

public accounting firms planning to register with the Board to begin collecting fee information in these four categories for all their clients in order to be able to report revenue in this format on an ongoing basis in the future.

#### *Part IV—Statement of Applicant's Quality Control Policies*

As required by section 102(b)(2)(D) of the Act, Part IV requires the applicant to provide, as an exhibit, a narrative, summary description of its quality control policies for its accounting and auditing practices, including procedures to monitor compliance with independence requirements. GAAS requires accounting firms to have quality controls for their audit practices.<sup>33</sup>

A few commenters suggested that this Part of the Form should be limited to a representation about the firm's quality control policies complying with applicable standards. The Board does not believe that this approach would be consistent with the statutory directive. Several other commenters sought clarification of the parameters of the description called for by this Part of the Form. As explained in the proposing release, the description should be in a clear, concise, and understandable format and should convey the scope and the key elements of the applicant's quality controls for its accounting and auditing practice. A description that addresses all of the elements of quality control covered by the professional quality control standards the firm is subject to will be sufficient. Technical descriptions and detailed explanations of procedures are not required. Absent unusual circumstances, the Board does not contemplate granting confidential treatment requests for this Item.

#### *Part V—Listing of Certain Proceedings Involving the Applicant*

As required by section 102(b)(2)(F) of the Act, Part V calls for information about criminal, civil, or administrative or disciplinary proceedings against the applicant or its associated persons. While the Act only requires applicants to submit information about pending proceedings related to audit reports, the Form requires information about certain additional proceedings that may reflect on the applicant's fitness for registration, even though the proceedings may no longer be pending or do not relate to audit reports.

As proposed, this Part of the Form was divided into six specific items that sought disclosure of different types of proceedings involving different persons for different periods of time. Many commenters expressed concerns about both the scope and the complexity of the disclosures required of applicants by this Part of the Form.<sup>34</sup> Accordingly, the Board has sought both to simplify and to narrow its request for information in this Part of the Form, while still preserving the information necessary to decide whether to approve or disapprove registration applications.

Specifically, this Part now contains three Items. Item 5.1 would, in general, require applicants to disclose whether the applicant or any associated person of the applicant is currently a defendant or respondent (or was a defendant or respondent in a proceeding that resulted in an adverse finding against the applicant or person during the previous five years) in three types of proceedings:

1. Any pending criminal proceeding;
2. Any pending civil (or alternative dispute resolution) proceeding initiated by a governmental entity arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer; and
3. Any pending administrative or disciplinary proceeding arising out of the applicant's or such person's conduct in connection with an audit report, or a comparable report prepared for a client that is not an issuer.

The third part of this Item further specifies what types of proceedings qualify as "administrative or disciplinary proceedings" and provides that investigations that have not resulted in the commencement of a proceeding need not be included. At least one commenter specifically suggested that, if the Board required disclosure of more than pending proceedings, the look-back period should be limited to five years since this period is consistent with the disclosure requirements for past proceedings against officers and directors of public companies.<sup>35</sup>

Item 5.2 would require applicants to disclose pending civil proceedings (or ADR proceedings) against the applicant or its associated persons initiated by a private (*i.e.*, non-governmental) entity that involve conduct in connection with an audit report or a comparable report

prepared for a client that is not an issuer. This Item is largely required by section 102(b)(2)(F) of the Act. For each proceeding listed in response to Items 5.1 and 5.2, applicants are asked to provide basic information about the proceeding, the parties, the allegations, and the proceeding's outcome.

The phrase "a comparable report prepared for a client that is not an issuer," as used in these Items, is meant to capture reports of audits performed for clients that are not issuers. Notes to Items 5.1 and 5.2 provide that, for these Items, foreign public accounting firm applicants need only disclose such proceedings for the applicant and any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least 10 hours of audit services for any issuer during the last calendar year. This is the same group of persons within foreign public accounting firms that must be listed in response to Part VII of the Form and for which consents must be obtained under Part VIII of the Form.

Finally, Item 5.3, permits, but does not require, applicants to include an exhibit describing any proceeding listed in response to this Part and giving the reasons that, in the applicant's view, such proceeding should not be a basis for the denial of its application for registration. The failure to file such an exhibit with respect to a particular proceeding will not raise any inference concerning the applicant's view of the impact of that proceeding on its application. The Board will consider any information provided pursuant to this Item in its approval process.

#### *Part VI—Listing of Filings Disclosing Accounting Disagreements with Public Company Audit Clients*

As required by section 102(b)(2)(G) of the Act, Part VI requires applicants to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in Commission filings. For each such instance in the preceding or current calendar year, the applicant is required to disclose the name of the issuer, the name and date of the filing, and to submit, as exhibits, copies of the identified filings. Disagreements under this Part are specified by reference to the provisions of Regulation S-K that require such disclosures.

To clarify an issue raised by a few commenters, an applicant is only required to identify instances in which the applicant's issuer audit clients disclosed disagreements with the applicant in such issuers' Commission filings. Therefore, if an issuer did not disclose a disagreement in a

<sup>33</sup> See SAS No. 25; AU § 161; see also Statements on Quality Control Standards ("SQCS") No. 2; AICPA SEC Practice Section ("SECPS") Membership Requirements, Appendix K, SECPS sec. 1000.45.

<sup>34</sup> In particular, a number of non-U.S. accounting firms and professional associations expressed concern that proposed Item 5.5 would require applicants to familiarize themselves with, and analogize to, a number of provisions of the U.S. Code. This Item has been eliminated from the Form.

<sup>35</sup> Item 401 of Regulation S-K. 17 CFR 229.401(f).