

disciplinary programs. The proposed rules that are approved by this order address only the Board's registration requirements for public accounting firms, and do not address the reporting or other requirements that will be imposed on registered firms or the manner in which the Board will exercise its oversight authority under the Act.

III. Summary of Comment Letters

The Commission received sixteen comment letters regarding the proposed registration system. Eight of these letters were from foreign governments and professional groups, and their comments related primarily to the impact of the proposal on non-U.S. accounting firms.⁴ Seven of the letters were from major accounting firms and the SEC Practice Section of the American Institute of Certified Public Accountants ("AICPA/SECPS").⁵ and one letter was from the National Association of State Boards of Accountancy ("NASBA")

Most of the letters from foreign governments and professional groups commended the Board on its accommodations for non-U.S. accounting firms, although they continued to express a desire for complete exemption from registration and oversight by the PCAOB. Most commenters in this group were of the view that registration in the United States would be costly, duplicative and burdensome. They expressed concern about the scope of the information requested in the registration form, about their perception that some of the information requested (e.g., general consents to cooperate with Board requests for information) went beyond registration and into the realm of oversight, and about their perception of the burden on small firms of complying with the proposal and the resulting risk of further consolidation in the accounting profession. Several of these commenters expressed concern about the confidentiality of information submitted to the Board. Many commenters in this group requested that the registration requirement be delayed,

both to permit firms to complete their registration applications and to give the Board's foreign counterparts time to develop or enhance their own registration and oversight regimes and agree with the Board on ways to reduce the need for PCAOB registration and oversight.

The letters from the AICPA/SECPS and the six largest accounting firms operating in the United States raised concerns about the scope of information requested by the PCAOB's proposed registration form and requested clarification of several issues. Among other things, the commenters in this group expressed concern about the confidentiality of information submitted to the Board, the scope of certain definitions such as "associated person" and "associated entity," the manner of obtaining the Board's proposed relief from submitting information that would violate non-U.S. law, and the differences in SEC and Board requirements for fee disclosure. Several of the commenters in this group noted that the Board's broad requirement that applicants consent to cooperate with any request of the Board for testimony or documents should be subject to established privileges, such as the attorney-client privilege, and constitutional protections against self-incrimination. Commenters also objected to the Board's request for information about legal proceedings, particularly criminal proceedings, which were not related to audits. Many of the commenters in this group suggested that the Board and the Commission permit "provisional" registration in order to avoid disruption in the delivery of audit services. These commenters expressed concern that even if applicants make a good faith effort to comply, they might not be able to obtain all required information (or respond to Board requests for supplemental information) by the October 22, 2003 deadline, and that the Board may have difficulty in processing information by that date, even if it is submitted in time.

The NASBA letter requested that the Board cooperate with state boards of accountancy in their regulatory role, and suggested several ways in which the Board and the Commission might support state regulatory bodies.

IV. Discussion

Title I of the Act assigns the Board the formidable task of designing and implementing a registration and oversight system within a relatively short period of time. The investor protection goals of the Act justify the need for prompt action, but the

importance of the Board's task and its potential impact on the public securities markets demand that it be undertaken in a thoughtful and reasoned manner. After careful review of the Board's proposed registration system, the Commission finds that it is consistent with the requirements of the Act and the securities laws and is necessary and appropriate in the public interest and for the protection of investors.⁶

A. Impact on Non-U.S. Accounting Firms

The Board has taken an important step in its mandate under the Act by proposing rules regarding registration of non-U.S. audit firms that prepare, issue, or play a substantial role in the preparation or issuance of, audit reports relating to U.S. public companies. This step has raised concerns in the international community, and the Board has made efforts to address those concerns, through its roundtable meeting in March, through its public comment process and through meetings and discussions with foreign regulators. In response to these concerns, the Board made significant accommodations in its proposal, especially with regard to non-U.S. accounting firms, including changes eliminating the potential conflicts of law raised by the registration system, narrowing the scope of information to be provided, and extending the deadline for foreign firms to register. This approach is similar to the approach the Commission has taken in implementing other provisions of the Act, by allowing for certain accommodations.

The Board has acknowledged that it is still considering the nature of its oversight, especially with respect to foreign public accounting firms. The Commission encourages the Board to continue its reasoned approach when considering its oversight role, especially with respect to non-U.S. firms. In this regard, we applaud the Board's initiative to work with its foreign counterparts to find ways to accomplish the goals of the Act without subjecting foreign firms to unnecessary burdens or conflicting requirements.

We urge the Board to continue its dialogue with oversight bodies outside the United States in order to try to find ways to reduce administrative burdens and coordinate in areas of common programmatic interest, such as annual reporting, inspections and discipline. We encourage the Board to move expeditiously to determine the nature and scope of its oversight over foreign public accounting firms. The

⁴ Letters in this group were submitted by the European Commission, the European Federation of Accountants, the Financial Services Agency of Japan, the Institute of Chartered Accountants in England and Wales, the Institut der Wirtschaftsprüfer and the Wirtschaftsprüferkammer (jointly), the Japanese Institute of Certified Public Accounts, the Swiss State Secretariat for Economic Affairs, and the Swiss Institute of Certified Public Accountants and Tax Consultants.

⁵ In addition to the letter submitted by the AICPA/SECPS, letters in this group were submitted by BDO Seidman LLP, Deloitte & Touche LLP, Ernst & Young LLP, Grant Thornton LLP, KPMG and PricewaterhouseCoopers.

⁶ Section 107(b)(3) of the Act.