

registered public accounting firms at a later date.

Rule 2102—Date of Receipt

Rule 2102 defines the date of receipt of an application for registration as, unless the Board directs otherwise, the later of (a) the date on which the registration fee has been paid, or (b) the date on which the application is submitted to the Board through its Web-based registration system. Although the Board had initially planned to have its registration system scan applications for completeness before accepting them, this step has been eliminated for administrative reasons. Applications will not be deemed received, however, until the required registration fee has been paid.

Rule 2103—Registration Fee

Rule 2103 requires that each public accounting firm applying for registration with the Board pay a non-refundable registration fee. This rule is consistent with section 102(f) of the Act, which provides that “[t]he Board shall assess and collect a registration fee * * * from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications * * *.”

The Board will publicly announce the registration fee amount and the payment procedure before the registration system is operational. The Board contemplates that the amount of an applicant's fee will be determined by formula and that fees will vary with the size of the applicant and the number of its issuer audit clients. Once the registration system is operational, the Board will, from time to time, announce (most likely by posting on its Web site or by a similar form of dissemination) the current registration fee for applicants. Several commenters made comments about the amount the Board should seek to recover in registration fees and the criteria the Board should use in allocating fees to applicants. The Board will consider these comments in connection with its setting of the registration fee.

Rule 2104—Signatures

Rule 2104 requires each person signing the application for registration (including any consents) to manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing of the application for registration. Such a document is required to be signed before the application is electronically filed with the Board through the Board's Web-

based system. Further, consistent with the Act's provision on the retention of audit workpapers,²² filers are required to retain the manually signed documents for seven years. In addition, under the rules, the Board or its staff may request a copy of any manually signed document retained pursuant to Rule 2104. The Board's rule tracks the Commission's requirement on signatures for electronic filings in Regulation S-T.²³

Rule 2105—Conflicting Non-U.S. Laws

Rule 2105 provides that an applicant may withhold information from its application for registration when submission of the information to the Board would cause the applicant to violate non-U.S. laws. A number of commenters raised a concern that submitting information in connection with an application for registration could cause an applicant to have to choose between obeying the laws of a non-U.S. jurisdiction and completing the application. The Board has decided to allow applicants to withhold such information from an application for registration.

The rule further provides, however, that an applicant that claims that submitting information as part of its application would cause it to violate non-U.S. laws must identify, in accordance with the instructions on Form 1, the information that it claims would cause it to violate non-U.S. laws if submitted,²⁴ and include as exhibits to Form 1: (i) A copy of the relevant portion of the conflicting non-U.S. law; (ii) a legal opinion that submitting the information would cause the applicant to violate the conflicting non-U.S. law; and (iii) an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict, if the withheld information could be provided to the Board with a consent or a waiver, and a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict. Like all other parts of the application, these exhibits must be submitted in English.

While the Board expects that this rule will mainly be used by non-U.S. applicants, the rule would also allow a

U.S. applicant to withhold information that would cause it to violate non-U.S. laws if submitted to the Board. It should be noted that, for purposes of this rule, the term “non-U.S. law” does not include laws of any state, territory, or political subdivision of the United States.

Rule 2106—Action on Applications for Registration

Rule 2106 governs the Board's approval process. In general, under this rule, unless the applicant consents otherwise, the Board is required to take action on an application for registration not later than 45 days after the date of receipt of the application. Rule 2102 defines the date of receipt. Such action may consist of approval, issuance of a written notice of a hearing specifying the proposed grounds for disapproval, or a request for additional information. Rule 2106 is consistent with section 102(c)(1) of the Act, which provides that “[t]he Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, a prospective registrant.” An applicant that does not elect to treat a notice of hearing as a notice of disapproval will be deemed to have waived the provisions in section (b) of this rule and in section 102(c)(1) that require the Board to act on applications within 45 days.

Specifically, Rule 2106(a) provides that after reviewing the application for registration, and any additional information provided by the applicant or obtained by the Board, the Board will determine whether to approve the application. The Board will approve an application for registration if it determines that registration 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. If the Board is unable to determine that this standard has been met, or if the Board concludes that the application may be materially inaccurate or incomplete, it will either request additional information from the applicant or provide the applicant with written notice of a hearing, pursuant to the Board's procedural rules governing disciplinary proceedings, to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds

²² See section 103(a)(2)(A)(i); see also Commission Final Rule: Retention of Records Relevant to Audits and Reviews, Release No. 33-8180 (January 24, 2003) (requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements).

²³ See Rule 302(b) of Regulation S-T, 17 CFR 232.302(b).

²⁴ The Board's Web-based registration system will include an option, next to each item on the Form, for the applicant to indicate that it is withholding information based on a conflicting non-U.S. law.