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Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street NW
Washington, DC 20006-2803
USA

26 January 2004

Dear Mr Secretary

PCAOB Rulemaking Docket Matter No. 013
Proposed rules relating to the oversight of non-U.S. public accounting firms

General observations

KPMG greatly appreciates this opportunity to comment on behalf of the non-U.S. firms on the Public Company Accounting Oversight Board's (PCAOB or Board) proposed rules relating to the oversight of non-U.S. public accounting firms. We reaffirm our support for the efforts of the Board in furthering the public interest through improving financial reporting, governance, and audit quality.

This letter is organized by first providing a number of general observations and comments on the proposed rules relating to the oversight of non-U.S. public accounting firms followed by responses, as applicable, to the proposed amendments to Board rules (PCAOB Rule 1001, PCAOB Rule 2100, PCAOB Rule 4011 and PCAOB Rule 5113) and the instructions to Form 1.

KPMG agree with the Board's observation that certain aspects of the oversight provisions of the Sarbanes-Oxley Act of 2002 (the 'Act') and the Board's rules raise special concerns for non-U.S. firms and support the Board's efforts to develop a framework under which non-U.S. firms could implement the Act's provisions. We welcome the Board's dialogue with foreign counterparts, the development of cooperative arrangements for oversight and discipline, and the recognition that those foreign counterparts share many of the same objectives as the Board. Further, we are encouraged that the Board is guided by the view that it will allocate its resources in a cost efficient manner that seeks to minimize unnecessary duplicative administrative burdens on non-U.S. registered firms. Where competent national regulators exist, we concur with the Board's approach to place reliance on the home country system to the maximum extent possible. This approach will

prevent unnecessary duplication. However, the proposed rules do not limit, in practice, the Board's authority and, therefore, we are concerned that the proposed rules may well result in dual oversight. In addition, the proposed amendments do not alleviate the legal impediments raised in our comment letter (28 March 2003) to PCAOB Rulemaking Docket Matter No. 001 which continue in many circumstances to prevent the Act being fully applied in practice. We are also concerned by the proposed approach which does not envisage a collaborative approach to the evaluation of different countries oversight systems, rather, the Board determines whether a non-U.S. system falls short by applying its own standards to foreign jurisdictions.

We believe that national, or supranational (such as the EU), competent regulatory authorities should oversee foreign public accounting firms. The framework for regulation of non-U.S. firms should be based on the principle that the home country should have primary responsibility for registration and control of oversight and discipline, with each non-U.S. country committing to meet certain requirements regarding independent oversight and cooperation in investigations with other competent regulators. Information would be shared with the Board on an agreed basis.

We acknowledge that the Act directs the Board to establish a registration system and inspection and enforcement programs for accounting firms that audit or play a substantial role in the audit of U.S. public companies (Sections 102, 104(a) and 105). Furthermore, Section 106 requires that non-U.S. public accounting firms comply in the same manner, and to the same extent, as a public accounting firm in the U.S. However, the proposed framework under which the Board can rely on a non-U.S. system 'to an appropriate degree' does not address the concerns of foreign firms; the inefficiency and inequality of dual oversight as a result of the Board's proposed ability to initiate an inspection, commence disciplinary proceedings or impose a sanction on a non-U.S. firm.

Dual oversight is undesirable as it will be inefficient, costly and could result in conflicts between national regulators. We believe that the existence of two regulators undertaking investigations and disciplinary actions is a cause for major concern and would not improve audit quality or financial reporting. The current proposals could result in two regulators investigating the same matter with potentially differing outcomes. This will be detrimental to confidence in the audit process and capital markets.

We believe the practical application of the proposed oversight system will also be difficult. The Board will need to be sensitive to the cultural differences within each jurisdiction and require a considerable number of staff with language skills to be able to effectively apply the proposed rules on a global scale.

The proposed rules would also create a double jeopardy for auditors who will be subject to both U.S. and national disciplinary systems. This would contravene the principles of natural justice.

As currently drafted, the Act cannot be enforced in a number of jurisdictions or applied consistently across territories due to the legal impediments to compliance with the

proposed oversight and discipline rules, as outlined in our response to PCAOB "Rulemaking Docket Matter No. 001" (see comment letter dated 28 March 2003). In addition, we also understand that the European Union may develop new rules that would have the effect of strengthening and broadening current rules preventing the export of data as part of the modernisation of the existing 8th Company Law Directive. The legal impediments cannot be overcome by the non-U.S. firms but only by the regulators, or even governments of the relevant foreign jurisdiction. As such, the proposed system can only work if the Board cooperates with non-U.S. regulators and governments.

For these reasons, we suggest that the Board continue its dialogue with regional and national regulators. Supervision, inspections and discipline should remain the primary responsibility of the home country regulator. Where necessary, however, we would support the active participation of the Board in cooperation with local regulators, provided that the final output and any disciplinary action was clearly the responsibility of the local regulator. Participation by the Board could include PCAOB personnel being part of monitoring, inspection or investigation teams (subject to legal constraints), with the ability to influence the direction of oversight activity. The output of oversight activity could also be shared with the Board, provided it did not relate to individual clients who were not SEC registrants, did not breach data privacy and any other applicable home country laws and was performed under appropriate confidentiality agreements.

This solution would avoid the problems of dual oversight, yet allow the Board to be an active participant in supervising the activities of foreign firms. The Board, after all, always has the ultimate sanction of removing the registration of the foreign firm.

Response to the proposed amendments

Proposed rule on Registration (PCAOB Rule 2100) and Form1 – Application for Registration

The Board has given the opportunity for non-U.S. firms to provide preliminary information about the applicant's home country oversight system (Exhibit 99.3, 'Non-U.S. Oversight System Information' to Form 1 – 'Application For Registration'). Whilst we believe there is merit (in the context of the proposed rules) in the Board obtaining information about foreign regulatory systems, it would be more efficient for the Board to request this information directly from the home country regulators, rather than from individual applicants. A number of countries are currently remodelling their oversight and enforcement systems and home country regulators would be better able to indicate the direction of such change to the Board.

We support the three months registration extension for foreign public accounting firms to 19 July 2004 (PCAOB Rule 2100). This will provide non-U.S. firms with more time to develop new systems and processes to obtain, translate and consider how best to disclose the information requested by the Board as part of registration.

Proposed rule on inspections (PCAOB Rule 4011)

Proposed PCAOB Rule 4011 permits a foreign registered public accounting firm to submit a written petition to the Board for an inspection that relies upon an inspection conducted by a home country system. The petition would describe in detail the non-U.S. system's laws, rules and other information. Release 2003-024 states that the Board has requested this arrangement because "petitions on a firm-by-firm basis allows the Board to take into account differences in the inspection work programs for different firms and also any changes in regulatory regimes that may occur from time to time". However, as drafted, the petitions will describe the local regulatory framework rather than the inspection programmes of individual firms. Therefore, the petitions will not assist the Board in formulating its view based upon "differences in the inspection work programs". As explained above, we believe it would be more efficient for the Board to request information on regulatory systems and indeed work programmes directly from the home country regulators, rather than from individual firms. The individual firms could still petition for home country inspections but would not be required to provide duplicative information about "the non-U.S. system's laws, rules and/or other information to assist the Board in evaluating such system's independence and rigor" (PCAOB Rule 4011(b)).

Release 2003-024 proposes that following a review of the non-U.S. inspecting entity's inspection work papers and inspection report and any work performed by the PCAOB, the Board would issue a PCAOB inspection report for a foreign registered public accounting firm. We believe that whilst the inspection may be a collaborative effort between the Board and home country regulator (subject to legal impediments), the inspection report should be clearly issued by the local regulator. Where necessary, we would also support the use of PCAOB personnel as part of the inspection team, albeit, a number of legal impediments caused by local data protection and data privacy rules would need to be considered. The inspection must be clearly led by home country inspectors working to methodologies set by the home country regulator, although we would expect there to be an increased emphasis on U.S. GAAS and GAAP compliance. Equally there should be a single report for each firm following from the inspection. This approach would avoid the inequity and inefficiency of dual oversight.

Proposed rule on Investigations (PCAOB Rule 5113)

Proposed PCAOB Rule 5113 permits the Board to "rely upon the investigation or a sanction, if any, of a foreign registered public accounting firm by a non U.S. authority". However, this does not limit, in any way, the authority of the Board under PCAOB Rule 5200 to commence disciplinary proceedings or under PCAOB Rule 5300 to impose a sanction.

The proposed approach results in the risk of two sets of investigators coming to different conclusions and the regulators proposing different sanctions. We believe that the final output of any investigation and disciplinary action should clearly be the responsibility of the home country regulator.

Other

The proposed rules do not address potential conflict between the law of certain countries and the Act that might have the effect of preventing the Board undertaking inspections or investigations (PCAOB Rule 2105 addresses conflicts of law in the context of registration). PCAOB Release No. 2003-020 stated that the "cooperative approach envisaged by the Board would also address potential conflicts of law which may arise in connection with an inspection or investigation", however, the amended rules do not provide non-U.S. firms with any guidance where such conflicts of interest might arise. We suggest that a rule similar to PCAOB Rule 2105 is included within the rule amendments.

Finally, we would emphasize that we believe that all of our suggestions can be implemented in a manner that would improve the oversight of foreign firms whilst remaining faithful to the overall objectives of Sarbanes-Oxley.

If you wish to clarify any comments you find unclear or answer any questions our comments raise, then please call or write to Neil Lerner + (44) 207 311 8620, neil.lerner@kpmg.co.uk

Yours faithfully

KPMG