

**FINANCIAL SERVICES AGENCY
GOVERNMENT OF JAPAN**
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June 27, 2003

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

Re: Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules
Relating to Registration System (File No. PCAOB-2003-03)

Dear Mr. Katz:

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 Securities and Exchange Commission ("SEC") for comments on the Proposed Rules Relating to the Registration System ("Proposed Rules") by the Public Company Accounting Oversight Board ("PCAOB") pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 as contained in Release No. 34-47990 (June 5, 2003).

We appreciate that the PCAOB has afforded certain accommodations to foreign public accounting firms in the Proposed Rules, decided on April 23, after considering numerous comments on its original proposal, decided on March 4, from interested parties including the FSA. I would also like to express my appreciation that I was given an opportunity to participate in the Roundtable on Registration and Oversight of Non-U.S. Public Accounting Firms ("Roundtable") and make comments on the original proposal on March 31.

(Three important principles)

As shown in our public comment letter to the PCAOB dated March 28 and as I mentioned at the Roundtable, there are *three principles*, which are very important to deal with and solve in a mutually satisfactory way the issues raised by the Proposed Rules. The first principle is *mutual respect for each jurisdiction's sovereignty and auditor oversight system*. The second principle is the *importance of recognizing substantially equivalent auditor oversight system* of foreign jurisdictions. The third principle is the *necessity of practical cooperation between auditor oversight bodies* of the United States and Japan. "Principles for Auditor Oversight" ("IOSCO Principles") by the Technical Committee of the International Organization of Securities Commissions ("IOSCO"), issued last October, provides an important guidance in this respect.

(Request for an appropriate exemption from the registration requirement)

The Japanese Diet passed on May 30 a bill for the comprehensive revision of the Japanese CPA Law. *Through this revision, the Japanese auditor oversight and auditor independence system will further provide a system substantially equivalent to that provided under the Sarbanes-Oxley Act.* In view of the above-mentioned first and second principles, *we respectfully request the SEC again to provide an appropriate exemption from the registration requirement to Japanese audit firms, utilizing the exemption authority provided by Section 106(c) of the Sarbanes-Oxley Act.*

(Request for further extension of deadline of registration)

We welcome the fact that the Proposed Rules would afford foreign public accounting firms an additional 180 days to register. The deadline would be April 19, 2004 under the Proposed Rule. On the other hand, the revised Japanese CPA Law will become generally effective in April 2004. This means that the Japanese audit firms will need to devote substantial resources and efforts to comply with the new requirements under the revised CPA Law in April 2004 and thereafter. For the FSA, the fiscal year 2004 (from April 1, 2004 to March 31, 2005) will be the important first year under the new oversight structure. In addition, we would like to note that various SEC rules under the Sarbanes-Oxley Act have afforded much longer time for foreign private issuers to comply with the rules. For example, while the U.S. issuers must be in compliance with the new listing rules by the earlier of (1) their first annual shareholders meeting after January 31, 2004, or (2) October 31, 2004 under Rule 10A-3 promulgated under Section 301 of the Sarbanes-Oxley Act, foreign private issuers must be in compliance by July 31, 2005.

Therefore, *we respectfully request the SEC to further extend the deadline of registration to Japanese audit firms by at least one additional year, namely to April 2005.*

(Request for an exemption from the requirement as to consents of applicant)

Needless to say, *the Japanese audit firms should not be subject to the oversight powers by the PCAOB such as reporting and submission of materials, inspections, investigations, and disciplinary proceedings.*

From this viewpoint, first, requests for more information stipulated in Rule 2106(c) should be reasonably limited with regard to foreign public accounting firms so as not to effectively make such request an oversight function. A note should be added to the rule in this respect.

Second, "Part VIII-Consents of Applicants" is not appropriate with respect the Japanese audit firms. Under Part VIII, the PCAOB would require "consents to cooperate in and comply with any request for testimony or the production of documents made by the Public Company Accounting Oversight Board in furtherance of its authority and responsibilities under the Sarbanes-Oxley Act of 2002." Such an unlimited broad power is beyond the scope of information collection and thus effectively amounts to an oversight power over the Japanese audit firms. As the auditor oversight body in Japan, such outcome is not acceptable to the FSA. In addition, such requirement would raise a clear conflict with the Japanese CPAs' duty to keep confidentiality of information imposed under the CPA Law, which the FSA has the responsibility to implement.

Therefore, *we respectfully request the SEC to provide an appropriate exemption from the requirement as to consents of applicant to Japanese audit firms, or at least narrow the scope of such requirement by replacing "any request" with "material request" and adding the requirement that the PCAOB shall consult such request in advance with the appropriate foreign auditor oversight body in charge of the applicant, as well as an explicit provision such as "to the extent the submission of such information would not cause the applicant to violate a non-U.S. law if that information were submitted to the Board."*

(Request for narrower scope of required information)

We have previously commented that *the PCAOB's need for information should be focused on "issuers"* in the U.S. securities markets. In this context, we appreciate that the Board has eliminated or narrowed the scope of required information for foreign public accounting firms such as eliminating the required disclosure of information on firm revenues and

limiting the required disclosure of accountants to those who provided a certain amount of audit services to issuers (Part V and Part VII of Form 1).

However, the Proposed Rules do not go far enough. For example, they still require information on criminal, civil and administrative proceedings which are not in connection with an audit report. Therefore, ***we respectfully request the SEC to further limit the scope of information as follows:***

- ***by adding "in connection with an audit report" after "disclose such proceedings" in Notes to Items 5.1 and 5.2 of Form 1;***
- ***by exempting the Japanese audit firms from the requirement of Item 7.2 of Form 1.***

In addition, in view of a large number of Japanese CPAs engaged in the auditing of Japanese issuers, ***the disclosure requirement should be limited to important accountants such as those who provided at least 30 hours (not ten hours as proposed) of audit services for any issuer*** during the last calendar year (Notes to Items 5.1, 5.2, 7.1, and 8.1).

(Cooperation with the SEC and the PCAOB)

In view of the above-mentioned third principle, we sincerely hope to ***establish and maintain a close and fruitful cooperative relationship*** with the SEC and the PCAOB on the issues relating to auditor oversight. From this viewpoint, we welcome the intention of the PCAOB to work with foreign counterparts to find ways to accomplish the goals of the Sarbanes-Oxley Act without subjecting foreign audit firms to unnecessary burdens or conflicting requirements. The FSA is also prepared to continue constructive dialogues and cooperation with the SEC and PCAOB.

(Conclusion)

We respectfully request that the SEC and 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
Government of Japan