

a court or other body of competent jurisdiction, nor will it prevent the Board from making use of this information in connection with the execution of its responsibilities under the Act. For example, the information may be used in the Board's inspection program and investigations, as well as in any resulting proceedings, subject to the applicant's right to seek a protective order in such a proceeding. In the event the Board receives a subpoena, the Board will notify the applicant of such subpoena to allow the applicant an opportunity to object to the subpoena. Finally, Rule 2300(h) delegates the Board's functions under this Rule to the Director of Registration and Inspection.

Commenters made several suggestions to improve the Board's proposed confidentiality rule. One commenter suggested the Board delegate the function of determining these requests and allow for appeal to the Board. Rule 2300(h) responds to this suggestion. Several commenters noted that the proposed rule did not specify when applications would be made available publicly and suggested that that should not take place until the applications had been approved or disapproved. Rule 2300(a) has been modified to reflect that applications will not be made available publicly until after the Board has approved or disapproved them. Commenters also suggested that the Board should provide notice to an applicant upon receiving a third-party subpoena seeking access to information the Board has granted confidential treatment and oppose such subpoenas. Rule 2300(g) now provides for such notice. While the Board does not believe it would be appropriate to provide in its rules that it will object to all such subpoenas, the Board will respond to such subpoenas in a manner consistent with its responsibilities under the Act, including its responsibility to protect proprietary information under section 102(e) of the Act. The confidential treatment requester will, of course, be free to protect its interests by seeking to participate in the proceeding from which the subpoena arose.

Form 1

The proposed rules also consist of instructions to PCAOB Form 1, which is the form to be used by public accounting firms to register with the Board. The Board plans to develop a Web-based form that will be available only electronically.

Form 1 consists of general instructions and nine parts, subdivided into various items requiring the disclosure of particular information concerning the applicant and its

associated accountants, and the applicant's audit clients. The information these items call for is, in general, required by section 102(b) of the Act. To the extent that Form 1 calls for information in addition to that specified in section 102(b), the additional information is closely related to the statutory minimum requirements, and is, in the Board's judgment, reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application. The general instructions and each of the parts of the Form is explained in more detail below.

General Instructions

The general instructions to the Form contain basic information about the application and the application process. In general, these instructions are self-explanatory. General instructions 7, 9 and 10 were added in response to comments received on the Board's proposal.

Many non-U.S. commenters suggested that the disclosure of certain information required by the Form, as originally proposed, would violate non-U.S. laws, particularly related to confidentiality, data protection and privacy. In response to these comments, the Board added General Instruction 7, which allows an applicant to withhold information from its application where disclosure of the information would cause the applicant to violate non-U.S. laws. General Instruction 7 specifies that an applicant claiming that submitting information would cause it to violate non-U.S. laws must so indicate by making a notation under the relevant item number of the Web-based form, and furnish as exhibits: (i) A copy of the relevant portion of the conflicting non-U.S. law, (ii) a legal opinion supporting the applicant's position, and (iii) an explanation of the applicant's efforts to seek consents or waivers, if applicable, and a representation that the applicant was unable to obtain such consents to eliminate the conflict.

In addition, some commenters were concerned that it may be difficult to ensure that application information is current when submitted in light of the fact that, particularly for larger public accounting firms, it may take significant amounts of time to compile the information necessary to apply for registration. To address this concern, the Board has added General Instruction 9 to provide that where the Form seeks current information, applicants may submit the information as of a date not earlier than 90 days prior to submission of the application and that such information will be deemed current for

purposes of the Form. General Instruction 10 specifies that information submitted as part of Form 1, including any exhibits to the Form, must be in English.

Part I—Identity of the Applicant

Part I of the Form calls for information about the identity of the applicant. This Part is generally intended to elicit basic information about the applicant and its operations and to facilitate the Board's interaction with the applicant. The seven specific items in this part require information about the applicant's name and identification number, contact information, primary contact with the Board, form of organization, offices, associated entities engaged in the practice of public accounting, and professional licenses or certifications.

In Item 1.1, applicants are required to state the legal name of the applicant and, if different, the name or names under which the applicant currently, or in the past five years, issues or has issued audit reports. This Item has been changed in two respects from the Board's proposal. First, this Item as proposed required applicants that have such a number to disclose their federal employer identification number (or comparable non-U.S. identifier), and, in the case of a sole proprietor, the applicant's social security number. In response to commenters' concerns about disclosure of confidential personal identifiers, the Board has eliminated the requirement for applicants to provide identifying numbers in response to this Item. Second, at least one commenter suggested that the Board clarify which predecessor entities constitute the applicant for purposes of the disclosure of names under which the applicant has issued audit reports in the last five years. The Board has sought to clarify this by modifying Item 1.1 to apply only to those predecessors for which the applicant is the successor in interest with respect to the entity's liabilities.

Items 1.2 and 1.3 ask for basic contact information from the applicant. These Items are unchanged from the Board's proposal, except that the Board has added a requirement to Item 1.2 that applicants state their Web site address, if available.

Item 1.4 asks for the applicant's legal form of organization and the jurisdiction under the law of which the applicant is organized or exists. Under the Board's registration system, organizations, and not natural persons, are required to apply for registration. Accordingly, among the examples given of legal forms of organizations are "proprietorship" and "partnership." This Item