BDO Global Coordination B.V.
International Executive Office

Boulevard de la Woluwe 60, B-1200 Brussels
Telephone: +32 2 778 01 30 Fax: +32 2 778 01 43
E-mail: bdoglobal@bdoglobal.com

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By email to;
Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803

PCAOB Rulemaking Docket Matter No. 027

Rule Amendments concerning the timing of certain inspections of non-U.S. Firms, and other issues relating to inspections of non-U.S. Firms -- PCAOB Release No. 2008-007

Dear Sir,

BDO International welcomes the opportunity to comment on the Public Company Accounting Oversight Board's (hereafter the PCAOB or the Board) Release No 2008-007. BDO International is a worldwide network of independent public accounting firms ("BDO Member Firms"), each of which is a separate legal entity serving international clients, including U.S. public companies. The network is coordinated by BDO Global Coordination B.V. located in Brussels, Belgium.

BDO International believes that investors and the securities markets benefit through coordination and cooperation among national regulators. In an increasingly global economy, we have seen only too starkly how transactions and events impacting businesses can transcend national borders. As a consequence we firmly believe that convergence of professional standards (including oversight norms) and coordination of regulatory efforts is imperative.

We make our submission on the PCAOB Release in that context and draw attention also to the related submission made by BDO International in March 2008 on PCAOB Release No. 2007-011 (Guidance Regarding Implementation of PCAOB Rule 4012).

RPR Brussels
BTW/TVA N° BE 0435 924 433
ABN AMRO Bank N V - N° 720-5204915-04

General remarks

We fully support the Board's efforts to establish cooperative relationships with non-U.S. oversight authorities and believe that these efforts will be a key step in moving towards a system of mutual recognition, in which a foreign country's oversight authority accepts the results of an inspection performed by the domestic country's (home country) oversight authority, as being sufficient to satisfy its own inspection requirements.

There will undoubtedly be many challenges to achieving such a an outcome, but we believe that establishing cooperative relationships with non-U.S. oversight authorities will further the Board's goals of protecting investors, ensuring effective and efficient oversight of audit firms, improving audit quality, and helping to preserve the public trust in the auditing profession.

We generally support the extension of the Board's inspection schedules, but would encourage additional flexibility in setting the revised extension deadlines for reasons set out below.

We do not support the Board's proposal to publish a list of audit firms not yet inspected, without a means of ensuring that non-US audit firms included on the list are not stigmatised or otherwise disadvantaged. We also believe that such a proposal could give rise to confusion among investors and have the potential unintended consequence of reflecting poorly on the oversight authority in the jurisdiction of any non-US firms so listed.

We have serious concerns about the proposal under consideration that would require public disclosure in the principal auditor's audit report, or elsewhere, of information regarding a non-US firm's refusal to provide information because of legal restrictions or sovereignty concerns and the principal auditor's procedures to gain comfort as to the adequacy of the work performed by the non-US firm. It is our belief that the disclosures under consideration would be confusing to investors, would be disproportionate to other elements of the audit, and would seem to further precipitate non-US legal and sovereignty issues by indirectly requiring disclosure of internal and external inspection results of non-US firms. We believe that the existing protocol involving PCAOB inspections of US firms already provides sufficient comfort to the inspection staff in the areas covered by much of the contemplated disclosures.

Lastly, we are concerned with the Board's reiteration that a non-US firm would be in violation of Rule 4006 for a failure to provide information to the Board where such failure arises as a result of a legal impediment present in the non-U.S. firm's home country law. Such situations arise as a result of a conflict of law and should be addressed and resolved by inter-governmental or inter-regulator contact, rather than by forcing non-US audit firms to choose which law they wish to violate. Such a situation is untenable and arguably will set back cooperative relationships with the oversight authorities in the jurisdictions whose laws give rise to the situations in question.

Our more specific comments are as follows:

1. Timing of certain inspections

We note that the Board has adopted and submitted for SEC approval, amendments that would eliminate the requirement that the Board regularly inspect firms that play a substantial role in the preparation or furnishing of an audit report but do not issue an audit report. We support such amendments based on the principle of reducing unnecessary regulatory burdens.

We are mindful that the Sarbanes-Oxley Act and the PCAOB Rules place certain responsibilities on the Board in relation to conducting a continuing programme of inspections of registered public accounting firms. Nonetheless we believe that delays in completing inspections can be justified where the delay serves investors' long-term interests of establishing cooperative arrangements that facilitate inspections of non-U.S. firms. Accordingly, we agree with the Board's proposed amendment to Rule 4003 regarding postponing first inspections of the remaining non-US audit firms which the Board is currently required to conduct before end of 2008.
We are concerned, however, that the extension by one year will not be sufficient to allow the Board and the non-U.S. oversight authorities to address existing impediments to the Board's inspections. It may not be practicable, within the extended timeframe allowed, to resolve those impediments and conduct inspections in those countries covered by this one-year extension. We suggest therefore, that the Board should not rule out further adjustments to the inspection-frequency requirements applicable to firms whose first inspection was due by the end of 2008, where such further extension would facilitate cooperation with non-US oversight authorities.

We also support the Board's proposal to amend its rules giving it the ability to postpone for up to three years, inspections that the Board is currently required to conduct before the end of 2009, in jurisdictions where the Board has conducted no inspections before 2009. As the underlying objective giving rise to extensions of the "2008 inspections" is the same as that justifying the extensions of the "2009 inspections", we would see a justification for seeking a similar extension period or flexibility for the "2008 inspections". As indicated above, we demur as to whether one year extensions for inspections that should have taken place by 2008, will prove to be an adequate extension period .

Whilst supportive of the Board's proposals above, we encourage the Board to continue its efforts on to finalise cooperative arrangements with all relevant non-U.S. oversight authorities.

2. <u>Basis for prioritising the timing of inspections in 2009-2012</u>

The Board indicates in the Release that in determining the schedule, it intends to "sequence ...... inspections such that certain minimum thresholds would be satisfied in each of the years from 2009 to 2012. The minimum thresholds would relate to U.S. market capitalisation of firms' issuer-audit clients."

Whilst we agree that use of U.S. market capitalisation is a reasonable *starting point* for prioritising inspections, we believe that the Board's approach as set out, without consideration of other relevant factors-- particularly legal and sovereignty impediments-- could result in premature inspection deadlines that could hinder concluding cooperative agreements with non-US oversight authorities and could be counterproductive.

In our opinion, other factors that should be taken into account would include the nature of existing impediments to securing cooperative working arrangements, the extent to which inspections are currently conducted by the oversight authority in that country, or other difficulties encountered in conducting inspections in the non-U.S. country.

The Board already assesses the oversight regimes of non-U.S. countries under its Rule 4012. Accordingly, audit firms located in countries where the oversight authority is strong, independent, transparent, and already conducting effective inspections, may merit a lower inspection priority than

those firms located in countries where the oversight authority is not yet fully developed. We endorse risk-based approaches of this nature and encourage a move towards *full mutual reliance* of home country inspections in appropriate circumstances.

As we stated in our submission on the proposal relating to Rule 4012 Release (Question 5):

"*We are of the view that the PCAOB should extend the meaning of full reliance* ***to eliminate*** *the need for joint inspections or the observation of portions of the inspection process. Any variations of this are in effect, versions of "partial reliance" and not indicative of mutual trust or unconditional professional recognition of the capabilities of the non-US Oversight Body*"

3. Transparency concerning delayed inspections

The Board has indicated that it is considering "maintaining on its web site an up-to-date list of all registered firms that have not yet had their first Board inspection even though more than four years have passed since the end of the calendar year in which they first issued an audit report while registered with the Board." The Board also indicates that "inclusion on the list would not be an indication that a firm has not cooperated with the Board or is at fault in any way…."

We have the following concerns about any such listing:

- The fact that a firm has not been the subject of a PCAOB inspection and is included on this list could be wrongly interpreted as meaning that the public can take no comfort as to the audit quality of that firm. This is unfair to the non-US firm, given that the scheduling of the Board's inspections of a non-U.S. firm is outside the control of that firm as are many of the legal and other impediments that may have prevented a satisfactory (or any) inspection from taking place.

- It is unclear as to whether any caveats or explanations to be provided would neutralise the possible conclusions that might be drawn by third parties as a result of a non-U.S. firm being included on the list.

• Finally, we believe that issuers could be impacted negatively by their auditor being identified on the list, as a result of doubts forming in investors' minds about the quality of the issuer's audit where the auditor has not been inspected by the Board. As the issuer does not have the ability to control the timing of a Board inspection or in any way affect the legal or other impediments that may have resulted in its auditor not having been inspected, such an action on the Board's part may have adverse unintended consequences.

In any event, we believe that such a list is unnecessary. The PCAOB website already lists the names of all firms that have been inspected including non-U.S. firms. It would be a simple matter of adding a note to that list, explaining the Board's inspection schedule as contemplated by this Release and that certain firms have been inspected, but their reports have not yet been finalised.

4. Refusal to provide information by non-US firms due to non-US legal impediments or sovereignty concerns

We are concerned by the Board's viewpoint in relation to the unwillingness or inability of non-US firm to provide information requested by PCAOB inspectors, where there are legal or sovereignty impediments.
The Release recognises in several places (pages 6, 8, and 9 in particular) that such impediments exist and that attempts to try to resolve the resulting conflicts can require a substantial effort. Nevertheless, the Release appears to start from the premise that a non-U.S. firm's failure or refusal to provide requested information constitutes a violation of Rule 4006 even in situations where the inability to comply is attributable to a legal restriction.
Whilst the Release indicates that the Board's consideration of any actual non-cooperation will be based on the facts of the case, footnote 35 on page 16 of the Release clearly states that *"the Board does not view non-US legal restrictions or the sovereignty concerns of local authorities as a sufficient defense in a Board disciplinary proceeding .....for failing or refusing to provide information requested in an inspection"*

We recognise that the Board's ability to fulfill its mandate literally, may be compromised when it is unable to obtain access to audit working papers or other information that it has requested in connection with its inspections. However, we believe that the Board's view on this issue is unworkable as it

will place non-U.S. firms in an impossible position as a consequence of what is essentially a conflict of laws.

Where a firm declines to provide the information sought to the Board's inspectors, that firm then risks being deemed to have violated the Board's rules with the various consequences and lines of censure available to the Board, up to and including revocation of registration.

On the other hand, if a firm provides the information to the Board's inspectors in apparent violation of its home country's laws, it will be exposed to home country discipline, which could also include revocation of the firm's licence and in certain countries, personal criminal law sanctions.

Furthermore, there are jurisdictions where violations of law or professional discipline rules in a foreign jurisdiction must be reported to the domestic oversight body, leading to a circular punishment scenario. It is highly undesirable to place a non-US firm in such a position and we strongly urge the Board to reconsider its actions in this regard.

Ultimately, the conflict of laws is a matter for resolution between sovereign powers and/or the oversight authorities involved. We would also suggest that the prospects for establishing sustainable cooperation with non-U.S. oversight authorities may be damaged if a non-U.S. firm's ability to comply fully with its home country laws is compromised by compliance with the Board's requirements. In the long term, this would be more injurious to the public interest and investor needs than the more immediate "non-compliance" by the non-US firm if it led to deregistration by non-US auditors, thus exacerbating the audit firm concentration concern and conceivably denying an issuer the right to appoint an appropriate auditor in its home country if all other domestic audit firms arrived at the same conclusion.

5. <u>Public Disclosure under Consideration by the PCAOB</u>

We appreciate the Board's concern about addressing aspects of the problem created by refusal of a non-U.S. firm to provide information on the basis of home country legal or sovereignty issues. However, the example of public disclosures that the Board has begun to consider is not, in our view, an appropriate solution.

We do not perceive there to be a benefit to disclosure to financial statement users of the fact that the principal auditor has failed to provide information in response to an inspection demand on the basis of non-U.S. legal restrictions or sovereignty concerns. In those instances, the PCAOB inspection staff would likely have achieved an appropriate degree of comfort through other means (including perhaps cooperation with the home country regulator), so disclosure of the fact under consideration would not seem to be useful information. Furthermore, such disclosure might be detrimental to establishing cooperative arrangements with non-U.S. oversight authorities.

If the various disclosures under consideration were included in the auditor's report, they would likely be confusing to investors. Audit reports are intended to fulfill a specific purpose in conveying the broad scope of the auditor's examination of the financial statements and, if required, the issuer's internal controls over financial reporting. Inclusion of specific procedures employed by the primary auditor in overseeing the work of the non-U.S. registered auditor, as well as the fact, based on inquiry, that the non-U.S. auditor declined to provide information in response to a Board inspection demand, would tend to obfuscate the focus of the report. This would pose particular problems if there were a proliferation of information resulting from the need to provide it regardless of whether the non-U.S, auditor played a "substantial role" in the audit and would be further exacerbated if there were a large number of non-U.S. auditors involved in the audits of the subsidiaries of a consolidated group that declined to provide information to the Board because of legal or sovereignty restrictions. Even if the Board were to adopt disclosures contemplated by the example, it should do so only with respect to non-U.S. auditors whose work constituted a "substantial role" on the engagement. Any level below that would appear not to be meaningful under any circumstances.

We also do not agree with the public disclosure of the information in the example even if it were not part of the audit report. An audit of financial statements and, where required, of internal controls over financial reporting, encompasses a vast array of procedures in many areas. Public disclosure of these procedures is not required and we perceive no demands for such disclosure by financial statement users. In contrast, the details set forth in the Release would place disproportionate emphasis on the importance of the procedures performed by the principal auditor to monitor the performance of the work of the non-U.S. auditor.

We are also concerned about the part of the example disclosure with respect to "(d) any other procedures on which the principal auditor relies to monitor or assess the firm's performance of audit procedures in the audits of issuers, and (e) a brief summary of any information available to the principal auditor about deficiencies in the firm's performance of any such procedures in the two-year period preceding the date of the audit report". This disclosure seems to require public disclosure of the results of a non-U.S. firm's internal inspection or domestic regulatory inspection if that information is available in any form to the principal auditor. If that is what is intended by this provision, we believe it would precipitate sovereignty issues and, therefore, should not be considered by the Board at this time.

In addition, we are concerned that the representation by the principal auditor that the non-U.S. firm declined to provide information or documents on the basis of legal or sovereignty issues might be construed as the principal auditor taking responsibility for the validity of the non-U.S. firm's basis for declining to provide such information or documents. Accordingly, any such representation should clearly indicate that the principal auditor is not assuming such responsibility.

Whilst we do not support the public disclosures being considered in the Release, we believe there is already an effective means for the PCAOB to gain comfort as to the work performed by non-U.S. registered firms on particular engagements. In its current inspections of U.S. registered firms. The PCAOB staff commonly inspects the work performed by the U.S. principal auditor in gaining comfort on the work performed by non-U.S. auditors. Paragraph 19 of Auditing Standard No. 3, *Audit Documentation*, contains specific documentation requirements applicable to work performed by other auditors, including non-U.S affiliates. These requirements implicitly recognise that in certain non-U.S. jurisdictions there are legal restrictions against transmission of certain workpapers out of the country. In evaluating the oversight work performed by the principal auditor, PCAOB inspection staff ordinarily inquire about how the principal auditor obtained comfort as to the competency of the non-U.S. auditor and the adequacy of their work. In certain cases, this comfort is achieved through the principal auditor's review of the workpapers in the foreign country. Since the inspection staff is already able to obtain much of the engagement-specific information contemplated by the disclosures in the Release, we believe the existing process should be sufficient for the present time. It is only when there are enhanced cooperative arrangements between the Board and non-

U.S. oversight authorities, leading to full mutual reliance, that we will have the complete comfort level sought by the Board.

Conclusion;

As recognised by the Board, many jurisdictions are developing audit oversight entities that share the objectives of the PCAOB, such as enhancing audit quality, giving greater protection to investors and assuring public trust in public company audits. We strongly support the willingness of the PCAOB to coordinate its inspection efforts with those non-US oversight bodies.

We are certain however, that legal, regulatory and other differences in foreign jurisdictions will inevitably cause audit oversight entities in those countries to follow somewhat different approaches in order to meet the imperatives above. We urge the Board therefore, to continue its collaborative efforts with non-US oversight bodies and to also consider amending the latest Release document with the longer term objectives in mind.

Should the PCAOB require any clarification of this comment letter or wish to discuss its views with us, we would welcome the opportunity to do so.

Yours faithfully,

BDO International

Noel Clehane
Global Head of Regulatory and Public Policy Affairs,