

rendered for the audit of an issuer's annual financial statements and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports." This 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.<sup>8</sup>

Several commenters suggested that the Board change the definition of "audit services" to conform to the category of fees disclosed as "audit fees" under the SEC's recently revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. As noted below in the discussion of Part II of the Form, the Board has decided not to change this definition at this time. However, the Board has decided to add paragraph (2) to this rule, which provides that, effective after December 15, 2003, the term "audit services" will mean "professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years." This definition in paragraph (2) is intended to conform to the category of fees disclosed as "audit fees" under the SEC's recently revised auditor independence rules.

#### *Foreign Public Accounting Firm*

Rule 1001(f)(i) defines foreign public accounting firm as a "public accounting firm that is organized and operates under the laws of a non-U.S. jurisdiction, government or political subdivision thereof." This definition, which follows closely the definition of foreign public accounting firm in section 106(d) of the Act, is intended to clarify that the term covers accounting firms that are organized and operate in any jurisdiction outside of the United States.<sup>9</sup>

#### *Issuer*

Rule 1001(i)(iii) defines the term "issuer" to include any public company, regardless of the jurisdiction

of its organization or operation, that is required to file reports with the Commission or that has filed a registration statement for a public offering of securities. This definition is the same as the definition of the term "issuer" in section 2(a)(7) of the Act.

#### *Non-Audit Services*

Rule 1001(n)(ii)(1) defines "non-audit services" to mean services related to financial information systems design and implementation as defined in Rule 2-01(c)(4)(ii) of Regulation S-X, 17 CFR 2-01(c)(4)(ii), and all other services, other than audit services or other accounting services. This definition will be effective through December 15, 2003. Paragraph (2) of the rule provides that effective after December 15, 2003, "non-audit services" will mean "all other services other than audit services, other accounting services, and tax services." The definition in paragraph (2) is designed to be consistent with the category of services disclosed as "all other fees" under the Commission's revised auditor independence rules, adopted on January 28, 2003, as amended on March 26, 2003. This definition is further addressed as part of the discussion of Part II of the Form below.

#### *Other Accounting Services*

Rule 1001(o)(i)(1) defines "other accounting services" as services that are normally provided by the public accounting firm that audits the issuer's financial statements in connection with statutory and regulatory filings or engagements and assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than "audit services." The Board has modeled its definition of "other accounting services" on concepts used in the Commission's recent revision of its auditor independence disclosure rules.<sup>10</sup> The term 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 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 revised rules.

The first category generally consists of those services that, while not captured as "audit services" under the Board's rules, are performed to comply with GAAS. As explained in the

Commission's adopting release, certain services, such as tax services and accounting consultations, may not be billed as audit services, but are necessary to comply with GAAS.<sup>11</sup> This category would also include "services that normally would be provided by the accountant in connection with statutory and regulatory filings or engagements" and "services that only the independent accountant reasonably can provide, such as comfort letters, statutory audits, attest services, consents and assistance with review of documents filed with the Commission."<sup>12</sup>

The term is also meant to capture services the fees for which are to be disclosed as "audit-related fees" under the Commission's revised auditor independence disclosure rules.<sup>13</sup> In general, these are fees for "assurance and related services (e.g., due diligence services) that traditionally are performed by the independent accountant." More specifically, as noted in the Commission's adopting release, these services would include, among others, "employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, internal control reviews, attest services that are not required by statute or regulation and consultation concerning financial accounting and reporting standards."<sup>14</sup>

In addition, paragraph (2) of the rule provides that, effective after December 15, 2003, the term "other accounting services" will mean assurance and related services that are reasonably related to the performance of the audit or review of the issuer's financial statements, other than audit services. The Board intends that this definition in paragraph (2) be consistent with the category of services disclosed as "audit-related fees" under the Commission's revised auditor independence rules. This definition is discussed further below in connection with the discussion of Part II of the Form.

<sup>11</sup> *Id.* At 39.

<sup>12</sup> *Id.*

<sup>13</sup> See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), as amended by Release No. 33-8183A (March 26, 2003). See also Schedule 14A, Item 9(e)(2), 17 CFR 240.14a-101 (as amended, January 28, 2003).

<sup>14</sup> See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), as amended by Release No. 33-8183A (March 26, 2003).

<sup>8</sup> See Schedule 14A, Item 9(e)(1), 17 CFR 240.14a-101; see also Commission Final Rule: Revision of the Commission's Auditor Independence Requirements, Release No. 33-7919 (November 21, 2000).

<sup>9</sup> Section 106(d) of the Act defines foreign public accounting firm as a "public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof."

<sup>10</sup> See Commission Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence, Release No. 33-8183 (January 28, 2003), as amended by Release No. 33-8183A (March 26, 2003).