mutual cooperation and these principles of international law. Under the proposal, the proposed rules and requirements for the most part apply equally to U.S. and foreign accounting firms, regardless of foreign law conflicts or the existence of foreign regulatory regimes.

Many foreign firms that are members of Ernst & Young Global believe that registration should not be required at all. They believe that such dual oversight will be inefficient, costly, and inconsistent with the principle of "positive comity." Many firms believe that the approach taken in the Act and the proposed rule will lead to serious conflicts and will infringe upon national sovereignty. They also believe that there is a serious question of proportionality – the PCAOB's proposal sweeps almost every significant accounting firm in the world into its regulatory regime, yet only approximately 2.5% of the trading volume of European companies listed on the New York Stock Exchange takes place in the United States. Thus, the vast majority of shareholders in these foreign registrants are not U.S. citizens. The proposal also imposes the PCAOB's considerable array of regulatory controls on firms that may have only a handful of SEC registrants, or, because of the proposed "substantial role" definition, no SEC registrants at all.

Notwithstanding these serious concerns and objections, we ask that, if the Board does go forward with its registration requirement, it work with foreign regulators to establish cooperative arrangements. There are at least three benefits to this approach. First, it will make foreign regulatory authorities into partners in helping to promote the integrity of the capital markets throughout the world. Second, it will almost certainly minimize delays and objections to production of workpapers and testimony and will facilitate inspections of foreign firms. And third, it will eliminate many foreign law obstacles to compliance by foreign accountants with the PCAOB's requirements.

2. Foreign law limitations: The foreign law concerns are significant. In recent weeks, Ernst & Young, together with other major accounting firms, retained the Linklaters law firm to assess foreign law issues raised by the PCAOB proposal. Linklaters examined the laws of seven countries that have a considerable number of foreign private issuers – the United Kingdom, Germany, Mexico, France, Japan, Israel and Switzerland.

Linklaters has submitted its detailed legal analysis in a separate letter to the PCAOB. The Linklaters memorandum describes a number of foreign laws that would conflict with the PCAOB's requirements regarding consents to production of information and that would prevent the firms from completing all portions of the proposed registration form. First, data protection legislation in some of the jurisdictions prohibits the disclosure of personal data to the PCAOB, including names, licensing information, and similar information about firm partners and employees. Second, some jurisdictions have laws that would prevent firms from requiring that employees sign consent forms, or would subject the firms to potential liability if they attempted to dismiss employees who refuse to sign such forms or if, having signed the form, they nonetheless refuse to comply with a PCAOB investigation. Third, all of the jurisdictions have confidentiality laws that prevent accounting firms from disclosing client information, which would make it difficult to provide information in response to a PCAOB request. Confidentiality laws also may prevent firms from disclosing employee information, such as information about prior disciplinary proceedings. Fourth, countries have laws that would prevent accounting firms from making audit workpapers or other information available to the PCAOB with respect to specific types of companies. In particular, bank secrecy laws would prevent firms from disclosing information about their banking clients when that information would in turn relate to clients of the banks. Likewise, certain countries – Israel, for instance – have strict national security laws that would prevent firms from disclosing information about defense industry audit clients.

Many of these foreign law constraints can be eliminated through appropriate waivers and consents, but not in all cases. Companies can generally waive confidentiality restrictions, but apparently not in France, and as a practical matter waivers may not be obtainable in certain other jurisdictions. Employees can waive certain data protection restrictions, but the United Kingdom and Germany (and perhaps other countries) require that such waivers be "freely given." A question exists in those jurisdictions as to whether such waivers would be viewed as "freely given" in the employer/employee context. In addition, even with a waiver, there are restrictions on the transfer of information across international borders. Most significantly, as noted above, a basic element of the Act's enforcement scheme – requiring consents from partners and employees – would be difficult for the firms to enforce, because they may be barred from dismissing or taking other significant remedial action against a non-complying employee.

In addition, it would appear that inspections by the PCAOB of non-U.S. firms would raise a number of legal problems. In every jurisdiction surveyed by the Linklaters firm, restrictions on extraterritorial law enforcement would prohibit such inspections, even when done with the consent of the foreign firm.

Many of these legal impediments can be overcome through agreements with foreign regulators. For example, we have been told by the Linklaters firm that data protection restrictions can be resolved through bilateral regulatory agreements. And inspections could be conducted through joint efforts of U.S. and non-U.S. regulators in order to avoid the restrictions on extraterritorial law enforcement.

3. Our proposed approach: In view of these foreign law constraints and conflicts, the Act and the proposed rule may promise more than they can deliver. The PCAOB cannot reasonably – or consistently with international law – require that a foreign firm violate the law of its home country. Moreover, although the consents will greatly facilitate U.S. law enforcement, the

individual accountant who signs the consent will be outside of the U.S., and the PCAOB would generally find it necessary to go to foreign courts to enforce the consent. As a result, in a circumstance in which information is urgently needed, this new enforcement mechanism may not work as effectively or efficiently as some people might think or would hope. The foreign firms may simply be prevented from delivering the information that the PCAOB wants and expects to receive.

It should also be noted that these problems could not be resolved by having the U.S. firm fill in the gaps and take over the role of performing audits in jurisdictions where firms cannot register because of foreign law constraints. Even if it were practical to do this, the U.S. firms would be subject to most of the legal limitations applicable to non-U.S. accounting firms. Thus, if audit firms in a particular country find it impossible to register because of registration requirements that conflict with local law, it may be that issuers in that country will be unable to file audited financial statements with the SEC. That result would not be in the interests either of foreign private issuers or their U.S. investors.

Accordingly, the appropriate approach is the entry of cooperation agreements between the PCAOB and foreign regulators, as the SEC has done for many years. We recognize that the MOU process does not always work perfectly – memoranda of understanding can take a long time to negotiate, foreign regulator counterparts may not be as helpful in producing information as the SEC would like, and persons being investigated may oppose the SEC's requests and challenge them in court. But the Act fundamentally changes this situation: for the first time there is now a statutory mechanism – the registration requirement and the related mandatory consents – that will facilitate foreign assistance and cooperation. MOUs typically provide a means to compel a person outside of the U.S. to provide information sought by the U.S. regulators, in addition to furnishing a procedural mechanism for production of such information. Here, the registration and consents provide their own basis for compelling production of information from outside of the U.S. In this situation, bilateral agreements would not be needed in order to compel production of information, but, rather, in order to ensure that such production would be consistent with foreign regulatory and legal requirements.

The PCAOB, therefore, should amend its rule proposal to make explicit that foreign firms and accountants are not required to violate their local law when they complete the registrations and consents (something which is essentially required by principles of international law), and should also make clear that it will work with foreign regulators to establish cooperative agreements that would facilitate the Act's regulatory objectives.

4. <u>Need for more time</u>: As noted, we believe that any foreign firm registration requirement should be coupled with negotiations and discussions between the PCAOB and foreign regulators about supervision and regulation of the foreign accounting firms. Accordingly, we believe that the PCAOB should postpone foreign firm registrations for some period of time – we recommend one year – in order to put into place cooperation agreements with other countries. In this regard, we note precedents for an extension in this context. The SEC's independence rules adopted in 2000 gave foreign firms an almost two-year transition period to comply with requirements relating to quality control systems to ensure auditor independence. Revision of the

Commission's Auditor Independence Requirements, Release No. 33-7919, 65 Fed. Reg. 76008, 76055 (Dec. 5, 2000). Likewise, the SEC's recently adopted independence rules provided additional time for foreign firms to comply with new partner rotation requirements. Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183, 68 Fed. Reg. 6006, 6047 (Feb. 5, 2003).

Importantly, a one-year delay would give the PCAOB time to flesh out its approach to standard-setting, inspections, investigations, disciplinary proceedings and other activities. The PCAOB could also work with foreign regulators in developing requirements and procedures that would be applicable to foreign firms. Many foreign governments have developed their own regulatory approaches to accounting firm quality control. For example, in the European Union, the European Commission has adopted a Recommendation on Quality Assurance which will be implemented by all of the member states by November 2003. It provides a comprehensive approach to quality control of the audit firms. We understand that similar initiatives have been proposed in Switzerland and other countries. The PCAOB might well conclude that the existence of such regulatory regimes would obviate the need for exercising certain of the PCAOB's powers over foreign firms. The substantive rules and requirements that will be developed by the PCAOB are matters of great concern to non-U.S. firms, and it seems only fair to give them some sense of the Board's initiatives before they are required to register.

Even if the additional one-year period were not appropriate for these reasons, the foreign firms would nonetheless need additional time to file their applications. This is the first time that foreign accountants would be required to collect much of this information, and they simply do not currently have the information – such as the fee category data, or ten years of information relating to litigation – collected in a manner that would make it possible to complete the application under the proposed time schedule. As for gathering the fee data, it may in some cases be necessary for the foreign firms to gather relevant invoices and manually add relevant fees. In some countries, information systems have been developed on an entity-by-entity basis. In other words, there may not be one information system at a national level that brings together the results of all entities in that country. The need to aggregate information across national borders would further complicate this process. Finally, in order to avoid foreign confidentiality and secrecy law obstacles, it will be necessary in many cases to obtain waivers from audit clients. That will almost certainly be a complicated and difficult process, and may take many months. These problems are exacerbated by the fact that many foreign auditors will be in the midst of their "busy season" due to the June 30, 2003 deadline for Foreign Private Issuer 20F filings.

It also appears that an extension of time would be useful to the PCAOB because it would result in a staggered review process. If foreign firms were to register one year after the U.S. firms, the PCAOB will have more time to review the U.S. firm applications. The amount of information that is proposed to be filed with the PCAOB is enormous, and postponing the foreign firm filings will reduce the crush of registration form filings that will hit the PCAOB in early September of this year.

B. **Issues affecting both U.S. and non-U.S. firms**

Proposed Rules:

Rule 1001(a) defines "accountant" as a person "(1) who is a certified public accountant, or (2) who holds (i) an undergraduate or higher degree in accounting, or (ii) a license or certification authorizing him or her to engage in the business of auditing or accounting, or (3) who (i) holds an undergraduate or higher degree in a field, other than accounting, and (ii) participates in audits."

The definition of "accountant" in Rule 1001(a)(1) and 1001(a)(2)(i) as proposed would include individuals who might never participate in any audit services. For example, clerical and administrative personnel and personnel with no connection to the audit practice would be included. In addition, when coupled with the reporting requirements under Part VII of Form 1, Rule 1001(a)(2)(i) would require that registered firms collect and maintain information regarding the undergraduate or graduate degrees of all of their employees (professional and non-professional), which is not something that we currently do. The definition in Rule 1001(a)(3) sweeps less broadly but still reaches farther than necessary. At a minimum, the rule should define "participate" in a way that would eliminate purely *de minimis*, ministerial or inconsequential activities.

The definition in Rule 1001(a)(1) would by itself appear to sufficiently address the Board's need for information about those individuals whose roles will be of most concern to it. While this definition will also require the implementation of additional tracing mechanisms for some firms, the criteria are more objective and therefore, we believe, more easily implemented.

Rule 1001(f) defines "audit services" and **Rule 1001(l)** defines "other accounting services." According to the section-by-section analysis, the definition of audit services "is intended to capture the same category of services for which fees were required to be disclosed as 'audit fees' pursuant to the Commission's 2000 proxy disclosure rules." The term "other accounting services" is "meant to capture two categories of services: 1) services the fees for which are to be disclosed as 'audit fees' under the Commission's [January 2003] revised rules, but that were not previously disclosed as 'audit fees,' and 2) services the fees for which are to be disclosed as 'audit-related fees' under the Commission's [January 2003] revised rules." This means that auditors and their clients would be required to compute these two categories differently for purposes of the proxy disclosure rules and the Form 1 disclosure. It is not clear why the PCAOB is proposing such an approach. The definitions of all of these terms should refer to the revised proxy fee disclosure rules, and (as discussed further below) the Board's rules should require disclosure of whatever the issuer discloses publicly until such time as the new fee disclosure rules become fully effective.

Rule 1001(m) – There is a fair amount of inconsistency in the rule proposal's use of the terms "accountant," "person associated with a public accounting firm," and "accountant associated with a public accounting firm" (or "associated accountant"). As noted above, the term "accountant" is defined broadly to include CPAs, college accounting majors, and so on. The term "person associated with a public accounting firm" is defined to include persons who, in connection with issuance of a report on a public company, share in the profits, receive compensation, or participate "as agent or otherwise on behalf of such accounting firm in any activity of that firm." By contrast, the term "associated accountant" is not defined, yet that term is used throughout the proposed rules. For example, the roster of individuals associated with the firm in Part VII refers to "all accountants associated with the applicant." It is not clear what the term "associated" is intended to mean in this context, although we assume it is intended to refer to an employment relationship. We urge that the PCAOB clarify this matter.

The phrase "persons associated with a public accounting firm" is used in the requirements relating to disclosure of lawsuits, criminal actions, and related information (Part V). A similar although not identical term, "associated persons," is used in the requirements relating to consents to cooperate (Part VIII). As noted, the "persons associated with a public accounting firm" definition includes a third party who "participates as agent or otherwise on behalf of such accounting firm in any activity of that firm." Assuming the Board intends that "associated persons" have the same meaning as "persons associated with a public accounting firm" (which appears to be the case under Rule 1001(m)), it will be very difficult or impossible for firms to obtain such information and consents from third parties such as engineers, geologists, or other specialists who might occasionally be used on an audit under generally accepted auditing standards. In addition, it is not clear how far this definition reaches – the phrase "participates as agent or otherwise" lacks a precise meaning. Although we recognize that this definition was derived from the Act (Section 2(a)(9)(A)(ii)), we urge that it be modified to include only partners or employees of the accounting firm itself.

Rule 1001(n) – The proposal defines the phrase "play a substantial role in the preparation or furnishing of an audit report" as including the performance of "material services that a public accounting firm uses or relies on in issuing all or part of its audit report with respect to any issuer," and it defines "material services" as services "for which the engagement hours or fees constitute 20% or more of the total engagement hours or fees." The "substantial role" test can also be met if the firm performs audit procedures "with respect to a subsidiary or component of any issuer the assets or revenues of which constitute 20% or more of the consolidated assets or revenues of such issuer."

We do not believe that these dual tests for "substantial role" are necessary, and would urge that the Board drop the 20% of hours or fees test. There are at least four reasons for this recommendation. First, the 20% of assets/revenues test has often been used in the accounting literature as a measure of "significance." Indeed, the SEC adopted precisely that measure in its newly adopted partner rotation rules, which exclude partners serving on subsidiaries constituting less than 20% of assets and revenues of the issuer from the definition of "audit partner" subject to partner rotation. 68 Fed. Reg. at 6019. Second, it would be difficult for the U.S. and foreign firms to determine when the 20% hours/fees test will be met. This will be particularly true when the foreign firm is not part of an international network of accounting firms (as is often the situation in audits of multinational companies) and therefore must rely on a completely separate U.S. firm to provide it with relevant fee and hour information. Third, there could be situations where unregistered firms participate in an audit without anticipating a level of work that would exceed the 20% hours/fees amount, but the amount of work does in fact exceed that level, thereby resulting in a violation of the securities laws by the foreign firm. Fourth, the "substantial role" registration requirement is not required by the Act. *See* Section 10b(a)(2) of the Act. Because it is not statutorily mandated, and in view of all the other burdens being placed on the foreign firms, it seems excessive to impose the "substantial role" registration requirement in a manner that will be difficult for foreign firms to apply.

In addition, we ask that the Board provide greater certainty to the "assets/revenue" test by pegging the test to assets and revenue reported in the audited financial statements of the issuer for the most recent fiscal year prior to the year currently being audited.

Rule 2101 – Footnote 9 of the Release authorizes the Board to require or permit the filing of registration applications by means other than electronically via the internet in "special cases." We believe that there may be firms in some countries that are unable to submit this information electronically, and we would ask that the Board be reasonable in its application of the "special cases" exception.

Rule 2104 – This proposed rule requires that the accounting firm registrant obtain manual consents from accountants that they will provide documents and testimony if the PCAOB so requests. Ernst & Young has thousands of accountants who are partners or employees, and obtaining manual signatures from all of them would be a giant technological step backwards. Electronic consents should be sufficient. We have for several years used electronic signature procedures for partners and staff to confirm their compliance with the firm's independence requirements, and a similar procedure could be used for this purpose.

Rule 2105(a) – The Board's proposed standard for approval of registrations is whether registration of a particular firm is "consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors." This is a very vague standard and gives the Board almost complete discretion in reviewing and approving applications. We suggest the Board provide more specific guidance. The Board should state the factors it would look to in determining whether to approve or disapprove an application. In addition, the proposed rule does not indicate whether the Board will provide a notice of the grounds for denial of an application and an opportunity for a hearing, consistent with Section 15(b)(1)(B) of the Exchange Act, which governs the registration of broker-dealers. Such procedures should be provided given the significance of the registration process to applicants.

Rule 2105(c) – This proposed rule states that where the Board requests additional information from the applicant, "the Board will treat the application, as supplemented by the requested information, as if it were a new application under paragraph (b) of this Rule requiring action not later than 45 days after receipt of the application by the Board." We are concerned that, particularly in this first-year registration process, there may be many instances in which firms are asked to provide supplemental information to the Board. If a new 45-day review period is triggered whenever this happens, the Board might in some instances not approve a firm's application until after the October 24, 2003 registration deadline. We recognize that the Board does not need to take the additional 45 days every time supplemental information is submitted, but we nonetheless believe that the phrase "will treat" should be changed to "may treat," and that a new 45-day review period will only be triggered by the submission of important or significant new information.

Rule 2300 – We agree with the proposal that social security numbers or equivalent information be given automatic confidential treatment.

Form 1:

Item 1.8 Required Licenses and Certifications – This item requires that the applicant state whether "all individual accountants associated with the applicant who participate in or contribute to the preparation of audit reports have all licenses and certifications required by governmental (federal, state and non-U.S.) and professional organizations." Laws and rules relating to licensing requirements are complex and ambiguous, and it is often uncertain whether a license is required for work in a particular situation. Accordingly, it would be impossible for the firm to make an affirmative statement that "all" necessary licenses have been obtained for the thousands of associated accountants. The firm's statement will inevitably be based on self-reporting by the individual license holders and on interpretation of a patchwork of laws and regulations governing licenses that vary from state-to-state and are often interpreted without clear guidance. Thus, the item should be changed to include a qualifier such as "to the best of the firm's knowledge." In addition, we suggest that the phrase "required for their participation in or contribution to the audit report" be added to the end of Item 1.8 (after the words "professional organizations") to make clear that information only need be provided on individuals who hold appropriate licenses for the roles they have been asked to perform.

Item 2.1 Issuers for which Applicant Prepared Audit Reports During the Preceding Calendar Year – We assume that the Board intends the phrase "prepared or issued any audit report during the calendar year" to refer to the date of the auditor's opinion and not the date of the financial statements themselves, but this matter should be clarified.

The proposed fee disclosure rules are confusing and will be difficult to satisfy during this period when the SEC's proxy fee disclosures are in transition. The PCAOB's proposal appropriately tracks the fee "buckets" in the SEC's new rules – audit services, other accounting services (called "audit-related services" in the SEC's rule), tax services, and other services – but, as noted above, the proposal defines "audit" and "other accounting" differently than the new SEC rule. Moreover, even if this definitional problem is fixed, these new fee buckets are only required by the SEC for periodic filings for the first fiscal year ending after December 15, 2003, and in proxy statements that include such periods. Accordingly, the fee information required by the proposal is not generally available now, although some issuers, as encouraged by the SEC, have early adopted the new disclosure approach.

In our view, while it would be possible to reconstruct this type of fee information retrospectively, it would take a considerable amount of work, and we are not persuaded that this information would be useful or necessary. Further, in virtually all cases, the fee data that is disclosed would be inconsistent with fee data already in the public marketplace, as disclosed by issuers in their proxy statements. The proposed breakdown of fee information does not seem vital to the PCAOB's mission, and consistency with the SEC's rules is the most practical approach. The PCAOB's rules should simply require disclosure of whatever fee information is contained in issuers' proxy statements. For those companies that have not previously disclosed fee data, such as foreign private issuers, fee information should reflect the timetable and fee categories in the new SEC rules. As noted, some companies have in fact disclosed audit-related fees, even though the SEC rules did not previously require that disclosure, so the PCAOB would receive that information for those companies. In any event, if we are required to reconstruct these fee buckets, including for foreign private issuers, we ask that the Board understand that, because neither we nor our clients previously maintained fee information in this manner, our determinations may reflect certain estimates or approximations of particular fee categories.

Item 3.1 Applicant's Revenue – The rule includes a note stating that "[t]he fee disclosures required by this Item are not limited to fees received from *issuers* and include fees for audits performed other than pursuant to generally accepted auditing standards." This would appear to require fee information relating to non-public companies audited by the registrant, but we have never attempted to break down such fees into audit, audit-related, tax and other fees for such companies. Accordingly, this would require considerable effort to establish "fee buckets" for thousands of non-public companies. We do not see the need for this information, which extends beyond the PCAOB's jurisdiction over SEC registrants.

In addition, it should be noted that this type of financial information is viewed as highly confidential in many foreign countries and confidential treatment would frequently be appropriate.

Part IV – Statement of Applicant's Quality Control Policies – The rule proposal requires a "narrative, summary description, in a clear, concise and understandable format, of the quality control policies of the applicant for its accounting and auditing practices, including procedures used to monitor compliance with independence requirements." Although the rule uses the words "summary" and "concise," we note that quality control procedures are elaborate and extensive, and we believe that it would be helpful if the PCAOB were to provide additional guidance on how much detail it requires. For instance, the PCAOB might specify its expectations for the length of the summary and the elements of quality control to be covered. We also note that in circumstances where the applicant is part of a networked firm, the registration application will likely refer to the networked firm's quality control policies and requirements

Part V – Listing of Certain Proceedings Involving the Applicant's Audit Practice – We note that some foreign firms may not have maintained all of the information that is being requested as to various litigations, enforcement actions, and similar proceedings. Some of this information, such as information on pending proceedings or non-public arbitration proceedings, may also be confidential, particularly outside of the U.S., and we expect the PCAOB would provide confidential treatment. Foreign firms may also find it extremely difficult to comply with Items 5.5(a)(3), which requires an applicant to disclose information about crimes involving violations of foreign statutes that are "substantially equivalent" to specified U.S. statutes. Determining what foreign statutes are "substantially equivalent" to U.S. statutes will require considerable effort, both by the foreign firms and foreign lawyers who will need to assist them. In addition, the information being sought seems excessive both for U.S. and foreign firms, and we suggest that requirements for 10 years of information be changed to five years.

We also note that each disclosure item – Items 5.1, 5.2, 5.3, and 5.4 – requires information in connection with an audit report "or a comparable report prepared for a client that is not an issuer," which sweeps in non-SEC clients. However, subsection b.4 of each item is limited to clients who are "the subject of the audit report." Because the term "audit report" is defined as being limited to audits of SEC registrants (*see* Rule 1001(e)), the proposed rule is internally inconsistent.

Item 7.1 – Listing of Accountants Associated with Domestic Applicants – The proposal requires that a vast amount of information be provided – the name, social security number, and license number of "all" accountants associated with the firm. We do not currently have that information assembled in one database, and it seems unnecessary for the Board to gather all of this information. The staff turnover at the major accounting firms is significant. We believe that information on partners with signing authority should be sufficient. Moreover, we assume that the applicant can file this information as of a particular date prior to the actual application – e.g., the application could be filed on August 1, but the information might be current only as of July 1. In view of the high level of staff turnover, it would be impossible to ensure the accuracy of the accountant roster at the precise time of filing.

Item 7.2 – Listing of Accountants Associated with Non-U.S. Applicants – The rule proposal requires information as to all accountants who "participate in or contribute to the preparation of audit reports." We are not certain whether this definition would include "national office" personnel at foreign firms. In this regard, the SEC's new partner rotation rules exclude "national office" personnel who "may be consulted on specific accounting issues related to a client" because they serve as a "technical resource for members of the audit team" rather than as actual members of the team. 68 Fed. Reg. at 6020. The analysis may be different under the PCAOB's proposed "participate in or contribute to" test, and we ask that the PCAOB clarify this matter.

Item 8.1 – Consent to Cooperate with the Board and Statement of Acceptance of Registration Condition – The rule requires that the firm and its associated persons consent to providing testimony or documents in response to "any request" by the Board which is "in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002." The rule on its face does not contain any "reasonableness" limitation, but the Board should make clear that the same standards that are applicable to SEC subpoenas apply here as well. Courts have held that, to be enforceable, an SEC subpoena must be "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. 1978), *cert. denied*, 439 U.S. 1071 (1979). We assume that, notwithstanding the consent form, similar standards would apply here.

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We appreciate the opportunity to provide these comments, and we would welcome discussion of any points that require further explanation.

Respectfully submitted,

ΕΨ
Ernst & Young LLP