BDO International B.V.
Accountants & Advisers

International Office
Boulevard de la Woluwe 60, B-1200 Brussels
Telephone: (+32-2) 778 0130
Telefax: (+32-2) 771 4443

MEMORANDUM

To

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

Date

31 March, 2003

From

Frans Samyn

Dear Sirs,

Board Rulemaking Docket Matter No. 001

BDO is a global network of independent professional accounting firms in 100 countries worldwide. This letter is the response of BDO International B.V., on behalf of all our BDO Member Firms, to your request for comment regarding the matter detailed above.

Introduction

Let us first say that we share your concerns and support your efforts in helping to restore public confidence in financial reporting and in capital markets. We recognise the particular importance of restoring confidence in the U.S. capital markets, given their size. We therefore would like to work in a cooperative fashion with you and with other key national regulators that are striving towards the same goals.

We thank you for the opportunity to comment on these proposed rules of your registration system. It is unfortunate that the timing and brevity of the comment period do not allow us sufficient time to formulate additional and/or more constructive comments on the proposal. Nevertheless, given the significant issues involved, we feel that it is important not to forego the opportunity to comment, based on our analysis to date.

Whilst the focus of your ten questions outlined in Section B of the Release No. 2003-1 is directed at our non-U.S. Member Firms, many of the issues identified are equally relevant to our U.S. Member Firm and we comment on their behalf as well. We address your questions in order of those involving the registration process, its timing and information sought, the definition and application of "substantial role", the legal conflicts in foreign jurisdictions, and the role of the U.S. firms and international networks.

The Registration Process, Its Timing and Information Sought and the Need for Flexibility

Much of the information the Board proposes to require is not readily available and will necessitate significant time and expense to prepare. We believe it is consistent with the public interest and the Sarbanes-Oxley Act ("the Act") for the Board to facilitate registration by adopting a system that (1) is initially as flexible as possible and (2) over time transitions to more prescriptive requirements. During this transition period, applicants would be able to develop procedures necessary to compile information in a more consistent format. Flexibility during the transition period is extremely important in light of the tight deadlines applicants will have to meet to prepare their initial registration forms and the catastrophic effect of a failure to meet that deadline.

We comment below on some of the specific information requested, where clarity is required and how the Board might introduce flexibility into the registration process.

Part I – Identity of the Applicant

This section requests the names and addresses of all of the applicant's associated entities. We request clarification from the Board on whether each Member Firm would need to file details of its associated entities within their country of operation only, or whether this information needs to be global for all firms. The latter would seem to be excessive and unnecessarily duplicative.

Part II – Listing of Applicant's Public Company Audit Clients and Related Fees

This section requires applicants to provide information about those issuer clients for which they have *prepared* or issued any audit report. We do not understand the reference to the word "prepared" and suggest that the rule would be clearer if it were removed.

Part II requires an auditor to compile information based on reports issued (or prepared) during a calendar year. As we understand it, the process for preparing this information would consist of (1) identifying the relevant issuers, (2) accumulating fee information from each issuer's proxy statement (if the issuer is subject to the proxy rules), and (3) adjusting that fee information by determining and reclassifying certain "other" fees reported in the proxy statement disclosure that need to be reported as fees for "other accounting services" in the Form.

The period covered and the categorisations are different from the approach firms have used in the past for accumulating and providing fee information in annual reports to the SEC Practice Section of the AICPA. For SECPS purposes, a firm reports fees earned or billed during its fiscal year. In addition, amounts that the proposed rules would require to be categorised as fees for other accounting services are categorised as audit services for SECPS reports.

We assume the purpose of requiring fee information is to provide a "picture" of the firm and its public company practice. We believe that the picture will not look materially different whether an applicant paints a picture of its practice (1) based on the calendar-year period in the proposed rule or the fiscal-year period reflected in the SECPS report or (2) by reflecting fees for other accounting services separately or including them in audit fees.

The fee classifications will pose difficulties for many of our non-U.S. Member Firms, who will not have programmed their information systems to report fees by the broad categories of audit, accounting, tax and other services provided, as they have not needed to make such disclosures before. These Firms would need to reconstruct much of this information on a client-by-client and office-by-office basis. Furthermore, for those Firms who have recently gained clients by merging, the historical information may even be impossible to reconstruct.

In the interest of expediting the registration process and avoiding unnecessary expense and the severe penalties on firms and their clients for failure to meet the deadline, we suggest that the Board adopt a transitional period, where U.S. applicants would be permitted to report fees in the manner in which they have previously reported them to the SECPS. Because the data are being requested for informational, rather than investment, purposes, we believe that this categorisation and reporting of fees will present an equally valid picture of a firm. For non-U.S. applicants, the Board should consider waiving the requirement to disclose fees billed to clients by such classifications during this transitional period.

In addition, we note that soon registrants will begin reporting fee information using categories that are different than those in the proposed rules. We suggest that the Board plan to modify its rules at

some point to require firms to categorise fees in a manner consistent with the way issuers will report them. We believe this will make the reporting process easier and provide more useful information.

Part III – Applicant Financial Information

Part III requires applicants to prepare fee information on the basis of when the fees were *received* (i.e., based on the dates clients paid their bills). Preparing the information in this manner would be an extreme burden for most of our Member Firms and we think it would provide less useful information to the Board than if the information is based on fees billed. We strongly encourage the Board to adopt a fees billed approach, similar to the approach in Part II.

Part IV – Statement of Applicant's Quality Control Policies

Item 4.1 requires an applicant to provide information regarding its quality control policies. While we agree that applicants should be allowed significant judgement and flexibility in what they provide, we recommend that the Board be clearer in regard to the information that needs to be provided. We urge the Board to do so in order to reduce the risk that applicants may need to re-file their applications. In that regard, we note that footnote 25 to the proposal refers to SAS 25 and SQCS 2. We suggest that the Board indicate that providing information that addresses all of the elements of quality control covered by those standards will be sufficient.

Part V – Listing of Certain Procedures Involving the Applicant's Audit Practice

Items 5.1 and 5.5 call for information about criminal proceedings against the applicant or associated persons during the previous ten years. Due to the length of the period covered, it may be difficult, if not impossible for many firms to obtain information about proceedings that are no longer pending. Ten years is excessive because the information pertaining to such proceedings may not be available from the courts or from the persons named. We strongly encourage the Board to reconsider its need for information that is ten years old and to reduce the reporting period to five years. We do not believe that this reduction of information will impact the Board's ability to determine an applicant's fitness for registration.

Part VII – Roster of Associated Accountants

In Item 7.1, applicants are required to list the names of all accountants associated with the applicant. It is not clear to us whether this list must include accountants of other registered firms, when those firms are associated with the applicant. We assume that accountants associated with other registered firms would not have to be included and that they would instead be included in their firms' applications. If that is not the Board's intent, we recommend that the Board reconsider its approach. It would be difficult, if not impossible, to obtain all relevant information and consents from individuals who are not employed by the applicant.

Periods/Dates for which Information is Required

In certain places, the Form requests information, but it is not clear to us whether the information is to be provided for the most recent year, as of the most recent year-end, as of some other date, or for the upcoming year. Examples include Item 1.6, *Associated Entities*, Item 7.1, *Roster of Accountants Associated with Domestic Applicants*, and Item 7.3, *Number of Firm Personnel*. The Board should reconsider each of these requirements and make sure the rules are clear.

Disproportionate Cost Consequences for Non-U.S. Firms

The relative cost of registering and resources required will be much higher for our Member Firms outside the U.S., who naturally have far fewer audit clients who are US. issuers. For instance, some Member Firms will issue an audit report, or play a substantial role in such, for fewer than 5 issuers, but will nevertheless need to register hundreds of accountants. This could prove to be a prohibitive administrative and financial burden.

As this will be the first time that much of this information has ever been requested, it will involve the development of new systems and processes by most Firms, on a national or even global level. To ensure the required degree of reliability, completeness and accuracy, these new systems will need to include detailed checking procedures. For example, Items 5.5 requests information about crimes, misdemeanors or activities that are "substantially equivalent however denominated by the laws of the relevant non-U.S. jurisdiction". Determining whether a crime, misdemeanor or activity is "substantially equivalent" to those specifically identified in the rule would require a legal opinion and would place an undue hardship on non-U.S. firms. Furthermore, each Firm will need to respect its own local employment regulations and sensitivities. For example, some accountants may wish to seek independent legal advice before agreeing to sign the consents required by Item 8.1(b).

Accordingly, we strongly recommend a one year deferral of the due date for providing certain of the information required by the registration process. Even with such a relaxation, we predict that some of our firms will discontinue existing engagements, and/or forego the opportunity to accept engagements, that would expose them to the requirement to register with the Board. As the leading alternative to the "Big 4", we are particularly concerned about the likelihood that these registration requirements will lead to further concentration of the market for audit services worldwide.

The Filing Process

To expedite the filing and review process, we recommend that the Board permit applicants to file sections of Form 1 as they complete those sections, rather than requiring the entire Form to be complete before an applicant can submit it. Unlike information about a registrant that is provided in an SEC filing, much of the information Form 1 requires is discrete, so the Board should be able to effectively evaluate it even if all of the other information is not yet available.

In addition, we suggest that the provision for the Board to take action on a re-submitted application not later that 45 days after the date of its receipt should be modified to require action to be taken as soon as is practicable and consistent with the nature of information submitted, but in any event no later than 45 days. Otherwise, resubmission of a minor amount of information could result in use of a full 45 day review period. With the difficulty in providing the required information and the ambiguity in certain of the proposed provisions, such delays could result in a denial of a registration by the prescribed deadline.

The Board also needs to consider and provide rules stating how current the information in Form 1 needs to be. In a Securities Act registration statement, financial statements generally need to be only as current as 134 days prior to the filing date. Similarly, the Board's rules need to provide applicants with an appropriate amount of time to gather information and ensure that it is complete and accurate.

Conclusion

Allowing a transitional period of flexibility, for both U.S. firms and non-U.S. firms, will not compromise the Board's objectives or the interests of the public. It would allow Firms to properly develop the required new systems and processes of information gathering and detailed checking

procedures. It would also presumably assist the Board by staggering the review of an enormous volume of data contained in hundreds of applications.

The particular concerns of non-U.S. firms, especially those which audit a small number of U.S. issuers or their components, demand commensurate consideration. We believe the Board has the ability to draft the rules in a way that exempts certain or all non-U.S. firms altogether, either directly or by the definition or application of "substantial role". It is important to avoid raising market-entry barriers to reputable, highly capable auditors.

The Substantial Role

We believe there are a number of implementation issues regarding the definition of "substantial role".

How and When Significance of a Subsidiary Should be Measured

Item 2.4 addresses issuers for which an applicant plays or expects to play a "substantial role". The Board should clarify when and how an applicant should determine whether its role is substantial.

Proposed Rule 1001(n) is silent as to when an accounting firm should determine if it plays a substantial role in preparing or furnishing an audit report. The Rule must take into consideration that the significance of a subsidiary or component can change from one year to the next. In addition, the Board should also consider the fact pattern where a firm reasonably concludes that it will not play a substantial role in the audit of an issuer and therefore concludes that it does not need to register, but the situation changes during the course of the audit and it turns out that the firm does play a substantial role. To provide a practical approach to these issues, we believe the rules should permit an applicant to determine this at the outset of an engagement.

We recommend that the Board adopt an approach where the 20% tests are performed at the beginning of the issuer's fiscal year using prior year information. We further recommend that the test be performed only once during an issuer's fiscal year. We do not believe the Board should require a reconsideration of significance, regardless of changing circumstances, until the next fiscal year. Such an approach would be similar to the one used in applying new Rule 2-01(f)(7)(ii)(D) of Regulation S-X relating to partner rotation requirements.

Applying the Rule to Auditors Who Perform Material Services for Non-Client Issuers

In situations where firms that audit an issuer are part of a single worldwide network, we believe it is practicable for those firms to share hours and fees information and apply this rule. In situations where an auditor performs audit procedures, and the issuer is audited by another firm, we believe the "material services" portion of the test should not apply. We believe the test is not workable because the auditors of both the parent and the subsidiary may not have access to information about total engagement hours and fees.

How Fees From Significant Subsidiaries Should be Reported

It is not clear to us how an applicant should report its fees in certain situations. For example, if an applicant audits and issues a report on a significant subsidiary, and does not audit the issuer, it is not clear to us whether the fees for that audit should be reported under Item 2.1, 2.2, or 2.4. We urge the Board to clarify these reporting requirements.

Firms that Only Play a Substantial Role

We suggest that the Board consider having two categories of registered firms: (1) those that audit issuers and (2) those that only play a substantial role. Many of our non-U.S. Member Firms do not audit any issuers and will be required to register only because they play a substantial role in the audit of one or more issuers. If the Board does not decide to exempt such firms, we suggest that it consider whether its information needs with respect to these firms are less than its requirements for firms that audit issuers and whether it can permit these firms to provide abbreviated information in their applications.

The Legal Conflicts in Foreign Jurisdictions and Problems of Dual Regulation and Oversight

Our information and communications with Member Firms have identified potential problems in a number of jurisdictions. The profession's large firms commissioned the international law firm, Linklaters, to review the Act and consider what issues may arise under domestic legislation in certain European jurisdictions, and their report of 2 October 2002[1] also identified significant potential conflicts. These may be summarised as follows:

Data Protection

We understand that much of the information requested upon registration would be considered "personal data" under European Union (EU) legislation (refer EC Directive 95\46\EC). This personal data would include such information as the details of all accountants associated with the applicant and information relating to criminal, civil or administrative actions or disciplinary proceedings pending. Informed and specific consent must be given by each accountant, as well as all other "data subjects", such as clients and other employees or associated persons, before the application can be made.

Moreover, EU legislation prohibits the transfer of personal data to countries outside the EU, unless there is an agreed transborder data flow in line with the EC Directive. It would appear that the Board (or U.S. regulators) and the European Commission (or EU regulators) would need to strike a formal agreement which would provide an adequate level of data protection, as required by the Directive, while allowing the inclusion of sufficient information, as required by the Board.

Public disclosure of some information requested upon registration could be seriously prejudicial to both the accounting firm and individual partners. Such potentially sensitive information includes data requested about any criminal, civil, government or administrative and disciplinary action or other proceedings brought against individuals within the last ten years. This information may not previously have been on the public record, especially where the case is pending, and may not even be relevant to the Board if the individual concerned does not participate in or contribute to the preparation of an audit report of an issuer.

These factors mean that Member Firms may be forced to strike a balance between fulfilling disclosure requirements and not revealing information which could damage their prospects in defending current or future proceedings.

Access to Documents and Consent to Provide Testimony

In some countries, it would be illegal for our Member Firm to give consent to the Board to access documents or provide testimony, as required by Item 8.1 of Form 1. This obstacle often cannot be overcome by gaining prior client or individual consent.

[1] entitled "Sarbanes-Oxley Act 2002, Conflicts with Domestic Legislation in Key European Jurisdictions"

For example, in France, inspection by a foreign regulator is simply not permitted under French law. Whilst audit working papers and other information must be supplied to both the local regulator and the domestic securities regulator in the event of legal or professional proceedings, these rules do not apply to any foreign regulator. This is also the case in Italy where client consent could not override the client confidentiality provisions set out in the Italian Civil Code (which regulates audits of limited liability companies).

In Switzerland, audit working papers are protected by the Secrecy Obligation of Article 730 of the Swiss Code of Obligations and Article 321 of the Swiss Penal Code. These provisions not only protect the confidentiality interests of the audited company but also the confidentiality interests of various third parties affected. Obtaining the consent of clients to release papers would not prevent a breach of the Code, as this would not protect the third parties affected.

This is also a specific issue in Germany. The constitutional right in Germany of individuals not to give self-incriminating testimony could never be waived by our Member Firm (as the applicant), as the right does not belong to the Firm, but rather to the individual. In order to address issues of client confidentiality and secrecy, as required by the German Commercial Code, specific consent would be required. Whilst issuers might have little choice but to provide consent if they are not themselves to breach U.S. rules, it is by no means certain that individual employees of the Firm could be forced to give consent, particularly if they are not themselves involved in the audit of issuers.

Problems with Dual Regulation and Oversight

Different Interpretations and Approaches

It is probable that the Board's powers will be challenged in different jurisdictions as accountants seek guidance from their domestic courts to clarify their competing obligations. As a matter of private international law, the Board will not generally be able to enforce its powers within a country without the intervention of the courts in that country. Further, it is questionable whether local regulators would be prepared, in circumstances where their own system of regulation provides an equivalence of protection to investors, to accommodate the extra territorial reach of the Board in this manner. There is a risk of inconsistent decisions by the different courts, leading to different approaches emerging in different countries.

Double Jeopardy

The disciplinary system envisaged by the Act creates a double jeopardy for many auditors who will also be subject to national disciplinary systems. This would contravene the principles of natural justice enshrined in domestic laws as well as under the Universal Declaration of Human Rights (to which the U.S. is not party). Whilst the U.S. is party to the International Covenant on Civil and Political Rights which provides that no-one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedures of each country, this would not help accountants, who would possibly be subject to regulatory rather than criminal sanction. Thus, an accountant may indeed find himself sanctioned twice for the same violation, or even more bizarrely, exonerated under one investigation and sanctioned in another investigation for the same alleged violation.

Dual Standards

Our non-U.S. Member Firms will have to operate two sets of auditing, quality control and ethical standards. This may involve many changes in practice and we expect considerable confusion and uncertainty as to what will be the requisite standard for meeting their duty to clients.

Sensitivities

The Board's requirements fail to respect adequately the national sovereignty of countries outside the US.. We believe that the Board needs to be mindful of the different but equivalent ways in which accounting firms are regulated around the world. Besides the legal difficulties already mentioned, dual oversight is inefficient, costly and inconsistent with the recognised principle of "positive comity", which acknowledges mutual respect for the laws and regulations of other states.

Conclusion

We believe it to be appropriate for direct oversight of foreign accounting firms to continue to be exercised by competent national regulatory authorities, rather than the Board. The Board needs to have a detailed understanding, as do US. investors, of the oversight and monitoring processes, together with investigation and disciplinary procedures, already in operation at a national level. The Board should enter into constructive dialogues with the regulatory authorities responsible for foreign applicants, in order not only to assess their competency, but also to develop a clear understanding of the different regulatory regimes that exist around the world.

We believe it should be possible to work towards (where appropriate) a system of mutual recognition, where reliance may be placed on the monitoring systems of other jurisdictions. We understand that efforts are already underway in this regard in Canada. This respects the national sovereignty of non-U.S. countries and also addresses some of the practical problems that would arise with direct Board oversight (e.g., the fact that working papers will be maintained in a foreign language).

For the reasons stated above, the Board should consider exempting foreign accounting firms from having to provide testimony to the Board or access to their audit working papers. Again, it should be for the domestic regulatory agencies to exercise oversight in these areas. Where necessary, the Board may wish to enter into a series of bilateral dialogues with foreign regulators to establish proper lines of communication.

The Role of the U.S. Firm and the International Network

As mentioned above, when the only role of a non-U.S. firm is one of "substantial role", we believe that the registration information required (should the firm indeed be required to register) should be on an abbreviated basis. Moreover, we believe there is scope for some comfort to be taken from an applicant's membership of a recognised international network of accounting firms. All our Member Firms have met our membership requirements and are bound to comply with our technical and ethical standards. This compliance is monitored by regular international quality control reviews.

Also, we believe that where our U.S. Member Firm is the principal auditor of an issuer, it would make sense for them to oversee compliance with the Board's rules and standards by the non-U.S. Member Firm. Where our U.S. Firm is not the principal auditor of a foreign private issuer, we would strongly encourage the continuation of the system of SECPS Appendix K requirements.

Thus, should the Board conclude that it is necessary to carry out oversight of firms in foreign jurisdictions, this involvement of the U.S. firm, and membership of a recognised international network, should affect the scope of the Board's inspection programme.

Conclusion

There are compelling reasons for the Board to adapt its registration process. There should be a transition period, introducing flexibility into what information is requested, the format in which it is presented and the timing of its presentation. Many items need to be clarified prior to the rules being adopted.

There are additional considerations that are unique to non-U.S. accounting firms. We believe the Board should seriously consider utilising its power to grant exemptions to certain non-U.S. accounting firms from its registration and/or oversight system. Otherwise, the application of the definition of "substantial role" should be modified to reduce the registration and oversight requirements applicable to those non-U.S. firms which need to register only because they audit components of one or more U.S. issuers, and which are members of a recognised international network of accounting firms, and which are affiliated with a U.S. firm that is involved in such engagements.

Given all of the difficulties and uncertainties surrounding the Board's reach to foreign jurisdictions, it is essential that time is allowed for continuing dialogue between the Board and other regional and national regulators. The Board's unilateral actions may be seen to work against the objectives of many of the world's accounting professions and market regulators, who are working towards harmonisation and convergence of financial reporting standards, points of auditing and corporate laws.

Efforts should be made to find ways of achieving the Board's objectives by means which do not conflict with local laws and professional standards or incur considerable additional time and expense. Avenues to be explored include (where appropriate) a system of mutual recognition, as well as an extension of the current SECPS Appendix K regime.

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

Yours faithfully,
BDO International B.V.

Frans Samyn
Chief Executive Officer