



FINANCIAL SERVICES AGENCY  
GOVERNMENT OF JAPAN  
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August 15, 2003

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

Re: Proposed Rules on Investigations and Adjudications (PCAOB Rulemaking  
Docket Matter No. 005)

Dear Secretary:

As the Director for International Financial Markets of the Financial Services Agency of Japan ("FSA"), I am pleased to submit this letter on behalf of the FSA in response to the request of the Public Company Accounting Oversight Board ("PCAOB") for comments on the Proposed Rules on Investigations and Adjudications ("Proposed Rules") as contained in PCAOB Release No. 2003-012 ( July 28, 2003)("Release" ).

**(Importance of dialogues and cooperation between the PCAOB and the FSA)**

We appreciate that the PCAOB acknowledges in the Release special issues relating to Non-U.S. firms and the need for dialogues between the Board and its foreign counterparts. Such acknowledgement by the PCAOB is consistent with the acknowledgement, encouragement and urge by the Securities and Exchange Commission ("SEC") contained in its Release No. 34-48180 in which the SEC granted approval of the PCAOB's proposed rules relating to registration system. As the auditor oversight body in Japan, the FSA is also willing to continue constructive and practical dialogues and cooperation with the PCAOB in order to solve the serious issues of the oversight over Japanese audit firms by the PCAOB in a mutually satisfactory way. My visit to the PCAOB at the end of June was a first step toward such purpose.

**( Request for an appropriate exemption from the oversight by the PCAOB )**

The PCAOB's oversight, including investigations and adjudications, of foreign public accounting firms would raise a much more serious problem than the registration requirement. This raises not only the issue of imposing "unnecessary burdens or conflicting requirements" as stated by the SEC and PCAOB, but also the *more fundamental issue concerning the need to respect foreign jurisdictions' sovereignty and equivalent auditor oversight systems*, as shown in our public comment letter to the PCAOB dated March 28 and as I mentioned at the Roundtable on Registration and Oversight of Non-U.S. Public Accounting Firms on March 31. We would like to add that on May 30 the Japanese Diet passed a bill for the comprehensive revision of the Japanese CPAs Law, and through this revision, which will be effective next April, the Japanese auditor oversight system will be even more substantially equivalent to that provided under the Sarbanes-Oxley Act.

*Japanese audit firms should not be subject to the oversight powers of the PCAOB.* Legal powers of the PCAOB, including investigations, should not be, and could not be, conducted or enforced within the Japanese jurisdiction as a matter of sovereignty. In addition, since the FSA and CPAAOB (CPAs and Auditing Oversight Board) to be established next April under the revised CPAs Law have the power to require Japanese audit firms to report and produce documents, the FSA has the power to conduct investigations for the purpose of taking disciplinary actions against Japanese audit firms, and the JICPA (Japanese Institute of CPAs) also has the power to require Japanese audit firms to report pursuant to its charter under the revised CPAs Law, *it is not necessary or appropriate for the PCAOB to conduct investigations of Japanese audit firms.* In addition, since the FSA has the power to take disciplinary actions against Japanese audit firms, *it is not necessary or appropriate for the PCAOB to take disciplinary proceedings against Japanese audit firms* which do not have physical presence in the United States.

From this viewpoint, there is a problem in the Proposed Rules because they do not include any provision to deal with non-U.S. firms, including Japanese audit firms. Although the Release states that "the Board's proposed rules are not intended in any way to signal that the Board has already determined how its oversight should operate as to those firms, or to preclude any adjustments to the rules that may be appropriate in light of those discussions," non-U.S. firms would be subject to the same investigations and adjudications by the PCAOB as the U.S. firms if the Proposed Rules were not adjusted. Such an outcome would not be in line with the emphasis by the SEC

and the PCAOB on dialogues with foreign counterparts. The sequence of steps which should be taken should be as follows:

- First, registered foreign accounting firms should be exempted from the Proposed Rules.
- Second, the PCAOB and its foreign counterparts (the FSA and the JICPA) should continue dialogues and reach a mutually satisfactory conclusion.
- Third, the PCAOB's Rules on Investigations and Adjudications should be adjusted as necessary based on the above conclusion.

Therefore, *we respectfully request the PCAOB to provide an appropriate exemption from the Proposed Rules to Japanese audit firms.*

**(Other comments )**

Based on this premise, we would like to make further comments on the Proposed Rules.

Proposed Rule 5105 provides for "accounting board requests" for testimony or production of documents from persons not associated with a registered public accounting firm, including "any client of a registered public accounting firm." Although the PCAOB could only request, not require, testimony or production of documents from such persons, the PCAOB could seek issuance by the SEC of a subpoena to require the testimony and production of documents, pursuant to proposed Rule 5111. We would like to note that any such a request by the PCAOB or subpoena by the SEC would not be enforceable in foreign jurisdictions such as Japan.

**(Conclusion)**

*We respectfully request that the PCAOB will take full account of our comments in promulgating the final rules.*

Yours Sincerely,

Naohiko MATSUO  
Director for International Financial Markets

Financial Services Agency, Japan