

independent contractors, and/or to limit the consents to cover only reasonable, and not simply any, requests by the Board. Section 102(b)(3) of the Act,<sup>38</sup> however, specifies the scope and contents of the consents, and the Board therefore has decided not to modify this item to include these suggested qualifications.<sup>39</sup> Some commenters expressed concern about the amount of work involved in securing, gathering and maintaining written consents from each of their associated persons in accordance with Rule 2104. While the Board is requiring that the applicant's consent and the associated persons' consents be manually signed and that such manually signed documents be retained for seven years in accordance with Rule 2104, the Board leaves it to the individual applicants to determine other details as to how such consents will be obtained and maintained internally.

#### *Part IX—Signature of Applicant*

Part IX requires an authorized partner or officer of the applicant to sign the application in accordance with Rule 2104 and to certify the application's completeness and accuracy. Incomplete and inaccurate applications are subject to possible disapproval under Rule 2106(b)(2).

#### *Part X—Exhibits*

Part X lists the exhibits that must accompany the application and includes instructions on the format for exhibits with multiple pages. The nature of each exhibit is described in the corresponding items, Rule 2105 or Rule 2300.

<sup>38</sup> Section 102(b)(3) specifically requires that "each application \* \* \* include \* \* \* a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board \* \* \* and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm."

<sup>39</sup> While commenters did not identify any state laws that conflict with the required consents, one commenter suggested that the Board make explicit that the Board's rules, as approved by the Commission, requiring the consents would preempt any contrary state law. The Board's rules implement Congress' determination in the Act that applicants for registration must agree to "secure and enforce [such] consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with the firm." Accordingly, any otherwise applicable state or local law that conflicts with this requirement or stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress would be preempted. See *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372–73 (2000); *City of New York v. FCC*, 486 U.S. 57, 64 (1988).

## 2. Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

### *B. Board's Statement on Burden on Competition*

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Under the proposed rules, all public accounting firms must register with the Board if they wish to prepare or issue audit reports on issuers, as that term is defined in the Act and the Board's rules, or to play a substantial role in the preparation or issuance of such reports. In general, the information required to complete the Board's registration application is specifically required to be a part of those applications 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, either necessary to facilitate the Board's responsibilities or reasonably related to the determination that the Board will make in deciding whether to approve or disapprove an application.

Moreover, to the extent permissible under the Act and consistent with the Board's responsibilities, the Board has sought to base the contents of the application on information public accounting firms currently collect, in part to avoid imposing any undue burden on applicants that could have a disproportionate effect on smaller public accounting firms. In addition, the proposed rules provide a mechanism for applicants to seek confidential treatment of any proprietary information included in their application that should not be publicly available. The Board has also allowed public accounting firms that do not currently prepare or issue audit reports, or play a substantial role in the preparation or issuance of audit reports, but that wish to enter this business, to register with the Board. Further, the Board has announced that registration fees will vary based on the size of the applicant and the number of its issuer audit clients.

Several commenters suggested that requiring foreign public accounting firms to register with the Board could discourage smaller foreign public accounting firms, and foreign public accounting firms that are not affiliated with large international networks of firms, from auditing issuers. The Board has given careful consideration to the

impact of its registration rules on non-U.S. firms and has taken a number of steps to minimize any such effect. In particular, as described in Section II.A above, the Board has crafted certain changes to its original proposal to minimize, where permissible under the statute and consistent with the Board's responsibilities, the burdens on foreign public accounting firms applying for registration. Given these modifications, the Board believes that the cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms,<sup>40</sup> and therefore would not have a significant impact on competition. Moreover, the Board believes that the 180-day deferral of registration for non-U.S. firms should also minimize the administrative burden for smaller non-U.S. firms, also diminishing any anti-competitive effect.

### *C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others*

The Board released its registration system proposal for public comment on March 7, 2003. The Board received 46 written comment letters relating to its proposal. In addition, on March 31, 2003, the Board convened a public roundtable to discuss special issues raised by registration and oversight of non-U.S. firms, at which 14 representatives of foreign governments, non-U.S. public accounting firms and professional organizations, and U.S. institutional investors participated.<sup>41</sup>

The Board has carefully considered all comments it has received. In response to the written comments received and remarks made at the roundtable, the Board has clarified and modified certain aspects of its proposed

<sup>40</sup> In general, under the Board's registration system, non-affiliated foreign public accounting firms will be required to respond to the same information requests as affiliated foreign public accounting firms applying for registration. Because much of the information requested in Form 1 is focused on the applicant's practice of auditing "issuers," as that term is defined in the Act and the Board's rules, foreign public accounting firms with more issuer audit clients will necessarily be requested to provide more information to apply for registration than foreign public accounting firms with smaller practices auditing issuers.

<sup>41</sup> The following governments, firms and organizations participated in the public roundtable meeting: European Commission; U.K. Department of Trade and Industry; Embassy of Switzerland; Embassy of Australia; Financial Services Agency (Japan); Canadian Public Accountability Board; Wirtschaftsprüferkammer (German Chamber of Accountants); Fédération des Experts Comptables (FEE); Ernst & Young (Brussels, Belgium); PricewaterhouseCoopers (Toronto, Canada); Deloitte Touche Tohmatsu (Santiago, Chile); KPMG (London); Pennsylvania Public Employees' Retirement System; and the State of Wisconsin Investment Board.