KPMG International
345 Park Avenue
New York, N.Y. 10154

Telephone 212-758-9700
Fax 212-758-9819
Internet www.kpmg.com

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

July 20, 2009

Transmitted via electronic mail

Re: File Number PCAOB 2008-04

Dear Ms. Murphy:

On behalf of KPMG LLP (U.S.) and the other member firms of KPMG International ("KPMG"), we appreciate the opportunity to comment on the Proposed Rules on Annual and Special Reporting by Registered Public Accounting Firms ("Firms") adopted by the Public Company Accounting Oversight Board (the "Board") (the "Proposed Rules").[1] These Proposed Rules were issued for comment by the SEC on June 12, 2009, through Release No. 34-60107, and were then published in Vol. 74, No. 116 of the Federal Register on June 18, 2009. This letter contains our comments on the Proposed Rules. We hope our input is useful.

As a preliminary matter, KPMG notes that it strongly supports the overall purposes of the Proposed Rules, which are, among others, to enhance transparency, and thus public confidence in, the accounting profession and to render the Board's regulation of the profession more effective and efficient. KPMG further recognizes that the Board made several revisions to the Proposed Rules in response to comments made by KPMG and others through the comment process, which we feel has been, on the whole, extremely effective.

Although KPMG has a limited number of comments to the Proposed Rules, those comments reflect significant issues that KPMG believes must be addressed before the SEC approves the Proposed Rules as final. Our comments relate to four topics: the ability of foreign registered public accounting firms ("Foreign Firms") to gather and submit information pursuant to Proposed Rule 2207, the reporting of consents under Item 4.1 of Form 2, the reporting of the engagement of certain professionals and consultants under Item 2.14 of Rule 3, and the level of organizational knowledge required under certain triggering events for Form 3.

Proposed Rule 2207

Proposed Rule 2207 governs situations in which a Foreign Firm is unable to submit to the Board on Form 2 or 3[2] certain required information, due to a conflict with non-US law. The Proposed Rule

[1] By letter dated July 24, 2006, KPMG commented on the initial release of the Proposed Rules issued for comment by the Board on May 23, 2006.
[2] Under Proposed Rule 2109, which was also issued for comment by the SEC on June 12, 2009, the Board intends to apply Proposed Rule 2207 generally to Form 4, which relates to succeeding to the registration

would require the Foreign Firm to nonetheless gather and maintain the omitted information, as well as obtain legal documentation to support the existence of the conflict. It would also require that the Foreign Firm provide certain information upon the request of the Board, including, ultimately, the omitted information. Recognizing the very difficult issues that conflicts between the Board's rules and local laws can present to Foreign Firms, KPMG believes that the most effective process for regulation of Foreign Firms by the PCAOB would be through a process of international cooperation with local regulators, based on principles of reliance and home country control. Such a process would avoid inconsistency in regulation, conflicts of laws, and reduce the cost and burden of compliance for Foreign Firms, while at the same time allowing the PCAOB to obtain necessary information regarding the Foreign Firm and its activities from the home country regulator. At a minimum, however, we believe that three provisions of this Proposed Rule raise concerns that require additional protections and/or clarification before a final rule is approved.

The specific provisions that raise concerns are Proposed Rule: 2207(c)(1), which would require Foreign Firms to gather and maintain certain information; 2207(a)(3), which would require the Foreign Firm to represent to the Board that it had gathered and was maintaining all the information requested by Forms 2 and 3; and 2207(e), which would require Foreign Firms to submit information to the Board. Because these provisions would apply regardless of any inconsistent prohibition imposed by non-US law, they potentially place Foreign Firms in the position of having to choose between violating local law and violating the Board's rules.

Proposed Rule 2207(c)(1) would require Foreign Firms to gather and maintain, for a period of seven years, the information required by Forms 2 and 3 that the Foreign Firm is unable to submit because of a conflicting local law. The proposed requirement may conflict with privacy or other laws in certain jurisdictions that would preclude employers from requesting particular information from their personnel, including, for example, information about prior legal proceedings. Related to this requirement, Proposed Rule 2207(a)(3) requires the Foreign Firm to represent to the Board that it has gathered "and has in its possession [all] the materials required by paragraph (c) of this Rule[,]" including information that an employer may be legally prohibited from requesting.

An additional concern is presented by Proposed Rule 2207(e), through which the Board reserves to itself the authority, notwithstanding the good faith assertion of a conflict of law by the Foreign Firm, to demand the submission of the information that is withheld. As noted in previous comments made by KPMG and others, this Proposed Rule effectively could put the Foreign Firm in the legal dilemma of having to violate either its local law or the Board's rule, and suffer the resulting disciplinary and/or legal consequences. We understand that, although the Board is reluctant to waive or limit any appropriate regulatory authority by completely eliminating 2207(e), it recognizes that it is an extreme procedure and intends to use it as a last resort. In its comments to the Proposed Rules, the Board wrote that "[it] does not foresee invoking paragraph (e) with any regularity . . . [and] is optimistic that reservations of authority such as that in Rule 2207(e) will serve a purpose that is principally theoretical, and will rarely need to be invoked as practical tools."

Although we appreciate the Board's sensitivity to the serious ramifications of the invocation of Proposed Rule 2207(e), we believe that principles of sound regulation and sovereignty would counsel in favor of a more clear-cut approach to, and additional safeguards regarding, legal conflicts. As an initial matter, we believe that all the provisions discussed above should recognize an exception where compliance is not possible because of a conflict with local law. Moreover, we

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status of a predecessor firm, in the same manner as Form 3. KPMG notes that the concerns discussed above regarding Proposed Rule 2207(e) also apply to its application to Form 4 through Proposed Rule 2109.

also believe that there should be a clearly articulated process for evaluation by the PCAOB staff of an asserted legal conflict, and more importantly, review by the Board of a decision by the staff that the asserted conflict does not prohibit compliance. This process for evaluation and review should be required to be completed prior to the initiation of disciplinary proceedings for a failure to comply with the provisions set forth above or the invocation of Proposed Rule 2207(e). Such a process for evaluation and review could be analogous to, and should provide no less protection than, the process set forth in Rule 2300 relating to an assertion for the need for confidential treatment of information provided to the Board as part of the registration process. In the absence of such protections, a Foreign Firm asserting a conflict of law, a subject at least as important as that of confidential treatment, could be forced to test the validity of a good faith assertion through the punitive mechanism of a disciplinary proceeding, the initiation of which could present substantial risk and potential harm to the Foreign Firm and the companies that it audits.

Audit Consents (Item 4.1 of Form 2)

Item 4.1 of Form 2 requires the reporting of issuer audit reports rendered by a Firm during the reporting period. In a note to Item 4.1, the Board further indicates that the Firm must also report certain consents to the use of previously-issued audit reports. "It is not necessary to provide the date of any consent to an issuer's use of an audit report previously issued for that issuer, except that, if such consents constitute the only instances of the Firm issuing audit reports for a particular issuer during the reporting period, the Firm should include that issuer. . . ."

This note was not part of the Board's original release of the Proposed Rules, and therefore has not been subject to comment. KPMG's concern about this note and the additional requirement it imposes is two-fold. First, the note uses language that could be interpreted as equating the provision of a consent with the issuance of an audit report. Applicable auditing standards require that an auditor perform certain limited down-to-date procedures before providing consent to the use of its previously-issued auditor's report, but such procedures cannot reasonably be understood to provide the level of assurance equivalent to the issuance of an auditor's report. Further, given that the note to Item 4.1 identifies circumstances in which the Firm's auditor relationship with the issuer has ceased, KPMG questions whether the additional cost and burden associated with the tracking and reporting of consents is necessary and consistent with the Board's mission of "further[ing] the public interest in the preparation of informative, fair, and independent audit reports." KPMG believes that this note should be omitted from the final rules and that Firms should not be required to report information regarding consents to the use of previously issued audit reports.

Engagement of Consultants or Professionals Subject to PCAOB/SEC Discipline (Item 2.14 of Form 3)

As currently drafted, the Proposed Rules include an inconsistency between Forms 2 and 3 regarding the reporting of the hiring of consultants or professionals who previously have been sanctioned by the PCAOB or the SEC. Item 7.3 of Form 2, the annual form, requires the reporting of the hiring of such consultants or professionals who provide "services related to the Firm's audit practice or related to services the Firm provides to issuer audit clients." In contrast, Item 2.14 of Form 3, the thirty-day form, contains no such limitation, and requires the reporting of the hiring of previously disciplined consultants or professionals to provide any services to the Firm for any purpose. In its statement accompanying the Proposed Rules, the Board explained that it had responded to certain comments by limiting the scope of Item 7.3 of Form 2, as noted above. The Board then, however, expressed concern that similarly limiting Item 2.14 of Form 3 would negate the purpose of the

reporting requirement, "which is generally intended to gather information about new relationships with persons or entities that are effectively restricted from providing audit services." [cite?]

KPMG supports the Board's objective, but does not believe that the objective would be negated if the scope of Item 2.14 were narrowed to be consistent with the Form 2 requirement. Under the more limited scope applicable to Item 7.3, a Firm still would be required to report within thirty days the hiring of any previously-sanctioned consultant or professional who provides "services related to the Firm's audit practice or related to services the Firm provides to issuer audit clients." As proposed, however, Item 2.14 goes beyond the direct provision of services to audit clients. Many Firms, especially the larger Firms, hire numerous professionals and consultants who provide a wide range of internal services unrelated to the audit practice or to the provision of any services whatsoever. The burden associated with tracking such relationships would, in the view of KPMG, outweigh the extent to which this requirement would assist the Board in fulfilling its mission of improving the quality of audits of public companies. KPMG believes, accordingly, that making Items 7.3 and 2.14 consistent in scope would facilitate compliance and reduce the associated cost and burden.

"The Firm has Become Aware" Standard
(Items 2.4 to 2.11, 2.15 of Form 3)

The reporting of Items 2.4 to 2.11 and 2.15 of Form 3, which relate primarily to certain legal proceedings involving the Firm or certain personnel of the Firm, is triggered by the Firm's "awareness" of the proceeding or event. In response to comments by KPMG and other Firms, the Board in a note to Part II of Form 3 has clarified that this awareness extends only to partners/principals/shareholders/members of the Firm, and does not include all Firm personnel. KPMG appreciates the Board's sensitivity to the logistical and administrative challenges associated with these items, as reflected by this clarification. The larger firms, however, contain at a minimum several hundred partners and principals. In addition, compliance with this rule will necessarily depend on the reporting of information by such individuals to a central administrative function of the Firm responsible for, in turn, reporting such matters to the Board. Accordingly, the practical extent of a responsible firm's ability to manage this regulatory requirement is to put in place policies and processes that require partners and principals to timely report their awareness of the triggering events, and to periodically survey affected personnel to inquire regarding these matters.[3] For this reason, we believe that the Board should recognize that the isolated failure of an individual partner or principal to report such information ordinarily would not constitute a violation by the Firm itself if the Firm has put in place and maintained appropriate processes and policies. This type of recognition is analogous to the "safe harbor" principles that have long governed the SEC's regulation of matters relating to independence. We believe that the proposed rule could result in unintended violations of the reporting requirements, exposing a Firm to Board sanctions notwithstanding its efforts to comply, and should be revised to provide this clarification.

We would be pleased to clarify or answer any questions about our comments. We would also encourage the staff of the SEC and/or the Board to consider participating in informal discussions with representatives of the Firms to discuss in more detail the comments that have been elicited

[3] The Board recognizes the need for such processes on page 24 of the Release: "The Board believes it is reasonable to expect a firm to have controls designed to ensure that any such person who becomes aware of relevant facts understands the firm's reporting obligation and brings the matter to the attention of persons responsible for compliance with the obligation."

through this process. For any such communications, please call or write Scott Frew of KPMG LLP (U.S.) at (212) 909-5804 or sfrew@kpmg.com.

Very truly yours,

KPMG

KPMG International

cc:

Mark W. Olson – Chairman, Public Company Accounting Oversight Board

Daniel L. Goelzer – Member, Public Company Accounting Oversight Board

Bill Gradison – Member, Public Company Accounting Oversight Board

Steven B. Harris – Member, Public Company Accounting Oversight Board

Charles D. Niemeier – Member, Public Company Accounting Oversight Board

George Diacont – Director, Division of Registration and Inspections
Public Company Accounting Oversight Board

Paul A. Beswick – Deputy Chief Accountant for Professional Practice
Office of the Chief Accountant, Securities and Exchange Commission