

rules and form instructions. The changes made to the proposed rules and form instructions in response to these comments are summarized in Section II.A.1. above.

In addition, under section 106(c) of the Act, the Board and the Commission each have the authority to "exempt any foreign public accounting firm" from any provision of the Act as "necessary or appropriate in the public interest or for the protection of investors." The Board received numerous comments in letters from public accounting firms, foreign governments and foreign professional accounting associations, requesting such exemptions from the Board's registration requirements, as well as its inspections and disciplinary programs.<sup>42</sup>

Some commenters expressed concerns about registration of non-U.S. public accounting firms, including that the Board's registration of non-U.S. public accounting firms (1) would be duplicative of existing or planned home-country auditor oversight programs, (2) would require information, the disclosure of which would violate foreign laws on confidentiality, data protection and privacy, (3) would require information that does not have clear equivalents in non-U.S. jurisdictions, (4) would require accumulation of information not already compiled and not readily available, and (5) would lessen competition among public accounting firms by discouraging some firms from registering.

In response to the concern that registration of non-U.S. public accounting firms would be duplicative of existing or planned auditor oversight programs, as an initial step, the Board sought, as part of its roundtable meeting, to gather information about existing or planned oversight bodies outside the United States. The Board has also commenced dialogue with non-U.S. oversight bodies in order to achieve its objectives generally, as well as to try to find ways to reduce administrative burdens and to provide for coordination in areas where there is a common programmatic interest, such as annual reporting, inspection and discipline.

Many commenters suggested that registration of non-U.S. firms would require information, the disclosure of which would violate non-U.S. laws,

particularly those related to confidentiality, data protection and privacy. In response to this concern, the Board added Rule 2105 and corresponding instructions in Form 1, which allow applicants to withhold information from its application for registration where disclosure of the information would cause the applicant to violate non-U.S. laws. Also, in order to allow firms time to give full consideration to the potential conflict of law issues, the Board has afforded non-U.S. firms an additional 180 days to register.

Furthermore, in light of concerns with respect to conflicts with confidentiality, data protection, and privacy laws, the Board has eliminated or narrowed the scope of information required by Form 1, as originally proposed. Specifically, any requirements to provide Social Security numbers, taxpayer numbers, and comparable non-U.S. tax identifiers have been eliminated. In part to address concerns with respect to the confidentiality of information on criminal, civil and administrative proceedings in Part V, the Board has significantly narrowed the disclosure required for non-U.S. applicants. Also, the list of accountants associated with a non-U.S. firm has been narrowed. In particular, as revised, Form 1 requires non-U.S. accounting firms to list only those accountants who are proprietors, partners, principals, shareholders, officers or managers of the applicant and who each provide at least 10 hours of audit services for any issuer during the last calendar year. Finally, to accommodate privacy restrictions related to employment in certain non-U.S. jurisdictions, the scope of "associated persons" from whom the applicant is required to secure consents has been narrowed to cover only those accountants identified on the list of accountants. As discussed above, to the extent that a non-U.S. law would prohibit disclosure of information that is still required, new Rule 2105 permits a firm to withhold the information and submit instead (i) a copy of the conflicting non-U.S. law, in English, (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.

The Board has eliminated or modified certain disclosure requirements where determining a non-U.S. equivalent may

be particularly burdensome, in an effort to address concerns that registration would require information that does not have clear equivalents in non-U.S. jurisdictions. For example, in response to a comment that the term "undergraduate degree" was not meaningful in a non-U.S. context, the Board revised the educational reference in its originally proposed definition of accountant to "a college, university or higher professional degree." The Board has also eliminated the requirement from its original proposal to disclose a "violation of a substantially equivalent non-U.S. statute" to certain provisions of the United States Code.

In response to concerns that registration of non-U.S. firms would require accumulation of information not already compiled and not readily available, the Board has allowed an additional 180 days for firms to compile information and to obtain any necessary consents or waivers from associated persons to provide the information requested by the form. Further, the Board has significantly modified and in some cases eliminated disclosure requirements, the information for which commenters noted, would be burdensome to gather. For example, Part III of Form 1, which as proposed required disclosure of information on firm revenues, has been eliminated. Moreover, with respect to Part II in Form 1, the Board has modified the disclosure categories for audit, non-audit, and other accounting services to track more closely those used by the Commission. As a practical matter, at the time when non-U.S. firms are required to be registered with the Board (*i.e.*, by April 19, 2004), the disclosure categories in effect will be those used in the Commission's recently revised auditor independence disclosure rules, with which foreign private issuers will be required to comply for periodic annual reports filed after December 15, 2003.

In addition, the Board has tried to facilitate the reporting in Part II by allowing applicants to use estimates to the extent that such information has not been previously disclosed or is not known. Finally, in an effort to minimize the administrative burden of compiling information for the registration process, the requirements in Form 1 to provide accountant names and license numbers, consents to cooperate with Board inspections and investigations, and information about certain legal proceedings, as applied to non-U.S. firms, have been significantly narrowed to include only partners and managers who participate in or contribute to the preparation of audit reports for issuers.

<sup>42</sup> The Board also received comment letters against such exemptions, for example on the grounds that "[i]ncluding foreign auditors under the purview of the new Public Company Accounting Oversight Board would, thus, add a much-needed element of auditor oversight for firms reviewing corporations trading in U.S. markets." See Letter from Senator Carl Levin dated March 21, 2003 (in PCAOB Docket No. 1 public file).