



5 August 2004

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

By email: rule-comments@sec.gov

Dear Mr Katz

File No. PCAOB-2004-04: PCAOB Rulemaking Docket No. 013

PCAOB Proposed Rules Relating to Oversight of Non-U.S. Registered Public Accounting Firms

The Institute of Chartered Accountants in England & Wales (ICAEW) is pleased to comment on the SEC's exposure of the PCAOB's proposed rules referred to above. The ICAEW is the largest individual body of professionally qualified accountants in Europe with over 126,000 members who work in many sectors in business and the public sector, as well as practising as accountants and auditors. We operate under a Royal Charter that requires us to act in the public interest.

The ICAEW registers substantially all of the audit firms in the United Kingdom that are likely to be affected by the proposed rules and we understand that the UK is the second most significant source of non-US SEC registrants after Canada. Accordingly, we have followed the development of the rules with great interest.

Overall response to PCAOB Proposed Rules

We welcome, in so far as it goes, the proposal to issue rules allowing the PCAOB to rely on home country control in appropriate circumstances. As regards inspection and enforcement, we believe the substance of the underlying proposed rules allows suitable flexibility and is to the point. We made a small number of detailed comments to the PCAOB during their initial consultation process and are pleased to see that a number have been dealt with in the final proposal.

Outstanding issues

We appreciate that time and other constraints render it impracticable and possibly undesirable to amend the Proposed Rules at this stage. However, we believe that there are risks that need to be kept under review in relation to the application of the Proposed Rules in the areas of registration, independent oversight and transparency.



1. Registration

We understand the need to assess home country control on a case by case basis, as regimes around the world vary considerably in structure and effect. However, we regret the lack of any consideration of whether there can be reliance on home country control for registration purposes. The prospective use of the home registering authority as a ‘mail box’ achieves little and does not solve the disclosure problems that arise as a result of data protection legislation. For example, we understand that there is a legal view that UK firms cannot complete Item 8.1 of the registration form (agreeing to provide any information at any time in the future) because the UK Information Commissioner has indicated that consent from employees to disclosure of ‘any information at any time in future’ would not be valid, as it is too unspecific.

2. Independent oversight

We commented on the discussion in the original consultation paper of issues that the PCAOB will consider in determining reliance on overseas systems of inspection and enforcement. We understand and do not disagree with the underlying rationale, but note that the proposal seems to regard government as the only possible direct appointer of individuals within an independent system. We believe there are effective alternatives. For example, in the UK, government delegates its responsibility to approved supervisory bodies such as the ICAEW, operating for these purposes within a tight legal and independent oversight framework. This includes public oversight by a government approved but non-government operated organisation that is constitutionally structured to be independent of firms, the profession and the government.

We note that the proposed rules (which now incorporate part of what was in the original discussion) still seem to imply that government appointment is the only safe option. However, provided the assessment is approached in the right spirit, we are reassured by the PCAOB’s commentary about the proposed rules that it is not its intention to measure the effectiveness of an overseas system based on its similarity to the structure of the US domestic system.

3. Transparency

We have previously enquired about the transparency and appeals process relating to the PCAOB’s determination of reliance on overseas inspection and enforcement systems. We note that the position has been clarified in the final proposal in that the PCAOB will not have a formal appeals process but does intend to discuss its rationale for assessment with the overseas regulator. Again, although this is not an ideal outcome, it will no doubt work if approached in the right spirit.

Promoting shared objectives

We operate different regulatory and oversight structures, but we believe that the ICAEW, the SEC and the PCAOB all share the same objectives: reliable financial reporting, efficient capital markets and global investor confidence.

In this context, we look forward to working with the PCAOB in a spirit of openness and common sense. It would also be helpful if the SEC could encourage the PCAOB to review in due course the need for direct registration. We have had some discussions with the PCAOB about the registration process in the past and would be very pleased to do so again, as we believe a revised process would help solve a number of disclosure and competition issues.

We hope you find these comments helpful and we look forward to continuing a dialogue with the SEC and the PCAOB in working towards our shared objectives.

Yours sincerely

A handwritten signature in cursive script that reads "Robert Hodgkinson".

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