



BDO Seidman, LLP
Accountants and Consultants

330 Madison Avenue
New York, NY 10017
(212) 885-8000 Phone
(212) 697-1299 Fax

July 2, 2003

Mr. Jonathan G. Katz
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: Release No. 34-47990 - Public Company Accounting Oversight Board; Proposed Rules Relating to Registration System

File No. PCAOB-2003-03

Dear Mr. Katz:

We are pleased to provide our comments on the above captioned matter. BDO Seidman, LLP is a member of BDO International, a global network of independent professional accounting firms in 100 countries worldwide. This letter only addresses the concerns of BDO Seidman, LLP and does not necessarily represent the comments or concerns of other BDO Member Firms.

Introduction

Let us first say that we strongly support the goals of the Sarbanes-Oxley Act of 2002 (the Act) to restore public confidence in financial reporting and in capital markets and agree that the establishment of the Public Company Accounting Oversight Board (PCAOB) is an important step in this process. We previously commented on the PCAOB's proposed rules and are pleased that many of our concerns were addressed in its final rulemaking. As such, we believe that the proposed PCAOB registration system reasonably tracks the legislative mandate set forth in the Act. However, we believe the PCAOB's rule should be clarified and improved in several respects to minimize the burdens imposed on accounting firms while still allowing the PCAOB to carry out its responsibilities under Section 101 (a) of the Act. This letter addresses only our most significant concerns.

Associated Entities and the Practice of Public Accounting

Part I of Form 1, Item 1.6, requires an applicant to "state the name ... of all *associated entities* that engage in the practice of public accounting or preparing or issuing *audit reports* or comparable reports prepared for clients that are not *issuers*" (emphasis added). However, the proposed rule does not provide a definition of the "practice of public accounting." If the term is interpreted broadly, it could apply to many related entities (especially in foreign countries) that do not perform services in connection with audits. In our view, the names and addresses of those entities do not provide information relevant to the PCAOB objectives of registering firms or overseeing the quality of audits of issuers. In coming to this view, we note that Section 104 (a) of the Act requires the PCAOB to conduct inspections designed "...to assess the degree of compliance of each registered public accounting firm and associated person of that firm with th[e] Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers." Nothing in this

Section requires the PCAOB to extend its inspections, and we understand that the PCAOB does not intend to extend its inspections, to services a firm provides to non-issuers.

Accordingly, we recommend that the Commission clarify the definition of "public accounting" by limiting that definition to entities that perform audit services for SEC issuers.

We further recommend that the list of associated entities be limited to those entities that the applicant believes will not register with the PCAOB. Providing information about other registered firms seems to be excessive and unnecessarily duplicative. We note that the PCAOB took a similar approach when it excluded from the definition of persons associated with a public accounting firm "...persons whom the public accounting firm reasonably believes is a person primarily associated with another registered accounting firm."

Associated Persons

Rule 1001(p)(i) defines "Person Associated With a Public Accounting Firm (and Related Terms)." The proposed definition includes any "individual proprietor, partner, shareholder, principal, accountant, or professional employee" of the applicant, and any "independent contractor that, in connection with the preparation or issuance of any audit report" receives profits or compensation or participates as an agent unless the person is engaged only in clerical or ministerial tasks or is a person whom the public accounting firm reasonably believes is a person primarily associated with another registered public accounting firm. Further, the analysis states that "an employment or an independent contractor relationship with a public accounting firm is not required for a person to be covered by the definition." The definition of "person associated with a public accounting firm" impacts the requirement to disclose information about legal proceedings under Part V of Form 1 and to obtain consents from all present and future associated persons of the applicant under Part VIII.

We believe the definition of "Person Associated With a Public Accounting Firm" is not clear and could result in unintended difficulties for applicants. In our opinion, the definition should extend only so far as is necessary for the PCAOB to accomplish its oversight objectives set forth in the Act. We recommend that the Commission clarify and narrow the definition in three respects.

1. It is unclear to us whether the definition applies to all persons associated with the firm or only to those persons who participate in audits of issuers. We recommend that the definition be limited to include only those individuals who participate in the preparation or issuance of audit reports for issuers. Some personnel in our firm (e.g., estate tax specialists) might not perform any professional services for issuers. Obtaining a consent or information about past and pending legal proceedings from such specialists would in no way further the protection of investors in SEC issuers. In this regard, we note that performance of such persons will continue to be monitored by local licensing authorities. In addition, we note that foreign firms are required only to obtain consents and provide information for "... any proprietor, partner, principal, shareholder, officer, or manager of the applicant who provided at least ten hours of audit services for any issuer during the last calendar year." We believe similar, if not equivalent, limitations should be afforded partners and other personnel of US firms.
2. We recommend that the Commission narrow the definition to include only those independent contractors who are natural persons directly engaged by the applicant, and not individuals who are partners or staff of independent contractors of the applicant who have no direct contractual relationship with the applicant. This approach is similar to the approach taken by the PCAOB in defining the term "accountant." If the definition is not limited in this fashion, our compliance with the

rules would be dependent on obtaining consents and information about legal proceedings from persons who are not within our control (e.g., accountants employed by others). Further, we do not believe the definition should extend to independent contractors (e.g., specialists as that term is defined in Statement on Auditing Standards No. 73, *Using the Work of a Specialist*) hired directly by the issuer.

3. We recommend that the Commission delay the requirement for applicants to obtain consents and/or provide certain other information concerning foreign nationals meeting the definition of persons associated with a public accounting firm. We believe that many applicants will face legal impediments in securing consents or obtaining the required information from such persons. In these situations, the applicants would be required to provide a copy of the relevant law (in English) and a legal opinion that the law would in fact prevent the applicant from securing and enforcing consents. This modification to the original PCAOB proposal was made to reduce the burden on non-US firms. Non-US firms, however, were given an additional six months to register and thus to obtain the appropriate documentation. We believe it would create an undue hardship for US firms to obtain the appropriate documentation in the short time remaining before the US firms must register. Therefore, we recommend that US firms be permitted to comply with the requirements of Parts V and VIII for such foreign nationals at a later time.

Proceedings Against the Applicant and Associated Persons

Section 102(b)(2)(F) of the Act requires that applicants provide "information relating to criminal, civil, or administrative actions or disciplinary proceedings *pending* against the firm or any associated person of the firm *in connection with any audit report*" (emphasis added). However, certain disclosures required by Part V of Form 1 go beyond those of the Act by requiring information about past proceedings and about matters unrelated to audits of issuers. We recommend that the required disclosures more closely track those required by the Act. This would avoid unnecessary disclosures and would facilitate the registration process, while still being consistent with the public interest. In that regard:

1. Disclosure of criminal proceedings against associated persons that are unrelated to audits of issuers can result in an unwarranted infringement upon the privacy of those individuals. The phrase "criminal proceedings," while connoting serious crimes, by definition also refers to misdemeanors such as disorderly conduct and trespassing, which clearly are not relevant to an audit of issuers (or of any other entity) or to evaluating a person's fitness to perform an audit. Therefore, these types of "crimes" should not be required to be disclosed.

As to more serious crimes unrelated to an audit of issuers, it should be recognized that the various state licensing bodies consider these events in determining the fitness of CPAs to practice public accounting in their jurisdictions. We believe the PCAOB should rely on these state bodies in this capacity.

2. We are not aware of any other industry where the equivalent of associated persons are required by regulation to provide publicly available information about their past activities to the extent provided for in the proposal. In that regard, we believe that, to the extent that the proposed disclosures exceed the provisions of the Act, they are "not necessary or appropriate in the public interest or for the protection of investors." (Section 107(b)(3) of the Act)
3. Item 5.1 requires an applicant to disclose information, including the names of all defendants and respondents in such proceedings who **were** associated persons at the time the events in question occurred. In some cases, a firm would have no contact information for such persons. Further, even in those cases where the firm was able to

contact former associated persons, such persons may be unable or unwilling to provide the requisite information. In those cases where a firm already possesses the requisite information, compliance with the rule might require that firm to divulge information about individuals who formerly were, but who are no longer, its "associated persons." To the extent that Part V calls for non-public information about former associated persons, the applicant would be doing so without their consent or involvement. Moreover, according to Rule 2300(b), unless there was some additional basis to warrant confidential treatment of that information, the PCAOB intends to make it publicly available. Accordingly, we recommend that the Commission require an applicant to provide information about legal proceedings only as it relates to current associated persons.

Provisional Registration

As noted above, we strongly support the goals of the Sarbanes-Oxley Act of 2002 and the creation of the PCAOB. We have every intention of using our best efforts to comply with the registration process on a timely basis and to cooperate fully with the PCAOB in achieving its goals. However, the issues and uncertainties discussed above, and the short period of time applicants will have to prepare their registration forms once the final rules are released may present insurmountable difficulties for some applicants to fully comply by October 22, which could have a significant adverse impact on the capital markets. This is particularly true for larger firms. Therefore, we urge the Commission to permit provisional registration for those firms that use and demonstrate their best efforts to comply with the rules on a timely basis, provided they submit delayed information on a reasonably prompt basis.

We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Wayne Kolins (at (212) 885-8595 or via electronic mail at wkolins@bdo.com).

Very truly yours,

/s/ BDO Seidman, LLP