

for disapproval and may, at the applicant's election, be treated as a written notice of disapproval for purposes of section 102(c) of the Act.

If the Board requests additional information, a new 45-day review period will begin when the requested information is received. The Board may request additional information when an applicant has failed to complete fully Form 1, or when the information is otherwise necessary in order to make a determination on the application.<sup>25</sup> Rule 2106(c) provides that the Board will take action on such supplemented applications as soon as practicable, and not later than 45 days after receipt of the supplemented application.<sup>26</sup> If the applicant declines to provide the requested information, or fails to do so within a reasonable amount of time, the Board may deem the application incomplete (and disapprove it on that basis, pursuant to Rule 2106(b)(2)), may deem the application not to have been received in accordance with Rule 2102, or may take such other action as the Board deems appropriate.

Commenters raised several concerns with Rule 2106 as proposed by the Board. Some commenters suggested that the Board's standard for approval was too subjective or, at least, that the Board should provide more guidance on how it will be applied by the Board. Section 102 of the Act does not provide an explicit standard for the Board's determination to approve or disapprove an application for registration. At the same time, the Act clearly contemplates that the Board will apply some standard to applications for registration before deciding whether to approve or disapprove a completed application.<sup>27</sup> The standard in Rule 2106(a) is based on the Board's mandate under section 101(a) of the Act. The Board considered providing more specific criteria, but has decided that additional criteria would be inappropriate in light of the varied circumstances of public accounting firms that likely will be applying for registration. For instance, the Board considered providing that the failure of an applicant or its associated accountants to have all licenses and registrations required by governmental and professional organizations would be

a basis for disapproval. In response to the Board's proposal to require applicants to represent that they have all such licenses, a number of commenters gave reasons why they could not provide such a representation. In addition, the Board considered providing that certain criminal and/or civil governmental actions would be a basis for disapproval. Actions against an accountant that might justify disapproval of the application of a sole proprietor might not warrant disapproval of the application of a large public accounting firm if the accountant was one of many employees of the firm, however. Accordingly, the Board has determined to retain the current standard and make an evaluation based on the facts and circumstances of whether each application meets the criteria in Rule 2106(a).

Several commenters suggested that applicants should have "due process" procedures through which they could seek and obtain review of a disapproval of their application within the Board. The Board has addressed these comments by changing the rule to provide that, if the Board is unable to determine that the statutory 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,<sup>28</sup> to determine whether to approve or disapprove the application. Such notice will specify, in reasonable detail, the proposed grounds for disapproval. Because the statute provides for the Board to make these decisions within 45 days and also provides for appeal to the Commission, the applicant may, at its election, treat the notice as a written notice of disapproval for purposes of section 102(c) of the Act. Under sections 102(c)(2) and 107(c) of the Act, a written notice of disapproval may be appealed to the Commission. Therefore, an election to treat a hearing notice as a disapproval will afford applicants an immediate opportunity to seek Commission review.

#### **Rule 2300—Public Availability of Information Submitted to the Board: Confidential Treatment Requests**

Rule 2300(a) provides that applications for registration will be publicly available as soon as practicable after the Board approves or disapproves the application. This is consistent with

section 102(e) of the Act, which provides that applications for registration "or such portions of such applications \* \* \* as may be designated under the rules of the Board" must be available for public inspection.

In order to prevent the disclosure of confidential information,<sup>29</sup> Rule 2300 also sets forth a procedure by which applicants can request confidential treatment of any information submitted to the Board in connection with their applications for registration. Under Rule 2300(b), an applicant for registration may request confidential treatment of any portion of an application that either (i) contains information reasonably identified by the public accounting firm as proprietary information, or (ii) is protected from public disclosure by applicable laws related to the confidentiality of proprietary, personal, or other information.

Rule 2300(c)(2) requires that confidential treatment requests contain a detailed explanation of the reasons that, based on the facts and circumstances of the particular case, the information for which confidentiality is sought meets the requirements in Rule 2300(b). Rule 2300(f) states that unless the applicant seeking confidential treatment consents otherwise, confidential treatment requests themselves will be afforded confidential treatment without the need for a request for confidential treatment. Rule 2300(d) provides that pending a determination by the Board as to whether to grant the request for confidential treatment, the information in question will not be made available to the public. Rule 2300(e) states that if the Board determines to deny a request, the applicant requesting confidential treatment will be notified of the Board's decision in writing and of the date on which the information in question will be made public.

Under Rule 2300(g), the information as to which the Board grants confidential treatment under Rule 2300 will not be made public. The Board anticipates that a notation in the application that is made publicly available will appear in the place of the information for which confidential treatment was granted. However, the granting of confidential treatment will not limit the Board's ability to provide this information to the Commission or to comply with any subpoena issued by

<sup>25</sup> Accordingly, the Board may request additional information regarding any of the applicant's responses contained in Form 1, as well as additional matters that have come to the Board's attention and that are relevant to the Board's decision on an application.

<sup>26</sup> This sentence was added to the Rule at the suggestion of a commenter that was concerned that the Board might take the full 45-day period notwithstanding that only relatively minimal supplemental information was involved.

<sup>27</sup> See section 102(c) of the Act.

<sup>28</sup> These rules will be the subject of a future Board rulemaking.

<sup>29</sup> Section 102(e) also states that the public availability of registration applications is subject to "applicable laws relating to the confidentiality of proprietary, personal, or other information" and directs the Board to "protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information."