
STAFF QUESTIONS AND ANSWERS

SPECIAL REPORTING ON FORM 3

January 12, 2010

Summary: The questions and answers below set out staff guidance to assist registered public accounting firms with respect to the requirement to file with the Public Company Accounting Oversight Board (“PCAOB” or “Board”) special reports on Form 3. This guidance does not constitute Board rules, nor has it been approved by the Board.

The questions and answers below were prepared by the PCAOB staff to supplement PCAOB Release No. 2008-004, *Rules on Periodic Reporting by Registered Public Accounting Firms* (June 10, 2008) and the instructions to Form 3, which can be found at http://www.pcaobus.org/Rules/Docket_019/2008-06-10_Release_No_2008-004.pdf.

Please note that the instructions to Form 3 include various “notes” intended to address anticipated questions.

Overview of the Requirements Relating to Special Reporting on Form 3

Q1. What is the general nature of the obligation to file special reports on Form 3?

A1. The PCAOB’s reporting framework includes two types of reporting obligations. Each registered firm must provide basic information once a year, covering a 12-month period that ends March 31, by filing an annual report on Form 2. Separately, there are certain events (“Form 3 events”) that, if they occur, a firm must report on Form 3 within specified time frames. The reportable events described on Form 3 are not events that routinely occur, and some firms might never experience an event required to be reported on Form 3.

Q2. Does the requirement to file special reports on Form 3 apply to all registered firms, regardless of the nature of the firm's practice?

A2. Yes. Each firm that is registered with the PCAOB, regardless of the reason the firm is registered, regardless of whether the firm is required to be registered, and regardless of whether the firm plays any role in audits of issuers, must comply with the requirement to file special reports on Form 3 if any of the reportable events described in Form 3 occur with respect to the firm.

Q3. What are the time frames within which events must be reported on Form 3?

A3. The deadlines for filing special reports on Form 3 are set out in Rule 2203(a). In general, any Form 3 event that occurs while a firm is registered must be reported on Form 3 within 30 days after the event occurs. There are, however, two special situations involving one-time reporting deadlines for firms to "bring current" certain information that was submitted on a firm's registration application.

The first situation relates to firms that are registered as of December 31, 2009, when Rule 2203(a) took effect. For those firms, a specified subset of Form 3 events must be reported if they occurred before December 31, 2009 and information concerning them continues to be current as of December 31, 2009. This reporting requirement is described in detail in General Instruction No. 4 to Form 3. Any firm registered as of December 31, 2009 should review General Instruction No. 4 to determine whether it has any "bring current" reporting obligation, and any such report must be filed on Form 3 by February 1, 2010.

The second situation relates to firms that become registered after December 31, 2009. For those firms, any Form 3 events that occur between the cut-off date used by the firm for purposes of providing information on its registration application and the date the firm receives notice of approval of its application for registration must be reported on Form 3 within 30 days of receiving notice of approval of the application. With respect to events that occur while a firm's registration application is pending, however, firms should also take account of Q&A 18 in the Board's Frequently Asked Questions Regarding Registration with the Board (PCAOB Release 2003-011C), which encourages applicants to notify the staff in writing if information contained in the application changes in any significant way while the application is pending.

Q4. What are the consequences of failing to file a special report after a Form 3 event occurs, or of a late filing?

A4. The failure to file a timely special report after a Form 3 event occurs is a violation of PCAOB Rule 2203(a). As with any violation of PCAOB rules, a registered firm that violates Rule 2203(a), and any associated person who causes that violation, could be subject to disciplinary proceedings and disciplinary sanctions, which, in appropriate circumstances, could include revoking a firm's registration and barring an individual from being an associated person of a registered firm.

In addition, the annual report on Form 2 that every firm must file, for each 12-month period ending March 31, requires the firm to certify that it filed all required special reports on Form 3 with respect to events that occurred during that 12-month reporting period. If a firm overlooked the special reporting requirements for some period of time, the firm would eventually discover that it needed to become current on its Form 3 obligations, even if that meant late filing of a Form 3, so that it could provide the certification required in order to satisfy the annual reporting requirement.

Q5. What happens if the firm does not know of the Form 3 event within 30 days of its occurrence?

A5. The reportable events in Form 3 are described in a way such that either the firm would necessarily be in a position to know about them as they occur (e.g., the firm has changed its name) or that the event triggering the reporting obligation is the firm *becoming aware* of certain information. With respect to that latter category of events, the instructions to Form 3 specify that the firm is deemed to have become aware of the relevant facts on the date that any partner, shareholder, principal, owner, or member of the firm first becomes aware of the facts. The Board's release adopting the special reporting requirements noted that it is reasonable to expect a firm to have controls designed to ensure that any such person who becomes aware of relevant facts understands the firm's reporting obligation and brings the matter to the attention of persons responsible for compliance with the obligation.

Q6. If a firm has requested leave to withdraw from registration by filing Form 1-WD, and that request is pending with the Board, must the firm continue to comply with the requirement to file special reports on Form 3?

A6. No. PCAOB Rule 2107(c) provides that the obligation to file special reports on Form 3 is suspended for any firm that has pending before the Board a Form 1-WD requesting leave to withdraw from registration. In the event that the firm decides to withdraw a pending Form 1-WD, PCAOB Rule 2107(f) requires that the firm file any special report that the firm would have been required to file had the Form 1-WD not been pending.

Events Required to be Reported on Form 3

Q7. What events are required to be reported on Form 3?

A7. The events that must be reported on Form 3 are described in Part II (and the instructions to Part II) of Form 3. For quick reference, a single page summary of the categories of reportable events is set out at the end of this document, but firms should refer to the more detailed descriptions in Part II of Form 3 for the specific events that must be reported. Firms should not attempt to report via Form 3 any events that are not described in Part II of Form 3. For example, while firms must report certain categories of legal proceedings involving the firm or certain firm personnel, firms are not required to report *all* legal proceedings involving the firm or its personnel, and firms should not attempt to use Form 3 to report proceedings not described in Part II of Form 3.

In reviewing the descriptions of events that must be reported, firms should bear in mind that some terms used in those descriptions are defined, for these purposes, in ways that may differ from a firm's common usage of the terms. Defined terms used in Form 3 are italicized, and the definitions can be found in PCAOB Rule 1001 or by clicking on an italicized term in the online form.

Q8. One of the reportable events on Form 3 is a firm's withdrawal of a previously issued audit report. Must a firm file Form 3 in every case where the firm withdraws an audit report or withdraws its consent to the use of its name by an issuer?

A8. No. If the issuer in question complies with its obligation to disclose the matter pursuant to Item 4.02 of a Form 8-K filed with the Securities and Exchange Commission, the firm need not, and should not, separately report the matter on Form 3. However, in the event the issuer fails to make the required Form 8-K filing within the time required by the Commission's rules, the firm must report that event on Form 3 within 30 days after that Form 8-K filing deadline, unless, within that 30-day period, the issuer reports the matter on a late-filed Form 8-K.

Q9. Reportable events on Form 3 include a firm entering into certain relationships with persons or entities who are currently the subject of specified PCAOB sanctions or Securities and Exchange Commission orders. Does a firm need to report such a relationship even if the person or entity does not participate in audits of issuers?

A9. Yes. Those relationships must be reported on Form 3 regardless of whether the relevant person or entity participates in audits of issuers.

Q10. Reportable relationships referred to in the preceding question include certain relationships with entities that are currently the subject of a PCAOB sanction disapproving the entity's application for registration. What does it mean to be "currently the subject" of such a sanction?

A10. An entity is considered to be "currently the subject" of a Board sanction disapproving registration if either of the following is true: (1) the Board order disapproving registration identified a date after which the Board would not treat the violations described in the order as a sole basis for possible disapproval of a new registration application, and that date has not passed, or (2) the Board order identifies no such date, and the entity has not subsequently become registered with the Board.

Q11. For purposes of Form 3's reporting requirements, is a person or entity considered to be "currently the subject of" a specified PCAOB sanction if the sanction has not yet taken effect because it is pending review by the Securities and Exchange Commission?

A11. A person or entity is not "currently the subject of" a PCAOB sanction if the imposition of the sanction has been stayed, pursuant to Section 105(e) of the Act, by virtue of an application to the Commission for review, and the stay has not been lifted.

Q12. The obligation to report new relationships with persons or entities currently the subject of certain PCAOB sanctions and Commission orders is not by its terms limited to situations in which the firm has become aware of such sanctions or orders. What if the firm is not aware of them?

A12. The sanctions and orders that give rise to this reporting obligation are public information. A firm generally should be able to identify this information as to any person or entity with whom or which it enters into a new relationship, even if the person or entity is not forthcoming about it.

Q13. One of the reportable events on Form 3 is a change in a registered firm's name. Should a firm file a report on Form 3 to report all name changes, including those that occur in connection with a merger or other change in the firm's legal form?

A13. No. A change in a firm's name should be reported on Form 3 if, and only if, other than the name change, the firm remains the same legal entity that it was before the name change. If the name change is in connection with a more significant change in which the firm, as previously constituted, ceases to exist – such as a change in the legal form of the firm or a merger resulting in a new legal entity – the new entity does not automatically succeed to the registration status of the former entity and may not report the event on Form 3 as a mere name change. In that event, the firm should consider whether, pursuant to the provisions of Rule 2108, the firm can make the representations required in a Form 4 filing to enable the firm to succeed to the predecessor firm's registration status.

Q14. If the address of a firm's headquarters changes, must the firm report that change on Form 3?

A14. The only address change that must be reported on Form 3 is a change in the business mailing address (and other contact information) of the person that the firm designates as its primary contact with the PCAOB. If a firm changes its headquarters address, but the contact information for that primary contact person remains unchanged, the firm should not report the headquarters address change on Form 3 but should simply provide the new address in the firm's next annual report on Form 2.

Completing Form 3

Q15. Which portions of Form 3 must be completed if a firm is reporting only a single event?

A15. For any Form 3 filing, a firm must complete Parts I, II, and VIII of Form 3 and at least one of Parts III through VII. Part I identifies the firm and Part VIII certifies the accuracy of the report. In Part II, the firm must check a box, or boxes, to indicate which of the events described there the firm is reporting. Depending upon which box or boxes the firm checks in Part II, the firm must complete one or more of Parts III through VII to provide certain details.

Q16. May a firm use a single Form 3 filing to report multiple Form 3 events?

A16. A firm may file a Form 3 to report a single event or to report multiple events. Timeliness of reporting, however, is judged with respect to each reported event.

Q17. May a firm combine in a single Form 3 filing the “bring current” reporting described in Q&A 3 above and reporting on other events that occur within the 30-day period before the “bring current” report is due?

A17. Yes, but attention should be given to ensure compliance with the “bring current” reporting requirement. A firm registered as of December 31, 2009 must file a Form 3 by February 1, 2010 to report certain information that is current as of December 31, 2009, and it must do so even if that information is superseded by events that occur between December 31, 2009 and February 1, 2010 that must also be reported on Form 3. Similarly, a firm that becomes registered after December 31, 2009 would, within 30 days of becoming registered, need to file a Form 3 to report events that occurred before the date it became registered, even if the relevant information were superseded by other events occurring before the firm filed that “bring current” report. In those situations, a firm would need to file one Form 3 to satisfy the “bring current” obligation and a separate Form 3 to report the subsequent change to that information.

Amending a Previously Filed Form 3

Q18. What should a firm do if it discovers that it provided incorrect information in a filed Form 3 or omitted information that should have been included?

A18. Special reports on Form 3 should be complete and accurate, and an individual in the firm must, on behalf of the firm, certify that the form does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which the statements were made, not misleading. Inaccuracies or omissions could form the basis for disciplinary sanctions for failing to comply with the reporting requirements, and it is therefore in a firm’s interest to correct such errors as soon as possible. A firm may do so by filing an amendment pursuant to PCAOB Rule 2205 and the Form 3 instructions specific to amendments.

Q19. Should a firm amend a previously filed Form 3 to update previously reported information that has changed since the original filing?

A19. Amendments are appropriate only to correct information that was incorrect at the time of the filing, or to supply omitted information that should have been supplied at the time of the filing. The amendment process should not be used to update information reported on a Form 3. In the event of changes, the firm should consider whether a new Form 3 reporting obligation has been triggered.

Requesting Confidential Treatment

Q20. How does a firm request confidential treatment for information that it provides on Form 3?

A20. A firm may request confidential treatment for information provided in certain, though not all, items in Form 3. General Instruction No. 8 to Form 3 identifies the items with respect to which a firm may request confidential treatment. In filling out the form, the firm may request confidential treatment by checking the “CR” box associated with each such item for which the firm wants to request confidential treatment.

The requirements concerning what a firm must submit in support of a request for confidential treatment have changed effective December 31, 2009 and so, for most firms, are different than they were when the firm submitted its registration application. As amended, PCAOB Rule 2300(c) requires both a representation that the information has not otherwise been publicly disclosed and either (1) a detailed explanation of the grounds on which the information is considered proprietary, or (2) a detailed explanation of the basis for asserting that the information is protected by law from public disclosure and a copy of the specific provision of law.

A special report on Form 3 will be published on the PCAOB Web site promptly upon submission. That public version of the Form will not display information for which confidential treatment is requested unless and until a determination to deny the request becomes final. As a safeguard, as a firm prepares to submit a completed Form 3 to the PCAOB’s Web-based system, the system allows a firm to view two separate versions of the completed form – one showing all of the information the firm has entered and the other showing what the publicly available version of the form will look like, with redactions where confidential treatment is requested. Before finally submitting the form, the firm should carefully review the redacted version to make sure that the firm has requested confidential treatment where it intended to do so.

Withholding Information on the Basis of Non-U.S. Legal Restrictions

Q21. May a firm refrain from reporting information on Form 3 if non-U.S. law prohibits the firm from providing or obtaining the information, just as the PCAOB allows firms to withhold information from Form 1 registration applications on that basis?

A21. A non-U.S. firm may withhold certain information from a required special report on Form 3 because of non-U.S. legal restrictions, but the related process, which is governed by PCAOB Rule 2207, is significantly different from the process in the context of a registration application on Form 1.

A legal conflict can be asserted on Form 3 only if the firm is actually withholding information that the form requires. A separate section at the end of each relevant part of Form 3 instructs the firm that if any portion of its response in that part is incomplete because of an asserted legal conflict, the firm must, in that separate section, identify the specific items with respect to which the firm actually has withheld, or been precluded from obtaining, responsive information.

Also, unlike the case with Form 1, the materials that a firm must compile in support of its position that a conflict exists – a copy of the relevant provisions of law, a legal opinion, and a written explanation of the firm’s efforts to seek consents or waivers that would overcome the conflict – need not routinely be submitted when the firm files Form 3. Rather, the firm must certify on Form 3 that it has those materials in its possession, and it must submit them only in the event of a follow-up request from the Board or the Director of the Division of Registration and Inspections.

Q22. To comply with the requirement to have a legal opinion relevant to the asserted conflict of law, must a firm secure a new legal opinion specific to each Form 3 that the firm files?

A22. The supporting materials maintained by the firm need only contain a legal opinion that the firm has reason to believe is current with respect to the relevant point of law. Rule 2207 does not attempt to specify the ways in which a firm may satisfy this requirement, and various approaches might be satisfactory. Compliance does, however, depend upon a firm implementing in good faith some mechanism for generally being aware of relevant changes in the law, rather than relying on a particular legal opinion in perpetuity without genuine regard for whether the law changes.

Q23. If a non-U.S. firm takes the position that non-U.S. law prohibits it from providing any of the details required by Parts III through VII of Form 3 with respect to a particular matter, is the firm still required to file a Form 3 concerning that matter?

A23. Yes. The firm must still file a Form 3 completing Parts I, II, and VIII, and checking the relevant boxes in Parts III through VII to indicate the items as to which information is being withheld.

The Mechanics of Reporting Through the PCAOB Web-Based System

Q24. How does a firm submit Form 3 to the Board?

A24. To submit Form 3, your firm will need to access the PCAOB's Registration, Annual and Special Reporting system at <https://rasr.pcoabus.org/Security/Login.aspx>. Your firm will need to provide the Username and Password issued in connection with the registration process to gain access. Registered firms may email registration-help@pcoabus.org for assistance with log-in information. Firms that are already registered with the Board should not request a new user name and password through the Board's web site – this functionality is for firms seeking to register with the Board and is not appropriate for registered firms needing login assistance.

Q25. What formats will the system accept? What software is needed to properly prepare and submit Form 3?

A25. To properly communicate with the Board's system, you will need Internet Explorer 6.0 or later, or Firefox 2.0 or later. To complete Form 3, you may fill it out online as a web form, or you may submit it in XML, which is a computer language. If you have large amounts of information going into Form 3, you may find that XML is a more convenient way to submit the data because you would be able to load the data into your XML file directly or indirectly from other databases. If you would like to make your submission in XML, you must download the XML Schema from the Board's system. Using XML will likely require the assistance of a programmer who is versed in that computer language.

Form 3 may require you to submit various documents to be labeled as exhibits. The system will accept exhibits in PDF, GIF or JPEG format. You can convert text documents or scan documents for submission, as long as they are submitted in PDF, GIF or JPEG.

Q26. Is assistance available on how to create a web form in the Board's system?

A26. You may view an online tutorial on how to create a web form in the Board's system by going to the Registration, Annual and Special Reporting page of the Board's web site (<http://www.pcaobus.org/Registration/RASR.aspx#>) and viewing the system tutorial entitled "Create a Form."

Further Questions About Reporting on Form 3

Q27. What should I do if I have further questions?

A27. If you have questions, you should first review the Board's release adopting the reporting requirements, including the rules and Instructions to Form 3, which can be found at http://www.pcaobus.org/Rules/Docket_019/2008-06-10_Release_No_2008-004.pdf, and the instructions for filling out Form 3 that are available for download after you log into the registration and reporting system. The instructions to Form 3 include various notes intended to address anticipated questions. If you still have questions, you can email the PCAOB's registration staff at registration-help@pcaobus.org.

Summary of Form 3 Reportable Events

- The firm has withdrawn an audit report on financial statements, and the issuer failed to comply with Commission reporting requirements (Item 4.02 of Commission Form 8-K) concerning the matter.
- With respect to the 100 issuer audit client threshold that determines the frequency of Board inspections under Rule 4003, the firm has crossed to a different side of the threshold than the firm was on in the preceding calendar year.
- The firm, or a partner, shareholder, principal, owner, member, or audit manager of the firm (in some cases limited to those who provided at least ten hours of audit services for any issuer during the firm's current or most recently completed fiscal year), has become a defendant in certain types of criminal proceedings, or any such proceeding has been concluded as to the firm or the individual.
- The firm, or a partner, shareholder, principal, owner, member, or audit manager of the firm (in some cases limited to those who provided at least ten 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 government-initiated civil proceeding, or an administrative or disciplinary proceeding (other than a Board proceeding), arising out of conduct in the course of providing professional services, or any such proceeding has been concluded as to the firm or the individual.
- The firm, or a parent or subsidiary, has become the subject of a petition filed in bankruptcy court or certain similar proceedings.
- The firm has taken on individuals or entities meeting certain criteria regarding disciplinary history, or entered into an arrangement to receive from such individuals or entities services related to the firm's audit practice or related to services the firm provides to issuer audit clients.
- The firm has obtained or lost authorization to engage in the business of accounting or auditing in a particular jurisdiction, or that authorization has become subject to conditions or contingencies.
- Contact information for the firm's Board contact person has changed.
- The firm has changed its legal name, while otherwise remaining the same legal entity that it was before the name change.