

requirements to those documents.⁵⁸ An issuer commented that, due to the host of documents, databases, and other material provided to an auditor, it is impossible for an issuer to determine what, if any, documents provided to the auditor were relevant to the auditor or provided the basis for the auditor's conclusions.⁵⁹ Accordingly, we are not instituting such a requirement at this time.

We also requested comments on whether a transition period was necessary or appropriate in implementing the rule. Accounting firms⁶⁰ and a law firm⁶¹ noted that time may be required to develop systems related to the retention of documents (particularly electronic documents) and to train people to use them. Accordingly, we have indicated in the beginning of this release that accounting firms should comply with the rule no later than October 31, 2003.

Several items were raised in the comment letters that may be addressed more appropriately by the Public Company Accounting Oversight Board. For example, one commenter suggested that the Commission adopt the standard promulgated by the General Accounting Office, or a previously proposed draft auditing standard, related to the form and content of audit workpapers.⁶² This commenter also suggested that the Commission adopt standards requiring accounting firms to: Document differences of opinion on issues that are material to the audit; have written documentation and destruction policies; document significant relationships regarding the auditor and issuer; and have auditors performing audit or review work related to the issuer's subsidiaries or foreign affiliates document all work performed and certify in writing that such documentation is complete and available for inspection.⁶³ These matters are more appropriately within the purview of setting auditing standards and should be addressed, in the first instance, by the Oversight Board.⁶⁴

The same commenter suggested that the Commission provide that if audit work is not documented in the workpapers then the burden of proof shifts to the auditor to prove by a preponderance of evidence that the work in fact was performed.⁶⁵ We note that the retention requirements under SAS 96, as discussed above, and new rule 2-06 should provide documentation of all significant matters considered during the audit. If such work is performed but not documented, the auditor generally would violate GAAS or new rule 2-06.

Another commenter suggested that the Commission require that all accounting firms registered with the Public Company Accounting Oversight Board comply with consultation requirements, and related documentation requirements, currently prescribed by the SEC Practice Section of the American Institute of Certified Public Accountants for large accounting firms.⁶⁶ We believe these matters relate to quality control standards within the scope of the Oversight Board's standard setting authority and we encourage the Oversight Board to consider adoption of such requirements. This commenter also suggested that the Commission address the application of rule 2-06 to documents prepared for a firm's internal inspection or outside peer review.⁶⁷ Such documents generally would not be considered to be created, sent or received in connection with an audit or review engagement and, therefore, would not be within the new rule. We would encourage the Oversight Board to consider, however, whether there are circumstances in which certain of the records prepared for inspection purposes may be considered part of the audit or review workpapers.

III. Paperwork Reduction Act

Certain provisions of rule 2-06 contain "collections of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), and

establish auditing standards, including, to the extent it determines appropriate, adopting standards proposed by professional groups of accountants or by expert advisory groups convened by the Oversight Board.

⁶⁵ *Id.*

⁶⁶ Letter from BDO Seidman, LLP dated December 27, 2002. See Section 1000.08(q) of the SECPS membership requirements. This section requires large firms to have policies on internal consultations and to document: the matter, the action taken to address the matter, and the basis for the final conclusion reached. Under this provision, the auditor must either follow the position taken by the person consulted or appeal any disagreement to a higher level of authority within the firm for ultimate resolution.

⁶⁷ *Id.*

the Commission submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Regulation S-X—Record Retention." The request for approval of the rule's collection of information requirements is pending at OMB.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Compliance with the proposed requirements would be mandatory. Rule 2-06 requires that accounting firms retain certain records for seven years. Retained information would be kept confidential unless or until made public during an enforcement, disciplinary or other legal or administrative proceeding.

The final rule, which is included in Regulation S-X, requires accountants to retain certain records for a period of seven years after the accountant concludes an audit or review of an issuer's or registered investment company's financial statements. The proposed rules do not require accounting firms to create any new records. It also is important to note that decisions about the retention of records currently are made as a part of each audit or review.

The records to be retained include records relevant to the audit or review, including workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review, and contain conclusions, opinions, analyses, or financial data related to the audit or review. Records described in the rule are to be retained whether the conclusions, opinions, analyses, or financial data in the records support the final conclusions reached by the auditor, or contain information or data, relating to a significant matter, that is inconsistent with the final conclusions of the auditor on that matter or the audit or review. The required retention of audit and review records should discourage the destruction, and assist in the availability, of records that may be relevant to investigations conducted and litigation brought under the securities laws, Commission rules or criminal laws.

In the proposing release, we estimated that approximately 850 accounting firms audit and review the financial statements of approximately 20,000 public companies and registered

⁵⁸ Letter from BDO Seidman, LLP dated December 27, 2002. See also letter from the American Institute of Certified Public Accountants dated December 27, 2002.

⁵⁹ Letter from Mr. Donald G. DeBuck, Computer Sciences Corporation, dated December 26, 2002.

⁶⁰ See, e.g., letter from BDO Seidman, LLP dated December 27, 2002 and letter from KPMG LLP dated December 27, 2002.

⁶¹ Letter from Sullivan & Cromwell dated December 26, 2002.

⁶² Letter from Wendy S. Perez, President, California Board of Accountancy, dated December 23, 2002.

⁶³ *Id.*

⁶⁴ Sections 103(a) and 103(c) of the Sarbanes-Oxley Act empower the Oversight Board to