



MEMORANDUM

To
Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 260006-2803
Email: comments@pcaob.org

Date
26 January, 2004

From
Frans Samyn
CEO
BDO Global Coordination B.V.

Dear Mr. Secretary,

**PCAOB Rulemaking Docket Matter No. 013
Proposed Rules Relating to the Oversight of Non-U.S. Public Accounting Firms**

We welcome the opportunity to comment on the Public Company Accounting Oversight Board's ("PCAOB" or "Board") proposed rules relating to the oversight of non-U.S. public accounting firms. BDO Global Coordination B.V. is the coordinating entity of BDO International, a world wide network of independent public accounting firms ("BDO Member Firms") serving international clients, including U.S. public companies.

We appreciate the Board's efforts to date to address the concerns of non-U.S. firms and to work with non-U.S. regulatory bodies in developing a cooperative arrangement with respect to the oversight of non-U.S. firms. We should like to make a broad comment on this cooperative framework, before commenting on some of the specifics of the proposed rules.

The Cooperative Framework

While we appreciate the Board's efforts towards developing a cooperative approach, we believe that more time is needed still, to achieve a framework that will work in a multinational environment. The recent spate of global accounting scandals has highlighted the need, not only for improvements in regulatory structures around the world, but also for an internationally harmonised approach to standards and oversight. Many countries have already embarked on ambitious reforms with respect to auditor oversight. There now appears to be an excellent opportunity to be proactive in reaching multilateral agreement on the principles and minimum requirements of an effective and robust oversight regime.

While the proposed rules allow for cooperation, it appears, nevertheless, that the PCAOB is still claiming global jurisdiction. This poses numerous problems for audit firms in many jurisdictions with conflicting legislation. These legal conflicts have been well documented by the international law firm, Linklaters, in its submissions to the PCAOB¹. Given that regulators in many countries are working towards the same objectives, to ensure that investors have access to reliable information, an effective system of mutual recognition should be achievable. Such a system would allow for different approaches, while insisting that rules are in place to achieve the common goal of investor protection. We would urge the PCAOB to consider these non-U.S. oversight systems to

¹ Comment on Docket Matter No. 012, dated 20 January 2004
Comment on Docket Matter No. 001, dated 31 March 2003



the fullest extent possible and, in that regard, recognize the practical and legal impediments that the PCAOB proposal may present in certain countries.

We hope that every effort will be made to avoid duplicate registration and oversight requirements. Such duplication increases the costs of compliance for audit firms (and consequently for issuers) and does little to enhance audit quality or serve the public interest.

The Proposed Rules

The Proposed Extension Period

We agree with the Board's proposal to provide an extension of the registration deadline for non-U.S. firms. Indeed, we believe consideration should be given for an extension period greater than three months. The proposed extension would require non-U.S. public accounting firms that audit, or play a substantial role in the audit, of U.S. public companies to be registered with the Board by 19 July 2004. Given the application review timeline, firms need to be preparing their applications now, for submission before the end of April, to ensure that they are registered by the due date.

In effect, then, firms are having to submit to an oversight regime which has not yet been determined. It is not possible for firms to properly assess the impact of registration, or to make informed decisions about the feasibility of registration, until the final rules are known. There are many firms who currently have only one or two audit clients requiring them to register. These clients are usually subsidiaries of U.S. public companies and the engagements may not comprise a significant number of audit hours and fees. Such firms have a choice: they can either register or discontinue these audit engagements.

It is highly preferable that the final rules are issued before firms are required to make a decision about whether or not they wish to expose themselves to the consequences of PCAOB registration. The extension period should therefore be lengthened, to provide a timeline that will allow firms to properly consider, and prepare for, the registration process. This extension would provide more time to develop the cooperative framework and resolve legal conflicts.

Firm-by-Firm Requests and Decisions

The proposed Rule 4011 allows each non-U.S. registered firm to request that the Board rely on the inspection regime of its home jurisdiction. Each such request must include a written petition describing the laws and rules of the oversight system. We believe that this information should be provided directly by the respective regulatory bodies within each jurisdiction, rather than by individual firms. This would seem to be a more efficient, effective and equitable approach, given that laws and rules of each jurisdiction should apply uniformly to all firms within that jurisdiction.

Equally, the determination of the degree to which the Board may rely on an inspection system should be applied nation-wide, rather than to individual firms. The Release states: "*Considering 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.*" It would seem relatively easy for the Board to be updated by the foreign regulator on a periodic basis as to any changes in its regulatory environment. Therefore, we do not see the need for the Board to rely on individual firms for this information. In addition, if a non-U.S. oversight system applies its rules to individual firms differently, this should be taken into account in the Board's assessment of that system. Similarly, if changes occur in a regulatory regime, the Board's assessment of that regime may also change. The Board should not apply a differential system of oversight within jurisdictions.



Determining the Independence and Rigor of non-U.S. Oversight Systems

We believe the measurement criteria for determining the independence and rigor of a home country system needs to be more clearly defined. For example, what is an appropriate source of funding of an oversight body? We would expect that funding by the accounting profession would not be considered appropriate, but how would funding by the issuers or securities bodies be evaluated?

What weight is to be given to each criterion? The regulatory systems in many jurisdictions are newly established or evolving. To what degree will this lack of an historical performance inhibit a positive evaluation?

The proposed rules are silent as to the transparency of the evaluation process. It is important that firms and non-U.S. regulatory bodies understand the reasoning behind the Board's determinations in order to have the opportunity to make amendments or develop procedures to address its concerns, if possible. There also needs to be a process whereby firms and/or regulatory bodies can appeal the Board's judgements.

Agreed-Upon Work Programmes

In determining whether to permit any reliance on a home country inspection system, *"the Board would weigh heavily the non-U.S. inspecting entity's willingness to agree to an inspection work program that includes, at a minimum, inspection of the foreign registered public accounting firm's audit and review engagements of U.S. public companies selected by the Board..."*. It should be acknowledged that, for many non-U.S. accounting firms, these engagements are likely to be subsidiaries of U.S. public companies, and may themselves be neither listed nor of public interest. As such, they may not ordinarily fall within a home country's inspection remit.

The Board would *"give great weight to the non-U.S. inspecting entity's willingness to agree to provide to the Board or its staff, upon their request, the inspecting entity's work papers or work product..."*. The oversight bodies in some jurisdictions may be willing, but completely unable, to comply with such requests, due to the aforementioned, well-documented legal conflicts regarding confidentiality and data protection. These same jurisdictions are also likely to be ones whose laws will prevent PCAOB staff from directly executing the inspection work programme. It would seem that these conflicts need to be resolved prior to implementing these provisions of the proposal.

Cooperation with Respect to the Board's non-U.S. Counterpart's Auditor Oversight Responsibilities

We are pleased to note that the Board is willing to cooperate with its counterparts with respect to their inspections of U.S. firms, as part of discharging their own oversight responsibilities. However, we note that this willingness is conditional upon, or "consistent with", the Board's assessment of the non-U.S. oversight system's independence and rigor. With respect to investigations, the Board would assist only "to the extent permitted by applicable law" and "consistent with its reasonably available resources".

We trust that the Board will respect similar qualifications offered by non-U.S. authorities with regard to the Board's inspections and investigations of non-U.S. firms.

We understand that the scope of the Board's authority to conduct inspections and investigations of U.S. firms is limited to reviewing and enforcing their compliance with U.S. laws and professional standards. Further, both the Sarbanes-Oxley Act of 2002 ("the Act") and the Board's own rules may limit the ability of the Board to share with its non-U.S. counterparts information gathered in the course of such an inspection or investigation.

Section 104 of the Act and Rule 4000 of the Board both provide for an inspection programme, but neither authority allows for an inspection of a registered accounting firm with the intention of



determining that firm's compliance with non-U.S. legal requirements or professional standards. Similarly, while Section 105 of the Act authorises the Board to conduct investigations of registered accounting firms and their associated persons, such investigations do not relate to acts or practices by firms that may violate non-U.S. laws or professional standards.

In regard to the information gathered from the Board's inspections and investigations, there does not appear to be any provision within the Act or the Board's existing rules that allows the Board to transmit to, or share with, its non-U.S. counterparts any information that it is not either authorised or required to make publicly available.

We believe that significant work needs to be undertaken within the U.S. legislative framework before reciprocal rights can effectively be extended to non-U.S. regulators.

Conclusion

The Board has stated that it "*anticipates continuing its dialogue with oversight bodies outside of the United States in order to achieve its objectives generally, as well as to try to find ways to coordinate in areas where there is a common programmatic interest*". We applaud this initiative, but consider that more time is needed to establish a workable structure that involves a system of mutual recognition and a degree of home country control. If a global approach is pursued, gaining multilateral agreement on the principles of an effective oversight regime, it is likely that many of the legal barriers will be overcome. Oversight in all jurisdictions can be simultaneously strengthened, while allowing for different approaches and legislative and cultural frameworks, without sacrificing investor protection, and avoiding duplicity and excessive compliance costs.

Please feel free to contact us, should you have any queries about us, our network, or our comments.

Yours sincerely,
BDO Global Coordination B.V.

Frans Samyn
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