

therefore fall under this definition. Under section 2(a)(11)(B) of the Act, the Board has the authority to expand this definition and designate by rule "any associated person of any entity" described in section 2(a)(11)(A) as a "public accounting firm." The Board has not chosen to exercise this authority at this time.

State

Rule 1001(s)(iii) would define "State" to mean any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States. The Board has adopted the same definition of state as used in section 2(a)(16) of the Act. The idea of including this definition, and the definition itself, was suggested by a commenter.

Tax Services

Rule 1001(t)(i) defines "tax services" as "professional services rendered for tax compliance, tax advice, and tax planning." This definition is based on, and meant to include the same group of services the fees for which would be disclosed as "tax fees" under the Commission's recently revised auditor independence disclosure rules.¹⁹ More specifically, as set forth in the Commission's adopting release, "tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment planning-services" and "[t]ax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities."²⁰ This definition is discussed further below in connection with the discussion of Part II of the Form.

Rule 2100—Registration Requirements for Public Accounting Firms

Rule 2100(a) requires any public accounting firm that prepares or issues audit reports with respect to any issuer to register with the Board. In addition, Rule 2100(b) requires the registration of any public accounting firm that "plays a substantial role in the preparation or furnishing of an audit report" with respect to any issuer. These registration requirements implement section 102(a) of the Act, which provides that "it shall be unlawful for any person that is not

a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer."

By introducing the "substantial role" test (defined through the quantitative test in Rule 1001(p)(ii) as described above), the rule clarifies the phrase "participate in the preparation or issuance of, any audit report with respect to any issuer" used in section 102(a) of the Act. In so doing, the Board intends to create a bright-line test to make it easier for firms and others to determine which firms are required to register with the Board. Stated differently, a firm that does not prepare or issue audit reports with respect to any issuer, but that does "participate" in the preparation of such reports, is only required to register if that participation amounts to a "substantial role," as defined in Rule 1001(p)(ii).

Rule 2100 does not exempt non-U.S. public accounting firms from registration. Therefore, a public accounting firm that is organized or that operates outside the United States must register if it prepares or issues an audit report on any issuer. In addition, such firms that play a substantial role in the preparation or furnishing of an audit report on any issuer must also register, even if the firm does not itself issue the audit report. Consistent with the Act, a Note to the rule provides that registration with the Board will not by itself provide a basis for subjecting a foreign public accounting firm to the jurisdiction of the U.S. federal or state courts, other than with respect to controversies between such firms and the Board.

Under Rule 2100, individual accountants that are associated with public accounting firms are not required to register. As noted above, the definition of the term "public accounting firm" includes proprietorships, and an individual accountant that prepares or issues, in his or her own name, an audit report on an issuer would be viewed as a sole proprietor and required to register.²¹ Individual accountants that are associated with public accounting firms, however, are not required to register.

Under the Act, the registration requirement will be effective 180 days after the date on which the Commission makes its determination under section 101(d) of the Act that the Board is capable of carrying out its responsibilities under the Act. Since this determination was made on April 25, 2003, the rule will specify that domestic public accounting firms that

wish to participate in or contribute to the preparation of audit reports must register by October 22, 2003. The Board has also decided to allow foreign public accounting firms an additional 180 days to register. Accordingly, the rule will provide that the mandatory registration date for these firms is April 19, 2004.

Several commenters suggested that the Board's proposed rules were unclear as to whether they required the registration of firms that do not plan to participate in audits of issuers after October 22, 2003, but that have issued audit reports for issuers covering periods prior to the mandatory registration date. These commenters noted that such a firm may be asked to issue a consent with respect to the use of its opinion for the prior period. To address this concern, the Board has added a note to the rule that provides that the issuance of a consent to include an audit report for a prior period by a public accounting firm, that does not currently have and does not expect to have an engagement with any issuer to prepare or issue, or to play a substantial role in the preparation or furnishing of an audit report with respect to any issuer, will not by itself require a public accounting firm to register under Rule 2100.

Rule 2101—Application for Registration

Rule 2101 requires public accounting firms applying for registration with the Board to complete and file an application for registration on Form 1. This rule is consistent with section 102(b) of the Act, which provides that "a public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section."

Rule 2101 further requires that, unless the Board directs otherwise, applications for registration and any exhibits to such applications must be filed electronically with the Board through the Board's Web-based registration system. The online registration mechanism is currently being developed and will be available in sufficient time for public accounting firms to register.

In addition, several commenters suggested that the Board should provide a procedure for applicants to withdraw their applications. In response to these comments, the Board has added a sentence to Rule 2101 providing that an applicant may withdraw its application for registration by written notice to the Board at any time before the approval or disapproval of the application. The Board will consider rules relating to the withdrawal from registration of

¹⁹ 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) (footnotes omitted).

²⁰ *Id.*

²¹ See Rule 1001(p)(iii).