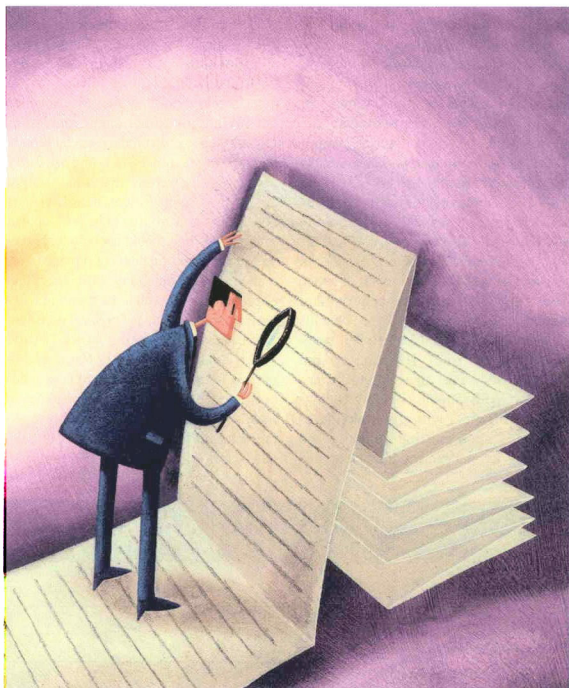


# A Practical Guide to the New PCAOB Reporting Requirements

By Steven R. Berger

**T**he Sarbanes-Oxley Act of 2002 (SOX) requires that any accounting firm that prepares or issues an audit report with respect to a U.S. public company must register with the Public Company Accounting Oversight Board (PCAOB). Until recently, an accounting firm was required only to provide information current as of the initial registration date for the firm. Effective December 31, 2009, accounting firms registered with the PCAOB are required to file annual and current reports with the PCAOB. On August 13, 2009, the SEC approved the proposed rules with the original effective date of October 12, 2009, but on September 30, 2009, the PCAOB delayed the effective date to December 31, 2009. These rules implement the requirements of SOX section 102(d) that registered public accounting firms 1) report annual information about the firms and their audit practices, and 2) submit, as specified by the PCAOB or the SEC, more frequent information necessary to update the information previously filed with the PCAOB. Until now, the PCAOB had no requirement for annual reports or amendments to report material changes in initial registration information.

The purposes of the new rules are 1) to keep the PCAOB up-to-date on a firm's basic professional information, such as name, location, licenses, and contact information; 2) to provide the PCAOB with current information regarding a firm's audit practice in order to facilitate analysis and inspection by the PCAOB and keep the public informed of such information; and 3) to alert the PCAOB of any events that would require more immediate action by the PCAOB in terms of inspections or enforcement and that might otherwise warrant public disclosure. As required by SOX section 102(e), all registration applications and annual reports



will be made publicly available, subject to PCAOB and SEC rules on the confidentiality of proprietary and personal information. The PCAOB is also authorized to collect an initial registration fee and an annual fee from each registered firm.

A summary of the disclosures required by the annual and current reports and the instructions for completing such disclosures, as well as a discussion of the substantive issues to be disclosed, follow below. Also

suggested are practical recommendations for firms on gathering and collecting the information necessary to comply with the PCAOB reporting rules. In addition to the annual and current reports required on an ongoing basis, the new rules required registered firms to file an initial "catch-up report" as a special report on Form 3 by February 1, 2010, for all material changes in the firm's disclosures that had occurred since such firm's initial registration.

### Initial Registration

An accounting firm's initial report is filed with the PCAOB on Form 1 and is required before an accounting firm is allowed to attest to financial statements being filed by an issuer with the SEC. Form 1 must be submitted through the PCAOB's web-based registration system. The PCAOB has 45 days to take action after the firm submits its application. There are three possible actions: approval, issuance of a notice of a hearing, or request for additional information. If the PCAOB requests additional information concerning the application, a new 45-day period will begin when the additional information is received. The new rules do not alter the information required in the Form 1 registration.

### Annual Report

The PCAOB adopted the new Form 2 for annual reporting by registered accounting firms. Its purpose is to provide a profile of the firm at a point in time based on its activity related to issuers over the most recent 12-month period.

**Filing requirements.** The annual report on Form 2 must be filed with the PCAOB no later than June 30 of each year, and the annual report must cover a 12-month period from April 1 of the preceding calendar year through March 31 of the current calendar year (the reporting period) in which the annual report is filed. Form 2 and all exhibits must be filed electronically through the PCAOB's web-based filing system.

**Reporting period.** The PCAOB adopted a single filing deadline rather than allowing registered public accounting firms to file based on their respective fiscal years. The reporting period covered is April 1 to March 31, and the due date is June 30, thereby providing each firm with three months to prepare and file a Form 2 reflecting information from that 12-month period. Each currently registered firm's first Form 2 annual report is due on June 30, 2010. (Any firm that was registered as of March 31 would be required to file Form 2 by June 30 of that year, but any firm that became registered in the period between April 1 and June 30 would not be required to file a Form 2 until June 30 of the following year.)

The PCAOB had considered—but rejected—tying the annual reporting period to a firm's fiscal year and decided that

it would be more beneficial to have all firms reporting on the same deadline. Although a firm might have a fiscal year ending other than on March 31, most of the information it reports must relate to the 12-month period ending March 31. One implied rationale for the March 31 end of the reporting period is that such reporting period will generally include the audit reports for issuers with fiscal years ending December 31, and therefore, the Form 2 will have the most recent and timely coverage of audit reports issued by the firm. Otherwise, the information would be more than a year old. Accordingly, for substantially all of the information required by Form 2, the firm must maintain a separate tracking system.

**Disclosure requirements.** Form 2 requires a firm to provide, among other things, information about its public issuer-related practice, internal and external resources on which the firm draws in performing audits, disciplinary histories of new personnel, certain new relationships and acquisitions, information about fees billed to issuer audit clients for various categories of services, and an affirmation of its statutory obligations to cooperate with the PCAOB. More specifically, the annual report on Form 2 requires a firm to report the following items for the reporting period:

**Information relating to issuer audit clients.**

- Of the total fees billed by the firm to all clients for all services in the reporting period, the percentages of such fees that were billed to issuer audit clients and were attributable to 1) audit services, 2) other accounting services, 3) tax services, and 4) nonaudit services.

**Information relating to audit practice.**

- For each issuer for which the firm issued an audit report during the period, the issuer's name, the issuer's Central Index Key (CIK) number, and the date of the audit report; a consent does not need to be included, unless it is the only instance during the reporting period for which the firm acts for the client;

- If a firm did not issue an audit report but played a significant role in the preparation or furnishing of an audit report, it must disclose the name and CIK number of each issuer, the registered firm that issued the audit report, the end date of the fiscal period covered by the audit report,

and a description of the substantial role it played;

**Information about the firm's offices and personnel.**

- The address of each physical office of the firm;
- All affiliations or memberships in networks or alliances (including a description of each);
- Total number of accountants, certified public accountants, and firm personnel.

**Information about certain relationships and acquisitions.**

- Disciplinary sanctions by the PCAOB or an order by the SEC entered into within the five years preceding the end of the reporting period with respect to any employee, partner, shareholder, principal, member, or owner who has provided at least 10 hours of audit services to any issuer during the reporting period. Once the disclosure is made, it does not have to be repeated in subsequent reporting periods, but if a disclosure is not made because it does not meet the 10-hour threshold, it must be made in a subsequent reporting period when it does. Disclosure does not need to be made in the annual report (Form 2) if the event has been previously reported on a special report (Form 3);

- With respect to any entity that is an owner or partial owner of the firm, disciplinary sanctions by the PCAOB or an order by the SEC entered into within the five years preceding the end of the reporting period suspending or revoking such entity's registration with the PCAOB or suspending or denying the entity's privilege of appearing or practicing before the SEC;

- Whether a firm entered into a contract with, or received services from, any person or entity described above, if such consulting or other services related to the firm's audit practice or to services provided to issuer audit clients;

- Whether the firm acquired a public accounting firm or took on as employees, partners, shareholders, principals, members, or owners, 75% or more of persons who, at the beginning of the reporting period, were the partners, shareholders, principals, members, or owners of another public accounting firm.

In addition, Form 2 requires an annual affirmation that the firm consents to cooperate with the PCAOB and to enforce such cooperation by associated

persons. The firm's affirmation is strictly required, subject only to exceptions imposed by non-U.S. legal requirements. In order to be accepted for filing, Form 2 must include a signed certification by an authorized partner or officer. This certification confirms the completeness of the annual report on Form 2 and also confirms that the firm has filed all required special reports on Form 3 during the applicable reporting period. If a firm realizes that it has not filed a required Form 3, it must complete and

**In order to report accurately on both Form 2 and Form 3, a firm must pay careful attention to the definitions of key terms in the PCAOB rules.**

file a special report before it can file the Form 2 with the required certification. For the initial annual report due June 30, 2010, the certification will mean implicitly that the firm has filed its initial special report and any special report with respect to a subsequent triggering event, and that all such special reports are complete and accurate.

**Questions about disclosure.** In order to report accurately on both Form 2 and Form 3, a firm must pay careful attention to the definitions of key terms in the PCAOB rules. These definitions embody substantive information directly relevant to the items on each report. PCAOB Rule 1001 sets forth the definitions of the key terms under current PCAOB rules. Each firm's compliance department will need to use these definitions in modifying the firm's internal compliance and disclosure controls, in order to gather the information necessary to complete Forms 2 and 3 and to institute systems necessary to report triggering events on a timely basis.

"Issuer" is defined in the PCAOB rules as an entity with securities registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act), as amended, or that is required to file reports under section 15(d) of the Exchange Act, or that has filed a registration statement that has not yet become effective under the Securities Act of 1933 (Securities Act), as amended. The first two parts of the definition are fairly straightforward in terms of an accounting firm's reporting—any issuer that is a reporting company, whether because of its registration under the Exchange Act or because it has recently completed a public offering under the Securities Act. The definition of issuer includes a third type—a company for whom the accounting firm has issued an audit report that is part of its registration statement under the Securities Act, even though such statement is not yet effective and, therefore, such company is not yet a reporting company under the Exchange Act. As an accounting firm collects data for its annual report, it must be careful to include issuers whose registration statements have been filed during the reporting period, even though no periodic reports under the Exchange Act have been filed.

The PCAOB defines "audit report" as a document or record prepared following an audit done for purposes of compliance with requirements of the securities laws, in which the firm sets forth its opinion regarding a financial statement, document, or record, or declares that no such opinion can be asserted. Accordingly, the disclosure in Form 2 does not pertain to reports prepared for entities that are not issuers under the PCAOB rules (i.e., entities that have not reported or otherwise utilized the federal securities disclosure system).

To add to the confusion, the instructions for the annual report refer to "issuer audit clients," a term not defined anywhere in the PCAOB rules. Combining the definitions of issuer and audit report, however, results in the definition of this term being an issuer for whom the accounting firm has issued an audit report.

Another potential source of confusion derives from the different labels used by the PCAOB and SEC for the four categories of fees for audit services and other services provided to issuer audit clients (even though, substantively, the labels are equivalent):

PCAOB	SEC
Audit services	Audit fees
Other accounting services	Audit-related fees
Tax services	Tax fees
Nonaudit services	All other fees

The PCAOB disclosure is based on fees billed, not cash receipts. If a firm can reasonably report the requested percentages based on precise data, the PCAOB encourages it to do so. If such reporting is not possible, Form 2 affords a firm two options for reporting fees: the reporting period or the firm's most recently completed fiscal year during the reporting period. If a firm were to use its own fiscal year for reporting, then it would report the fee amounts disclosed by its clients in its filings with the SEC for the clients' fiscal years that ended during the reporting period. As a practical matter, if a firm uses the reporting period for disclosing fees, it will necessarily need to implement a separate tracking system for such fees if the reporting period does not coincide with the firm's fiscal year. If a firm uses its own fiscal year to report fees, it will need to confirm with each issuer audit client what it is reporting to the SEC. Finally, because the PCAOB definition of issuer includes an entity that has filed a registration statement under the Securities Act, even if such registration is not yet effective, a firm will need to include fees billed to such a client, even though that client has not yet reported any audit fees to the SEC.

**Annual fee.** SOX requires the PCAOB to collect an initial registration fee and an annual fee from each registered firm "in amounts that are sufficient to cover the PCAOB's costs of processing and reviewing applications and annual reports." The PCAOB has collected registration fees since the commencement of firm registrations in 2003. Annual fees are due by July 31 of each year.

The PCAOB has reported that it has unrecovered historical costs for the review of registrations and annual reports that need to be collected from registered firms. In addition, the PCAOB will have significant ongoing costs as it implements and monitors the annual and current reporting regime for both domestic and foreign public accounting firms. Those costs may increase as a result of the requirement that auditors of nonpublic broker-dealers

be registered with the PCAOB for periods ending on or after January 1, 2009.

In its release adopting the final rules for reporting by registered accounting firms, the SEC has recommended that the PCAOB set its annual fees at levels that will enable the PCAOB to recover all of the unrecovered historical costs associated with the processing of registration applications in the first annual fee to be assessed on firms registered prior to January 1, 2009. The PCAOB has not yet issued its schedule of annual fees or methodology for determining and assessing annual fees.

### Special Report

The special report on Form 3 requires a registered firm to report certain material events that are not reflected in the firm's information already on file with the PCAOB. Its principal purpose is to alert the PCAOB about events that may have immediate bearing on how it carries out its regulatory responsibilities. The information disclosed in a special report affords the PCAOB the opportunity to seek additional information, at any time, in connection with such disclosure. By filing the special report, a firm agrees to cooperate with the PCAOB in providing this additional information.

Reportable events include a change in the firm's name or contact information; the institution of certain types of legal, administrative, or disciplinary proceedings against a firm or certain categories of individuals; and the employment, engagement, or admission of individuals or entities who have a recent disciplinary history. A reportable event also includes entering into an arrangement to receive from individuals or entities with recent disciplinary history services related to the firm's audit practices or services the firm provides to issuer audit clients. Except for changes in contact information and changes in the firm's name, the information called for by Form 3 does not duplicate or update information in Form 2.

Each registered firm was required to file an initial special report on Form 3 by February 1, 2010, to disclose certain events that had occurred since the date of the information contained in the firm's original Form 1 registration and only to the extent that information about those events has current relevance. The initial special

report should have included disclosure of all triggering events set forth in General Instruction 4 to Form 3 that are applicable. The initial special report was required even if the only reportable event was a change in the firm's name or mailing address or the contact information for the firm's designated contact with the PCAOB. A failure to have filed the initial special report in a *timely manner* could subject a registered firm to disciplinary action by the PCAOB, and, to the extent a firm has not yet filed, it should do so immediately, even though the original deadline has passed.

A special report must be filed no later than 30 days after a triggering event. Triggering events are described in Form 3 as having occurred when the firm has "become aware" that such triggering event has occurred. The firm is deemed to become aware when any partner, shareholder, principal, owner, or member of the firm first becomes aware of the facts underlying such event. With respect to the pro-

posed rules, commentators questioned whether this standard was too burdensome. The SEC and the PCAOB believe that a firm should implement such controls and internal reporting policies and programs in order to assure compliance with this reporting standard. In its adopting release, the SEC likened the internal reporting being required to the same type of internal reporting and controls it imposes on public companies to meet their reporting obligations under federal securities laws. Accordingly, firms must implement procedures to ensure that all relevant information is accumulated and communicated to the appropriate compliance personnel on a timely basis. The SEC also believes that this expanded internal reporting will not add undue burdens, because accounting firms should already have systems in place for tracking independence issues.

More than one triggering event may be reported on a Form 3, and Part II of the special report sets forth a checklist of trig-

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gering events. Each item has a specified disclosure component.

A firm must file a Form 3 special report if—

- it withdraws an audit report or withdraws its consent to the use of its name (and the issuer has not reported it to the SEC); or
- it exceeds the 100-audit-client threshold for the first time, or falls below the 100-audit-client threshold.

In addition, the following triggering events must be reported:

- The firm has become a defendant in a criminal proceeding prosecuted by a gov-

ernmental criminal law enforcement authority, including the following scenarios:

- In a matter arising out of conduct in the course of providing audit services or other accounting services to an issuer, a partner, shareholder, owner, member, or audit manager of the firm has become a defendant in a criminal proceeding prosecuted by a governmental criminal law enforcement authority.

- A partner, shareholder, principal, owner, member, or audit manager of the firm who has provided at least 10 hours of audit services for any issuer

during the firm's current or most recently completed fiscal year has become a defendant in a criminal proceeding prosecuted by a governmental criminal law enforcement authority and is charged with fraud, embezzlement, forgery, extortion, bribery, obstruction of justice, perjury, or false statements, or charged with any crime arising out of alleged conduct relating to accounting, auditing, securities, banking, commodities, taxation, consumer protection, or insurance.

- In a matter arising out of the firm's conduct in the course of providing professional services for a client, the firm

### EXHIBIT 1 Preparing PCAOB Reports, Step by Step

Task	Rationale
Obtain PCAOB user ID and password.	A firm has most likely not used the user ID and password since its original registration filing. All filings must be filed electronically on the PCAOB website.
Review original registration on Form 1.	Identify original disclosures that need updating, paying special attention to the items required for the initial special report.
Review internal annual questionnaires for audit personnel.	Annual questionnaires should be revised to elicit responses necessary to answer items calling for disclosure about audit reports, litigation, and new personnel.
Review forms of employment questionnaires for new audit personnel, and modify for disclosures required by Forms 2 and 3.	Disciplinary history of new audit personnel must be disclosed to the PCAOB on Form 3; in the case of new hires, this means within 30 days of hire.
Implement tracking systems for audit reports and consents, including dates of issuance and issuers' CIK numbers, for reports issued between April 1 and March 31 of the following year.	Form 2 requires disclosure of audit reports for each issuer in a reporting period.
Implement tracking systems for engagements in which the firm did not issue an audit report but played a substantial role in the audit.	Form 2 requires disclosure of these engagements, including the name of the registered accounting firm that issued the actual audit report.
Modify billing system to track four categories of fees for each issuer audit client: audit services, other accounting services, tax services, and nonaudit services.	Form 2 requires disclosure of these categories of fees for each issuer audit client.
Create due diligence questions for persons or entities providing consulting or other professional services related to the firm's audit practice.	Disciplinary histories of consultants to the firm's audit practice are required to be disclosed.
Create method for educating partners, members, and professional staff as to the level of information that must be reported internally on a timely basis.	Triggering events under Form 3 occur when a partner, member, principal, owner, or shareholder of the firm first becomes aware of the facts underlying the event. All audit personnel must be educated about triggering events and the necessity of reporting to the compliance department promptly.

has become a defendant or respondent in a civil or alternative dispute resolution proceeding initiated by a governmental entity, or in an administrative or disciplinary proceeding other than a PCAOB disciplinary proceeding.

■ In a matter arising out of conduct in the course of providing audit services or other accounting services to an issuer, a partner, shareholder, owner, member, or audit manager of the firm has become a defendant or respondent in a civil proceeding or alternative dispute resolution proceeding initiated by a governmental entity, or in an administrative or a disciplinary proceeding other than a PCAOB disciplinary proceeding.

■ In a matter arising out of conduct in the course of providing professional services for a client, a partner, shareholder, owner, member, or audit manager of the firm who has provided at least 10 hours of audit services for any issuer during the firm's current or most recently completed fiscal year has become a defendant or respondent in a civil proceeding or alternative dispute resolution proceeding initiated by a governmental entity, or in an administrative or a disciplinary proceeding other than a PCAOB disciplinary proceeding.

■ If any of the above proceedings have been concluded, whether by dismissal, acceptance of pleas, consent or settlement agreements, the entry of a final judgment, or otherwise, the proceeding and the outcome of such proceeding must be described;

■ Whether the firm—or the parent or a subsidiary of the firm—has become the subject of bankruptcy or other insolvency proceedings;

■ Whether the firm has taken on as employee, partner, shareholder, principal, member, or owner, or has become owned (or partly owned) by an entity that is currently the subject of a PCAOB disciplinary sanction or SEC order;

■ Whether the firm has obtained or lost a license (in any jurisdiction) to engage in the business of auditing or accounting;

■ Any changes in the firm's legal name, mailing address, telephone number, or e-mail of the person designated as the PCAOB contact.

The disclosure about proceedings also extends to audit managers who have pro-

vided at least 10 hours of audit services for any issuer during the firm's current or most recently completed fiscal year. Because the PCAOB rules do not define "audit manager," each firm will have to review its own personnel hierarchy for the designated audit manager and then, if necessary, track the hours billed.

Firms may file amendments to a special report if the original special report contains incorrect or incomplete information. If the information as originally reported needs updating because facts have changed since the original filing, a firm should not use an amendment but, rather, consider whether a new Form 3 reporting obligation has been triggered. When filing a Form 3 to amend an earlier special report, a firm must supply not only the amended and supplemental information, but also include all information, affirmations, and certifications that were required in the original Form 3. The PCAOB anticipates that reportable events will not routinely occur and that firms will go through most years without having any reportable events. As discussed above, when filing the annual report, a firm must certify that it has filed all required Form 3 special reports during the reporting period. The certification is only stating that the firm has filed the Form 3 special reports, not that it filed them on a timely basis; therefore, a firm must complete the missing Form 3 special reports before it would be in a position to file the annual report on Form 2.

#### Form 4

The new PCAOB rules also govern the filing of a Form 4 that will allow a firm, under certain circumstances, to succeed to the PCAOB-registered status of a predecessor firm without filing a new registration application on Form 1. A firm seeking to utilize this option with respect to a succession event that occurred before December 31, 2009, should have filed a Form 4, Succeeding to Registration Status of a Predecessor, with respect to such event by January 14, 2010.

The rules afford the opportunity for succession to registered status in two general categories of circumstances: 1) changes related to a firm's legal form of organization or jurisdiction in which it is organized, and 2) transactions in which a registered firm is acquired by an unregistered entity or combines with other entities to

form a new legal entity. The events to which the rules apply are intentional transactions, not unanticipated events. Form 4 requires an affirmation that, for purposes of the PCAOB's authority with respect to registered public accounting firms—including but not limited to the authority to impose disciplinary sanctions—a firm either has retained or assumes responsibility for the conduct of any predecessor registered public accounting firm before the change in legal form took effect. When the event is a change in the legal form or jurisdiction of organization, but the entity otherwise remains substantially the same,

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**The PCAOB anticipates that reportable events will not routinely occur and that firms will go through most years without having any reportable events.**

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this affirmation means that the firm accepts continuing responsibility for—and the possibility of sanctions for—the firm's conduct before the transaction. When the transaction is a combination of two or more entities, this affirmation means that the resulting entity accepts responsibility for—and the possibility of sanctions for—the conduct of each of the combining entities that was a registered public accounting firm at the time of the combination. A firm that is unwilling to provide the affirmation may not utilize the Form 4 process for succeeding to registration. In response to comments concerning successor liability, the PCAOB stated that the affirmation is not intended to create any new liability, nor is it intended to affect the legal liability under applicable common law of the combined firm to any person or entity other than the PCAOB.

For succession to registration to take effect automatically upon filing under the

rules, Form 4 must be filed within 14 calendar days after the effective date of the transaction. The successor firm may apply to the PCAOB to allow for a late filing, but must include a statement explaining the reasons for the late filing and why it should be allowed.

#### Disciplinary Authority

Pursuant to the PCAOB rules, each registered firm is subject to regular and special inspections such as the PCAOB chooses to conduct. The PCAOB has amended these rules to provide that it may, at any time, request that a firm provide additional information or documents relating to information provided on a Form 2 or Form 3, or relating to information that has otherwise come to its attention. Such information requests are deemed to be in connection with the firm's next regular or special inspection, and, accordingly, the cooperation requirements and disciplinary provisions of the PCAOB rules apply.

If the PCAOB discovers, through inspections or otherwise, that a report is untrue, incomplete, or misleading, it is authorized to take disciplinary action against the firm for violating the reporting requirements, and potentially against any associated person who caused the firm's violation. To the extent that a firm subsequently discovers an error in a filed report, it should, as promptly as practicable, file an amended report correcting such error or supplying the missing information.

#### Public Availability of Reports

Each firm's annual and special reports will be made available to the public on the PCAOB's website, subject to exceptions for information that satisfies specified criteria for confidential treatment. A firm may not request confidential treatment for

certain other specified types of information (discussed below). Each Form 2 and Form 3 will become immediately available to the public upon filing. The PCAOB's reporting system will automatically redact any information for which the firm has requested confidential treatment. Such information will remain redacted unless and until the request for confidential treatment is denied, but the balance of the filing will be immediately publicly available.

The adopting release clearly outlines certain types of information for which confidential treatment may not be requested, including the percentage of billings for U.S. firms that is attributable to services provided to issuer audit clients (non-U.S. firms may request confidential treatment), the identity of a firm's issuer audit clients, and the identity of an issuer for which the auditor has withdrawn its audit report. For Form 2, confidential treatment may only be requested for: information about its personnel (Part VI), relationships with persons or entities with disciplinary proceedings pending or recently concluded (Part VII), and materials filed as exhibits in support of requests for confidential treatment (Exhibit 99.3). For Form 3, confidential treatment may only be requested for: reasons for withdrawal of an audit report (Item 3.1[c]); the descriptions of the criminal, governmental, administrative, or disciplinary proceedings for a triggering event (Part IV); new relationships with persons or entities with disciplinary or other proceedings pending or recently completed (Part V); reasons underlying a loss of license or certification (Item 6.1[d]); reasons for a change in the firm name (Item 7.1[d]); and materials filed as exhibits in support of requests for confidential treatment (Exhibit 99.3).

For any information which a firm is requesting confidential treatment, it must

provide the PCAOB with a representation that such information has not otherwise been publicly disclosed, as well as either a detailed explanation of why the information is proprietary or a detailed explanation of the basis for why the information is legally protected from disclosure with a copy of the specific legal provision. If the firm fails to provide the requested supporting materials, the request for confidential treatment will be denied.

The PCAOB continues to recognize the concerns of non-U.S. firms faced with local legal restrictions on their ability to provide information to the PCAOB pursuant to these new reporting forms. If a foreign-registered firm cannot complete an item on Form 2 or Form 3 because disclosure would violate non-U.S. law, then it must: indicate that it has omitted required information on the grounds that disclosure would violate non-U.S. law; identify the items it has withheld on that basis; and represent that it has, in good faith, sought waivers or consents under local law to allow it to make such disclosures. Before filing the report with the PCAOB, a foreign-registered firm must have in its possession and maintain: an electronic version of the report and a manually signed copy of the report that would satisfy the PCAOB rules in full, if it were to be filed with the PCAOB; a copy of the provisions of non-U.S. law that prohibit the disclosure; a legal opinion addressed to the firm, in English, to the effect that the foreign-registered accounting firm cannot provide such information to the PCAOB without violating non-U.S. law; and a written representation that the report is complete and non-misleading.

#### Preparing for Reporting

The practical implications of the new reporting rules are that registered accounting firms have significant information-gathering, as well as reporting, obligations. Given that the reporting requirements are now effective, and the first annual reporting period ends on March 31, 2010, it is imperative that registered accounting firms begin gathering the necessary information as soon as possible. Because these reporting requirements have now become a fixture of accounting, with respect to public-company issuers, a firm must implement internal controls and disclosure systems, as

#### EXHIBIT 2 Important Dates

December 31, 2009	PCAOB reporting rules become effective
January 14, 2010	Optional Form 4 (Succeeding to Registration Status of a Predecessor) due
February 1, 2010	Initial "catch-up" special report due
March 31, 2010	End of reporting period, April 1, 2009–March 31, 2010
June 30, 2010	Annual report on Form 2 due for reporting period

well as internal education programs, in order to ensure that the accountants and professional staff report the required information to the firm's compliance department on a timely basis.

Firms should set up new, or modify existing, internal reporting systems that will collect information regarding the information required for annual reports as well as the triggering events for special reports. To the extent that these systems collect information on a regular basis during the year, a firm will not face a crunch of searching for and organizing the information necessary for the reports as they come due. The information required by the Form 2 annual report and the Form 3 special report are not, for the most part, duplicative. Accordingly, internal reporting systems must track both annual information and triggering event information. For the annual report, such a system should collect the information surrounding each audit report and consent issued, including the issuer,

the issuer's CIK number, the date of the audit report, and the date each consent is issued. A firm's billing systems should contain codes to identify billed fees as one of the four types required by the annual report. The compliance department and the firm's personnel department must also keep track of the accountants who have signatory authority with respect to each audit report. Finally, since information may be required from shareholders, partners, and even audit managers, the firm should be constantly aware of its personnel hierarchy and its designations of audit managers. For Form 3, a firm's internal controls should contain a list of triggering events and educate all of its personnel on how to communicate such information to the compliance department. Because of the sensitive nature of some of the items constituting triggering events, a firm may want to create a confidential way of communicating such information to the compliance department.

*Exhibit 1* sets forth recommended tasks that a firm's compliance department should undertake to gather the information that will be necessary to complete Form 2 and Form 3 going forward. *Exhibit 2* highlights some important dates under the new PCAOB filing requirements.

As firms cope with the new disclosure regime and raise issues and questions about events not falling squarely within any of the disclosure rules, it is likely that the PCAOB will be issuing further guidance on compliance. Nevertheless, annual and current reporting for accounting firms has now become a fixture of the accounting profession for firms under PCAOB jurisdiction, so firms must harmonize the disclosure requirements with their internal operations. □

*Steven R. Berger, JD, is a shareholder of Vedder Price P.C. in New York, N.Y.*

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