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2 February 2009

Dear Madam or Sir

PCAOB RELEASE 2008-007 (RULE 4003) of 4 December 2008

We very much welcome the opportunity to comment on the Board's release on adopting an amendment to Rule 4003 on the inspection of foreign registrants on behalf of KPMG International, the KPMG network of independent member firms. KPMG acknowledges the Board's mission to protect investors in the US capital markets and the strong support of the Board for closer international cooperation among oversight bodies. There are 50 KPMG member firms from outside the United States that are registered with the PCAOB, of which at least 39 registrants have requested home country reliance under Rule 4011.

KPMG has always supported robust oversight based on international cooperation and home country control principle where an audit firm is subject to a single regulatory framework, led by the independent home country regulator, that works with and shares relevant information on methodologies and outcomes with other regulators that have a relevant interest, but who place full reliance on that home country regulator. Therefore, we believe the broad thrust of the Policy Statement of 5 December 2007 does allow some greater flexibility and time toward regulators around the globe operating within a home country-led framework supported by shared protocols, thus avoiding multiple and overlapping inspections.

Inspection Timing: Within this context, KPMG broadly agrees with the more realistic timescale set out for outstanding inspections and recognise the immense work load and challenge which the cyclical inspections of ex-US audit firms impose on the PCAOB. We appreciate the flexibility which the PCAOB shows in order to find the right balance between its mandate to oversee all registered audit firms and the difficulties encountered when performing this task which are not only due to the immense number of firms to inspect but also due to legal conflicts which arise when performing inspections in foreign territories.

Registered Firms' Obligations: KPMG has greater concerns in relation to the approach described on page 15 of Release No. 2008-007 and as expressed in footnote 35 (page 16 of the Release). If adopted, it could place the registered foreign audit firms in an invidious deadlocked position of either not being compliant with the PCAOB rules or not being compliant with applicable local laws. Hitherto, the PCAOB had shown great sensitivity in trying to avoid such conflict.

Foreign audit firms have to register with the PCAOB in order to be able to issue audit reports on ex-US issuers with US listings and/or to participate in the audit of US-domestic issuers that have significant overseas operations ("substantial role" criterion). If foreign audit firms had not registered with the PCAOB, both US and ex-US issuers would have come into a situation where they could not present audited financial statements to the public. This would have a serious negative impact on the US capital markets. Thus, it is not fair to say that foreign firms register voluntarily and that they may withdraw from registration. In the interest of the issuers and the capital markets, there was no practical alternative for ex-US audit firms that act as principal auditor or in a "substantial role" on the audit other than to register with the PCAOB. When registering, KPMG member firms undertook to comply with PCAOB requests for cooperation to the fullest extent permissible under applicable law.

Therefore, where local laws prevent foreign audit firms them from fully cooperating with the PCAOB, they cannot reasonably be expected to breach local laws, and where there are conflicts between PCAOB requests and local laws, these need to be resolved in a manner that is satisfactory to both PCAOB as well as local governmental bodies, whose valid interest in enforcing local laws and regulations need to be appropriately acknowledged and respected. We would strongly oppose any sanction on a foreign registrant merely for following locally applicable laws.

In certain jurisdictions, the ability of an audit firm to submit to inspection by the PCAOB is limited by the broader stance taken by home country authorities that may regard inspections by non local regulators as an infringement of their sovereignty. As more fully explained in the attached detailed response, the proposed stance and sanctions by the PCAOB on registered firms that are unable to fully comply with requests for information due to home country legal or sovereignty impediments, which could include revocation of registration, could be detrimental to audit quality, could result in expectations that a registered audit firm should contemplate violating local laws, and may undermine efforts to find effective solutions to those issues.

Conclusion

KPMG supports the Board's goal of closer international cooperation among oversight bodies. We believe that the International Forum of Independent Audit Regulators (IFIAR) is the right platform for discussion of further convergence of oversight systems and on promoting best practice in inspections. Equally, we would hope that the PCAOB will work through IFIAR with their peers in other countries to find pragmatic ways around legal conflicts while ensuring that investors (in whatever territory) are protected and can have full confidence in the quality and integrity of the audit firm and process.

Our detailed response is set out below and we would be very willing to participate in any Round Table, or to provide further evidence, to explore workable solutions to these issues. If you have any further queries, please contact Hans-Peter Aicher (hpaicher@kpmg.com) on +49 89 9282-1453 or David Gardner (david.l.gardner@kpmg.co.uk) on +44 20 7311 1316.

Yours faithfully

KPMG International

KPMG International

I. Part I of Release No. 2008-007 – Timing of Certain Inspections

- The slippage in timing underlines the necessity that regulators across the globe converge their oversight systems and coordinate their inspection activities; no regulator will ever be able to have the resources necessary for performing inspections worldwide.

- Only mutual recognition and reliance on home country inspections can overcome this lack of resources and help the oversight bodies to concentrate on the audit firms originating in their own country; as more and more jurisdictions implement oversight systems which are equivalent to the PCAOB system, such move to mutual recognition should remain in the focus of further PCAOB rulemaking; the Policy Statement of 5 December 2007 points in this direction (but does not go far enough because it only discusses "full reliance" which is less than "mutual recognition", see our Comment Letter on the Policy Statement of February 2008).

- The PCAOB itself recognises that joint inspections allow to take advantage of potential efficiencies and to avoid imposing unnecessary regulatory burdens on the firm. Where adequate oversight systems are implemented, we are convinced that the quality of inspections will improve when performed by the local regulator or jointly with the PCAOB.

- In those jurisdictions where the PCAOB has still not reached a cooperative arrangement with the local regulator and is, therefore, behind its own inspection schedule, this is not an issue of non-cooperation by audit firms but is due to the inability to fully comply with requests for co-operation due to local legal and sovereignty issues which are beyond the control of the registered firm to resolve.

- KPMG's position always has been that we welcome a robust and balanced inspection system based on home country control and that all registered KPMG member firms have, and will always, cooperate with the PCAOB to the extent legally possible and KPMG supports joint inspections and recommends the PCAOB's move towards mutual recognition. This is why, the vast majority of ex-US KPMG registrants (at least 39 out of 50) submitted the Rule 4011 statement expressing their request that the PCAOB relies on home country inspections.

- We appreciate the constructive approach of the PCAOB when performing inspections outside the US which indicates that the PCAOB is sensitised to respect local law, where possible.

- Where there is a prospect of reaching a co-operative arrangement on joint inspections with the local oversight body, we would encourage the PCAOB to postpone their sole inspection. Otherwise, audit firms could find themselves in a situation where they appear to be expected to breach one law in order to comply with another law. Such situation would expose audit firms to sanctions by the PCAOB, the local regulator and/or law enforcement agencies; this would send the wrong signals to the capital markets, the issuers and investors because it would undermine the confidence in the integrity of the audit firm; the breach of either law would occur for reasons which are beyond the audit firm's control.

- Therefore, we encourage the PCAOB to follow this path even if this makes any further adjustments to the inspection frequency requirements necessary beyond 2009.

- We do not support the proposed transparency concerning delayed inspections; the contemplated list of all registered firms that have not yet had their first Board inspection seems to run the risk of being a black list irrespective of however the PCAOB describes it. Investors can more or less work out which firms the PCAOB has inspected by virtue of the PCAOB having issued a report. The proposed list seems to serve to highlight something that the local auditor has no control over – either due to local legal/sovereignty impediments that may delay an inspection, or due to the timing determined by PCAOB when it chooses to carry out an inspection. Furthermore, as noted below, whether or not an auditor has been inspected is different to the question as to whether that auditor has done sufficient audit work – either as principal auditor or where it participates on an audit. So such lists may confuse investors and negatively impact on the perception of the reliability of the audits of those issuers whose auditors have not yet been inspected, thereby potentially adding to instability of the capital markets.

II. Part II of Release No. 2008-007 – Registered Firms' Obligations

1. KPMG supports registered firms' compliance with PCAOB requests for cooperation, subject to compliance with local laws. KPMG opposes any sanction or de-registration of registrants simply for being unable to submit to PCAOB inspection to avoid violating locally applicable laws. Though this conflict is not resolvable by the audit firm, stakeholders might lose confidence in the audit firm, including the issuer itself. It would not be in the interest of the issuer or investors if, for example, a local auditor is de-registered due to local sovereignty / legal impediments in a location where the US issuer has substantive operations.

   The Sarbanes-Oxley Act provides in Sec. 106(c) for an exemption authority according to which the PCAOB could, either unconditionally or upon specified terms and conditions, exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the PCAOB Rules. So, it is in the discretion of the PCAOB to avoid this delicate position of the audit firms and not to put at risk the confidence of the investors' community in the (US) capital markets.

   It is understood that, of course, this deadlock situation is not due to a non-cooperative behaviour of the foreign audit firms but to the local legal environment which is beyond the control of the audit firms. It must therefore be resolved at regulator and governmental level as we suggest in the opening letter.

2. As regards the contemplated sanctions in case of a registered firm's failure to cooperate in an inspection (page 16 of Release No. 2008-007), we would like to comment as follows:

   - Restricting a firm from accepting any new issuer audit client would not help to solve the problem because the issuer would not be able to find any other audit firm in that respective jurisdiction which could cooperate with the PCAOB. The reason for this is that non-cooperation is not due to the unwillingness of the audit firm but to the local legal and sovereignty environment; this environment is applicable to all audit firms in that jurisdiction, so the same issue arises for the issuer when selecting any auditor in that jurisdiction.

   - The restriction to perform referred work on the audit of any issuer entails the same problems. For the same reason as described above, the principal auditor (or the client, respectively) could not replace the auditor performing referred work by another registered auditor from the same jurisdiction.

The only option the client and the principal auditor might have in this situation is that they could engage a non-registered audit firm from that jurisdiction (on the assumption that the referred work is not "substantial" in the sense of the PCAOB Rules) because only such non-registered audit firms would not be exposed to inspections of the PCAOB and, therefore, would not face such a legal conflict.

However, it is doubtful if this would be the right signal to the capital markets and whether this would not have a negative impact on the audit quality if the principal auditor / client would have to choose a local, non-registered audit firm which does not belong to one of the international networks of audit firms.

- Such sanctions would not enhance the competitiveness of the US capital markets, as many all issuers, both US and ex-US, are affected indirectly by the legal and sovereignty impediments their auditors face.

- The PCAOB should consider the negative impact on both US and ex-US issuers which might face a situation where no audit firm would be available in the certain jurisdictions to perform some, or, the entire audit.

  To avoid this situation, an issuer might be forced to appoint a US audit firm (or a registered audit firm which is based in another "non-conflicting" jurisdiction) as their principal or "substantial role" auditor, but this would, for various practical reasons, not enhance audit quality, and in any case, may not actually resolve the local legal or sovereignty impediments to provide information concerning audit work undertaken in respect of that local jurisdiction.

3. Comments on the contemplated public disclosure requirements:

3.1 Disclosure that the principal auditor has failed to provide information in response to an inspection demand on the basis of non-US legal restrictions could create confusion in the capital markets, including where the auditor has complied with requests from the PCAOB to the fullest extent permissible under local laws. Such inability to provide requested information has no relevance for the financial statements of the issuer.

- However, such disclosure would entail the risk that investors are misled in a way that they misinterpret this non-cooperation as an unwillingness of the audit firm (which is not the case because the audit firm is bound by its local legal restrictions).

- Further, such disclosure could have a negative influence on the competitiveness of the principal auditor because investors could be led to believe that specifically this audit firm does not cooperate with the PCAOB without being aware that all other audit firms from that respective jurisdiction would be in the same position, i.e. could not comply with the PCAOB's inspection demand.

3.2 Any representation of the principal auditor about whether the principal auditor used the work of any registered firm that had to decline to cooperate with the PCAOB on the basis of non-US legal restrictions or sovereignty concerns could be misleading for the public and the investors because such representation would only be required in cases where the participating auditor is PCAOB-registered. This concept would disregard that not all audit firms are required to register with the PCAOB (because they do not play a "substantial role" in the audit) and, therefore, by chance, the representation would not be necessary if the participating audit firm is not registered (and, therefore, not subject to PCAOB inspections).

- This effect is confusing, undermines confidence in the capital markets and negatively affects the competition among audit firms. Finally, such representation would not give any indication about the quality of the audit work performed by the participating audit firm.

- Such a concept may not be helpful to maintain confidence in the quality of audits and the audit oversight system.

3.3 The proposed disclosure requirements in the case when the principal auditor uses the work of any such firm and assumes responsibility for that work (under AU § 543.04) or makes reference to the audit of the other auditor (under AU § 543.06) also confuse registered and non-registered audit firms in an inappropriate manner.

- Existing auditing standards sufficiently stipulate the requirements that have to be met in order to allow the principal auditor to use, and take responsibility for, the work of other auditors. The principal auditor determines whether he may take responsibility for the work of local auditors; however, that determination is distinct from establishing the extent of impediments that may govern the local auditor in complying with requests from PCAOB and their implications on PCAOB's inspection regime.

- The mere fact that an inspection has been performed would become a sign of quality in this specific audit and may create the expectation of the capital markets and investors that only inspected audit firms could perform high quality audits.

- The proposed disclosure requirements would cover references to all registered audit firms that participate on the audit (irrespective of materiality of the local entity). Auditors in many non-US jurisdictions have various legal impediments that may restrict provision of information by them to the PCAOB. Therefore, the contemplated disclosures could be very lengthy and of no real benefit to investors, given that where the principal auditor takes sole responsibility for the audit report, the burden of obtaining sufficient audit evidence is on that principal auditor. Furthermore, the fact that there may be impediments on participating auditors in complying with PCAOB requests for information does not mean that there were similar impediments on the local auditor to appropriately cooperate with the principal auditor and respond to requests for information from the principal auditor. Nor does it mean, as noted earlier, that the local audits were deficient. However, making disclosures as contemplated could confuse investors.

- Finally, if there was no request for inspection which is at the discretion of the PCAOB, an audit firm would not be "caught" by the disclosure requirement even if there were legal or sovereignty obstacles which would have prevented that audit firm from fully cooperating with the PCAOB. It does not appear appropriate to single out those instances for disclosure where there is an inability of the foreign audit firm to fully cooperate whilst other circumstances which may have more relevance for the public and investors are disregarded.

4. Other possible rulemaking approaches

- We do not see any appropriate disclosure requirements (nor do we see the need for them) in such situations where audit firms are not able to fully cooperate due to local legal restrictions.

- We see, however, the risk of the creation of new expectation gaps and possible confusion at investor level.

- Rather than imposing additional burdens on audit firms, the PCAOB might consider publishing its own assessment as to the adequacy of foreign oversight systems to the effect that investors will be informed whether or not the principal auditor is subject to a robust oversight regime in its home country in the eyes of the PCAOB (irrelevant of the fact whether or not the PCAOB has achieved a cooperative arrangement on joint inspections with the local regulator); this is also the approach the EU is considering with regard to Art. 47 of the 8th Directive.