INSTITUT
DER
WIRTSCHAFTSPRÜFER
IDW

July 24, 2006

Public Company Accounting Oversight Board
(PCAOB)
Office of the Secretary
1666 K Street, N.W.,
Washington, D.C.
20006-2803

USA

By E-Mail: comments@pcaobus.org

Dear Sir(s):

Re: PCAOB Rulemaking Docket No. 019

IDW Comments on the PCAOB Proposed Rules on Periodic Reporting by Registered Public Accounting Firms

We would like to thank you for the opportunity to comment on the PCAOB Proposed Rules on Periodic Reporting by Registered Public Accounting Firms. The Institut der Wirtschaftsprüfer (IDW) represents the interests of the German Wirtschaftsprüfer (German Public Auditor) profession. The above-mentioned proposed PCAOB Rules will affect not only submissions by firms in the United States, but also German Wirtschaftsprüfer firms registered with the PCAOB.

The proposed PCAOB Rules are required in order to comply with the provisions of Section 102(d) of the Sarbanes-Oxley Act of 2002 (hereinafter referred to as the Act). Accordingly, they are intended to update the information contained in the firm's application for registration and to provide to the Board such additional information as the Board or commission may specify in accordance with Section 102(b)(2) of the Act. These provisions allow the PCAOB a certain degree of flexibility in establishing detailed Rules, but relate primarily to the information set forth in Section 102(b)(2) of the Act, which specifies the content of applications for initial registration of firms with the PCAOB. We are pleased that the PCAOB has taken a number of steps to accommo-

Institut der Wirtschaftsprüfer
in Deutschland e.V.
Tersteegenstr. 14
40474 Düsseldorf
Postfach 320580
40420 Düsseldorf

Telefonzentrale 0211/4561-0
Fax Geschäftsleitung 0211/4541097
Fax Fachabteilung 0211/4561233
Fax Bibliothek 0211/4561204
Internet http://www.idw.de
E-Mail info@idw.de

Geschäftsführender Vorstand:
Prof. Dr. Klaus-Peter Naumann,
WP StB, Sprecher des Vorstands
Dipl.-Kfm. Klaus-Peter Feld, WP StB CPA
Dr. Wolfgang Schaum, WP StB

Bankverbindung:
Deutsche Bank AG
Düsseldorf
BLZ 300 700 10
Kto. Nr. 7 480 213

date the legal impediments German registered public accounting firms are facing. However, we do have significant reservations as to the proposed limitations thereon under Rule 2207 (e). Furthermore, whilst we appreciate that, as stated on page 2 of Release No. 2006-004, the Board's proposal seeks to accomplish specific purposes without imposing any unnecessary burdens, we believe certain aspects of the proposal are overly bureaucratic, and consequentially may be unnecessarily onerous on non-U.S. registered public accounting firms. In fulfilling the intentions of the Sarbanes-Oxley Act it is essential that Rules are designed to have an appropriate sense of proportion and are practical and capable of application by all registrants, thus they need to fully take account of the special circumstances faced by non-U.S. firms. We would like to draw the Board's attention to certain of our members' concerns relating to matters of substance relating to the afore-mentioned issues. The majority of our comments relate to matters primarily affecting non-U.S. registered public accounting firms.

Also, in view of the necessity for public oversight bodies to cooperate with each other on a worldwide basis, we would like to suggest, where such cooperation will be established, it would be more appropriate for the Board to establish a specific rule that would allow the PCAOB to place reliance on information collected and provided by non-US public oversight bodies. This would result in less administrative work for audit firms, a reduction in duplication of information, and may facilitate public oversight bodies' understanding of conflicting legal provisions.

We understand that the PCAOB and the German Auditor Oversight Commission (AOC) are currently discussing the issue of mutual cooperation on the basis of the 8th EU Directive. The revised 8th Company Law Directive [2006/43/EC] was published in the Official Journal of the European Union on 17 May 2006. The provisions of European law, along with a system of regular inspections of audit firms similar to the one already existing in the U.S., are currently being implemented in Germany. These legal amendments can be expected to become effective as of the beginning of 2007. Once implemented, we firmly believe that a sound basis for cooperation between the oversight bodies will exist that will usually make provision of information not permissible under German law by audit firms under proposed Rule 2207 (e) obsolete.

Legal conflicts

We have previously informed the Board of various legal conflicts facing individual German registered public accounting firms reporting to the PCAOB. We would like to refer to our letters dated March 31, 2003, August 18, 2003 and January 26, 2004, which provide an initial discussion of the complex issues involved. To date, there have been no substantial changes in the legal system in Germany since German

public accounting firms were initially required to register with the PCAOB that would facilitate provision of information protected by German law to the PCAOB.

Potential impact of the existence of any legal impediment to the provision of information

We note that the PCAOB has identified certain information for which it proposes to introduce limits on asserting a conflict of interest. Insofar as these limits relate solely to the information identified on page 21 of Release No. 2006-004 and apply exclusively to the identified historical information required to be given on Forms 2 and 3, we do not believe there appear to be legal impediments, however, we would need recourse to legal advice before commenting fully on this issue. This notwithstanding, the criterion listed under (2) in the first paragraph of section C on page 21, namely "the Board could not, consistent with its most basic responsibilities, allow a firm to withhold the information and remain registered" when taken in conjunction with the proposal under Rule 2207 (e) gives us significant cause for concern.

Rule 2207

We believe that proposed Rule 2207 (e) would place foreign registered public accounting firms in an untenable position. Pursuant to proposed Rule 2207 (e) the PCAOB reserves the right to request any of the information required by the instructions to the Form, thereby requiring a foreign registered public accounting firm to violate home country law and transfer confidential information.

Page 22 of PCAOB Release No. 2006-004 states that paragraph (e) of proposed Rule 2207 is necessary to preserve the authority that Congress intended for the Board to have over all registered firms. We do not support inclusion of the provision of Rule 2207 (e) because it effectively undermines the intended protection afforded to foreign registered public accounting firms against breaches of law in their respective jurisdictions. The Board itself recognizes (footnote 33), that when sufficiently important information is not otherwise forthcoming, a foreign registered public accounting firm is placed in the position of having to breach either PCAOB Rules, potentially risking sanctions, or the relevant law prevailing in its home country. This has serious implications for German firms and other non-U.S. firms, because violation of home country law may ultimately affect a firm's authorization to perform audit work in its home country.

Respective roles of the PCAOB and home country regulators

We appreciate that when a foreign registered public accounting firm is unable to transfer certain information the Board may, depending on the circumstances of an individual case, consider that the matter warrants further investigation. However, we

do not consider it appropriate for the PCAOB to sanction foreign registered public accounting firms directly for non-compliance with information requests when home country laws prevent them from so doing. Nor do we agree that the PCAOB should request this information directly from firms, under the provisions that the Board is proposing in Rule 2207 (e). Rather, we believe that, before implementing Rule 2207 (e), the Board should further explore whether information needs it might have following a legal conflict assertion by a firm can be satisfied by means of cooperation with the oversight authority of the firm's home country. The Board has itself, on Page 20 of the Release, suggested this possibility may be appropriate in certain circumstances. Information exchanged under cooperative arrangement with the home country oversight authority might alleviate the need for the PCAOB to request a firm transfer confidential information protected by non-U.S. law. At the same time, it might provide a basis for determining whether further action is appropriate, and if so, whether it can be undertaken by the home country regulator, recognizing that it may ultimately lead to sanctions by the PCAOB. Whilst we appreciate that the Board is proposing Rule 2207 (e) as an *ultimate* measure, to be applied when all other possibilities have been exhausted, we do not accept that this proposal represents the only option open to the PCAOB. It may not be necessary in every case, for the PCAOB to, for example, obtain names of persons protected by confidentiality laws for the purpose of their oversight function. Again the example given on page 20 of the Release indicates that the Board accepts this. In any case, we do not consider this provision to be an appropriate stopgap solution until cooperative arrangements between regulatory authorities have been finalized.

In addition, we note that the Board proposes to extend Rule 4000 to make it clear that the Board may require a firm to provide additional information at any time as part of its inspection authority, so that cooperation requirements of Rule 4006 apply. Our concerns and suggestions discussed above also apply in respect of this proposal.

Affirmation of Consent

Form 2 requires annual affirmation of consent. The PCAOB is proposing this measure to serve as an annual reminder to the firm of its obligation to cooperate and its obligation to secure signed consents from new associated persons. As we note above, all aspects that were raised in the legal opinions submitted to the PCAOB in 2004 remain unchanged; thus German firms remain unable to give confirmation, and thus an affirmation relating to the broad consent foreseen by the PCAOB where a legal conflict exists. The proposal does not appear to allow for this, accordingly, we would like to suggest that wording such as "to the extent permitted by any applicable law" be added, to accommodate the situation faced by some foreign firms. We un-

derstand that German firms have adopted wording to this effect in submitting their registration forms to the PCAOB, which have been accepted.

Overly onerous requirements affecting foreign firms

The Release explains that the core principle for Rule 2207 is the same as that for Rule 2105, and further, that the differences are, in part, designed to minimize certain burdens relating to the supporting materials. The second paragraph on page 19 of the Release refers to elimination of "the possibility of an ambiguous general assumption that non-U.S. law limits the firm's ability to provide information of a particular type". We do not consider this justified, as Rule 2105 already required applicants to submit both a copy of the relevant portion of the conflicting non-U.S. law and a legal opinion that submission of the information would cause the applicant to violate the conflicting non-U.S. law. On this basis, we believe there are insufficient grounds for introducing requirements substantially more onerous to those of Rule 2105. In our view the following aspects of the proposal are overly onerous.

Degree of detail required

In respect of information relating to a firm's personnel we are of the opinion that the 10+ hours criterion applicable to Item 7.1 of Form 1 could also apply. We fail to appreciate why the PCAOB should routinely request information on individuals who were not active in the audit of issuer clients for less than 10 hours and/ or below the level of audit manager. Furthermore, in requiring information that is current as of the last day of the reporting period the rules do not provide for any cut-off criteria regarding the numbers of personnel required to be disclosed under Part VI Item 6.1 d. "the total numbers of personnel who, during the reporting period provided audit services, segregated by functional level". This is, inter alia, relevant, for example, when managers are promoted to partners.

Item 2.8 of Form 3 refers to certain information of which the firm has become aware, involving a partner, shareholder, principal, owner, member, or manager of the firm. As proposed, such information would cover the provision of all professional services for a client. Even the larger German registered public accounting firms may audit relatively few SEC registrants, but would, under the proposal, be required to submit information that is not even restricted to professional services provided to their issuer clients. The requirement under Rule 2207 (c) to obtain information of the detailed degree foreseen by the Board may constitute a disproportionate burden on firms. We suggest the information referred to in Items 2.5- 2.10 of Form 3 be limited to individuals involved in the provision of audit services to issuer clients in a similar manner to that applicable to Item 5.1 of Form 1. In the case of Form 1, the PCAOB has added a

note clarifying the requirement for foreign public accounting firms: "*Foreign public accounting firm* applicants need only disclose such proceedings for the applicant and 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".

The requirement to submit information on affiliations in or with network, arrangement, alliance partnership, or association on Form 2, Item 5.2 does not repeat information submitted by the applicant firm on Form 1 on initial registration. We accept that the Board may consider such information necessary for its purposes, however, we question the necessity of submitting this detailed level of information each year, in particular, when no significant changes in the firm's structure have occurred within a given year. We suggest that this degree of detailed information need not be submitted as a matter of routine, but on specific request of the PCAOB, and annual confirmation of the accuracy be sought.

Retrospective introduction

We do not favor retrospective introduction of Rules. The board intends the first reporting period for which a Form 2 needs to be submitted to be April 1, 2006 to March 31, 2007. In addition certain disclosures on Form 2, and any reportable event for Form 3 are to be required from the cut-off date applicable to a firm's filing of Form 1. We believe that this may lead to practical difficulties for firms whose current information systems are not capable of making all such so-called "catch up" information readily available. In extreme circumstances the firm may be unable to obtain certain information, but the proposal includes no provisions to allow for this. Furthermore, we believe some of this information may not be particularly relevant for the PCAOB's purposes. For example, information relating to an employee taken on by the firm reportable under Items 2.11, and 6.1 of Form 3, but no longer in the firm's employment at the effective date of the proposed rule may be difficult to obtain and of questionable benefit to the PCAOB. We would like to suggest that all such information requirements be limited to those persons as are connected with the firm at the effective date of the proposed rule in the capacity foreseen.

Other matters

Timing issues

Under Rule 2207 (b) Form 3 filing requires the firm to file within 14 days of the occurrence of the event in question. According to Rule 2207 (b) the prior consent of individuals may need to be obtained before the event can be reported to the PCAOB by

filing Form 3. There may be legal impediments precluding foreign firms from obtaining such consent, but even where this is not the case, the proposed deadline of 14 days is extremely unlikely to allow foreign registered public accounting firms sufficient time for this purpose, and almost certainly, in respect of unplanned or unforeseen events.

Rule 2207 (c) requires the firm to have certain materials in its possession, *before the date on which the foreign registered public accounting firm files the form* with the Board. In respect of Rule 2207 (c) (3) "a legal opinion, in English … that providing the omitted information ... would constitute a violation of non-U.S. law …". The proposed 14-days timeframe is also unrealistic here, in particular when the event in question is unplanned or unforeseen.

We would also like to question the necessity of the need for the written description required by Rule 2207 (c) (4) to be dated or updated not more than 30 days before the submission of the Form to the Board. We appreciate the reasoning given in the release, however, when consents would be required and have not been granted, an auditor cannot reasonably be expected to "pester" a client or individuals with repeated requests for consent. We do not see that it is in the public interest for an auditor to update efforts when none can reasonably be expected to have been undertaken.

Practical difficulties resulting from specific aspects of the proposals

We understand from our members that there may be practical difficulties arising from the fact that not all firms' internal reporting systems are capable of analyzing the total fees billed to all clients in the categories foreseen by the Board for disclosure under Item 3.2 of Form 2. For example, the financial year of many firms will not be synonymous with that required by the proposed reporting period, resulting in cut-off problems in relation to the calculations required. They are very concerned that necessary redesigning of their reporting systems may both be costly, and impossible to achieve in time for the first reporting deadline.

Use of different terminology

We note that when the firm issued no audit reports in respect of issuers, but *played a substantial role* during the reporting period, Form 2, Item 4.2 5 requires a description of the substantial role played by the Firm with respect to the *audit report(s)*, whereas on Form 1 Item 2.4 d. requires the applicant to state the type of substantial role played by the applicant with respect to the *audit report.* The inconsistent use of terminology is confusing. We wonder whether the Board intents a difference in substance.

Inclusion of information not readily available to the firm

Item 4.2 of Form 2 requires a firm provide certain information in respect of an audit report not issued by the firm, but with respect to which the firm played a substantial role during the reporting period. Under such circumstances the firm will not know the exact date the audit report was signed, since signing the report does not lie within the responsibility of that firm. We question whether it is really necessary to require the firm to take steps to obtain and pass on this information, which is neither within the role nor responsibility of that firm.

Potential need for guidance

We would appreciate the Board providing guidance as to the meaning of phrases such as “the firm has become aware of…” as used on Form 3, Items 2.4 to 2.10. In some instances, there appears to be doubt as to whether such “awareness” relates to the passive receipt of official notification. For example, in relation to legal proceedings referred to in Items 2.5 to 2.10 the issue appears clear. In contrast, in respect of use of the Firm’s name without consent in Item 2.4 the situation is less clear. The point in time “awareness” occurred directly impacts the proposed filing deadline of 14 days. In this context, we are also not sure what the Board envisaged when adding the phrase “the issuer indicates that such consent was provided” to Item 2.4, as the mere fact of publication itself indicates consent.

Definition of an Amendment

Although the wording of Rule 2205 states “unless the error or omission is clearly inconsequential” there appears to be a need for more qualitative and /or quantitative guidance as to when the PCAOB would regard an amendment reportable under this Rule.

Access to information

A foreign registered public accounting firm may be at a disadvantage in ascertaining whether an individual or an entity providing consulting or other professional services has been, or currently is, subject to a Board or SEC proceeding, as required on Form 2, Item 7.4. We are unsure as to how the PCAOB expects the firm to identify whether such individuals or entities meet the criteria set forth in Part VII. German firms may also face legal impediments precluding the transfer of detailed information in this context. In our opinion, the wording of Item 7.4 could be open to misunderstanding. The proposed wording refers to “any individual or entity meeting the criteria described in Items 7.1.a, 7.2.a, or 7.3.a”. From the proposed wording it is not clear whether the firm is required to supply information concerning individuals within an entity with which the firm entered into a contractual or other arrangement to receive

INSTITUT
DER
WIRTSCHAFTSPRÜFER
IDW

consulting or other professional services, or merely to report on the entity as a whole in this context. In addition, we note that Rule 1001 does not contain a definition of "consulting or other professional services" that would enable consistency in application. We wonder whether the term is intended to encompass, for example, the provision of assurance services in relation to a subsidiary in a group or permitted non-audit services.

We hope that you will find our comments useful. If you have any questions about our comments, we would be pleased to be of assistance.

Yours very truly,

Wolfgang Schaum
Executive Director

541