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Dear Sirs,

Rulemaking Docket Matter 001

PROPOSAL OF REGISTRATION SYSTEM FOR PUBLIC ACCOUNTING FIRMS

The Institute of Chartered Accountants in England & Wales is the largest of the professional accountancy bodies authorised to register firms to carry out audits in the United Kingdom. Accordingly the consequences in this country, of the process you propose to implement, will be most keenly felt by firms registered with us.

Our comments are directed at the impact of the proposed registration process on 'foreign public accounting firms' (FPAFs), particularly in the United Kingdom, though a number may have more general application.

We set out below, responses to the specific questions raised in your consultation paper but first we have included a number of general comments highlighting key issues that we believe should impact on the timing, extent and operation of the FPAF registration process.

The Institute of Chartered Accountants has long been committed to high standards in public company auditing. The principles of the Sarbanes Oxley Act are very much supported by us - independent monitoring of audit firms, independent setting of auditing standards and independent investigation of audit failure and independent discipline of those responsible have long been key components of audit regulation in the UK. However, the short response period specified means that comments are having to be submitted before the full consequences of registration with the PCAOB are explained or understood. This implies that the registration process is being seen as an end in itself rather than a means to an end. In addition, as noted in more deta il in our response to question 4 below, the interaction of the PCAOB's requirements with our own laws and regulations is complex and merits detailed follow up.

Leaving aside the issue of principle relating to the imposition of rules by one sovereign state on another, there are significant practical effects to be worked through.

- There is the potential that firms could be faced with irreconcilable requirements from the PCAOB and national regulators. Your requirements are necessarily based upon the legal, regulatory and business environments in the U.S.A. National regulators tailor their requirements to local circumstances. This issue is considered further in the responses to the questions, below.

- The impact on competition in the market, already restricted, is likely to be severe, particularly outside the U.S. The burden of cost and administration, exacerbated by the non-refundability of the as-yet unspecified registration fee and the extension of registration to firms that only audit substantial subsidiaries, is likely to persuade many firms with a small number of relevant clients, to discontinue auditing firms with U.S. listings and their subsidiaries.

- The potential for double jeopardy, with firms being subject to PCAOB and national discipline mechanisms, is likely to raise professional indemnity insurance premiums as well as violating principles of natural justice.

- The costs of double compliance will be significant and unnecessary. FPAFs will also have to bear the cost of complying with their own national regulatory requirements. As they typically undertake fewer U.S. - issuer audits than U.S. public accounting firms, the cost of complying with the PCAOB requirements relative to the income generated will be relatively greater.

- The impact of the above issues will be further exaggerated, in terms of both cost and the general iniquity of double jeopardy, if other national regulators decide to apply the same principle of ignoring local regulators. The demands and complexity of this whole process could expand exponentially.

- Many FPAFs only audit 'substantial' subsidiaries of U.S. issuers, rather than issuers themselves. Requiring these to register seems excessive: the auditor of the issuer should take responsibility for the whole issuer's group audit report and determine the adequacy of the audit work for subsidiaries for group audit purposes. If any registration information is really necessary in respect of such audits (which we doubt), perhaps it should be given by the auditor of the issuer. This would help to reduce the extra time likely to be taken in determining which audits are substantial, referred to above.

To ensure that our mutual objective of high quality audits is achieved in an effective and efficient manner, it is vital that a sensible system of recognition of each other's registration and inspection processes be devised which achieves the aims of all parties, but allows auditors to audit. At the very least, we need to ensure that the yet to be announced processes for dealing with monitoring and investigation factor this into account. We believe we have a robust arrangement in the U.K., including a rigorous independent oversight scheme, currently being further strengthened. We have commented on this in detail with the Securities & Exchange Commission in the past, and we would be delighted to discuss this with you further. Accordingly, we request that, as a minimum, registration for foreign public accounting firms be deferred until all these issues have been fully investigated and resolved.

Questio n 1: Ability of FPAFs to register within 180-day timetable.

The proposed registration process requires the provision of very significant amounts of information and for an individual partner to commit to its accuracy. While some of it will be easily available, the reliable collection of other information (particularly relating to associates and individuals) may need to have new systems implemented. Additional issues for FPAFs include assessment of what national equivalents are for the information required in the U.S. and an assessment of the legal consequences (e.g. privacy and human rights requirements, data protection legislation) of disclosure. These will require considerable time to deal with.

The extension of the registration requirements to auditors of substantial subsidiaries, not having been included in the Sarbanes Oxley legislation, was not foreseen. Given that one of the '20%' measures specified is total audit hours, it is likely that many auditors of subsidiaries and quite probably many group-level auditors will not immediately be aware whether their audit constitutes a 'substantial role'. We refer to this further in the response to question 5, but as proposed this will clearly require time to sort out.

We believe there is a strong case for deferral of the registration timetable for FPAFs by at least a further year. This would also allow time to be devoted to consideration of the recognition issues referred to above.

It may be advisable to phase the implementation. Allowing longer for firms which only deal with substantial subsidiaries and / or firms with only a small number of U.S. issuers, could partially mitigate the negative competition effects referred to above. We refer also to our response to question 2, below.

Question 2: Applicability ofregistration form to FPAFs

We note that the list of individuals for whom information is required relates to those 'accountants' who 'participate in or contribute to the preparation of audit reports'. It is unclear to us to what level of audit team member such information is intended to extend. If below the level of Responsible Individual[1], the FPAF concession to only list individuals who deal with U.S. issuers will be of little value as other staff are likely to be used interchangeably between the audits of U.S. issuers and other clients. In our view, if information is needed, it should be sufficient to list only those Responsible Individuals who take responsibility for the audit work. Similarly, the information provided in respect of criminal, civil and regulatory actions for individuals associated with the FPAF should not need to be extended beyond Responsible Individuals who take responsibility for the audit work, as listed on the Public Register of Auditors required by section 36 of the Companies Act 1989.

We are also unclear about the application in the United Kingdom of your definition of 'accountant'. The definition includes CPAs (but with no mention of foreign equivalents), holders of accounting degrees, holders of other degrees who audit and those with individual licences to audit. This appears to exclude individuals without degrees who perform audits, unless they are individually licensed. In the United Kingdom, we register firms to audit and 'approve' Responsible Individuals (see footnote). It is unclear if that would count as individually licensed. We also have

[1] Persons entitled to sign audit reports in the firm's name, under UK Audit Regulations

some quite senior auditors who do not have degrees (the majority of our members qualify with degrees now, but this has not always been so and alternative entry procedures are permitted whic h ensure a high educational standard). Given all these issues, it seems that a quite senior Chartered Accountant might not be deemed to be an accountant for your purposes.

As a general point, we wonder whether some of the information proposed to be included in the registration form is being gathered on a 'just in case' basis, rather than following a rigorous assessment that the benefit of collection clearly outweighs the cost of provision. To provide a couple of examples: (1) it is not clear why the SIC classification of audit clients is needed; (2) a de minimis limit on the legal / civil proceedings information required could significantly reduce the collection time. Claimants seldom claim too little so no important information would be lost.

The fee analysis required will result in onerous additional analysis requirements until such time as the information is needed to be disclosed as part of the issuer reporting. FPAFs in the United Kingdom will be in a better position than many others as audit fees and non-audit fees have had to be disclosed for many years. However, even here, the requirements are additional to those already in place, as the non-audit fee disclosure presently required relates only to an unanalysed total and then excludes services rendered to parts of the client group outside the United Kingdom. We believe that the information required should be linked directly to the issuer's disclosure requirements so that it can be phased in without additional work.

Question 3: Additional information from FPAFs

Further to our comments above about the importance of recognition of audit registration, monitoring and discipline processes of national regulators, it would seem sensible to ascertain who is responsible for these processes, for FPAFs. If recognition needs to be established on a bilateral basis, this would allow you to assess which regulator's registrants your FPAF registration process is having the most impact upon.

Question 4: Potential legislative conflicts

This is a complex area and the short response period has allowed us only to raise issues, rather than propose solutions. This illustrates the need to defer implementation for FPAFs while matters such as this are dealt with in detail.

Control of associated entities

We note that one of the issues you are proposing to consider is whether to treat associated entities of U.S. auditors differently to entities which are not so affiliated. The notion that the U.S. firm is, or could be made to be, responsible for the conduct of the foreign associate implies that the U.S. firm is able to control or at least significantly influence the associate. Schedule 11 of the Companies Act 1989 requires us to have Audit Regulations (which registered audit firms must abide by), to ensure that the audit firm has arrangements to prevent certain persons being able to influence the conduct of audits. Such persons include those who are not members of the firm (the legal entity) and individuals who do not have qualifications from a specified set of accountancy bodies (all presently in the UK and Republic of Ireland). We believe that any presumption of influence as described above could be a breach of these statutorily-derived Regulations.

Data protection and confidentiality

The Data Protection Act 1998 imposes significant requirements on possessors of data relating to individuals, as to what they can do with such data. This includes disclosures to third parties, such as the PCAOB.

Much of this legislation is written in general terms and its interpretation rests with the Office of the Information Commissioner, which deals with enforcement of the Act in the U.K., or with courts as caselaw develops. However, there is a potential breach of such legislation, as the general principle is that disclosure about individuals can only be made if at least one of certain criteria are met. One of these criteria permits disclosure with "freely given" consent. For certain information (such as history relating to breach of criminal and civil law), consent needs to be expressly given for the specific intended use. Consent would need to be obtained not just from relevant employees, but also (particularly in the event of documentation having to be produced), from former partners and employees involved in the legal proceedings to be disclosed, and any individuals at clients or elsewhere who happen to be mentioned. Clearly it should be possible to obtain such consents, but it will clearly be administratively complex and there are issues as to whether employee consent can be "freely given".

It is unclear from interpretations and caselaw so far, whether other criteria could be relied upon, such as disclosure in the public interest, or pursuing legitimate interests subject to protection of individual rights and freedoms. The Information Commissioner has, for example, given a formal ruling to the effect that it is inappropriate and unlawful for National Insurance numbers[2] to be used as personal identifiers.

A further criterion applies to compliance with legal obligations. However the exemption for this only appears to apply to U.K. law. It may be possible to take advantage of this criterion by incorporating compliance requirements into local law or indeed the regulations of the audit registration bodies, such as ourselves. This would need to be explored further.

A further issue is a restriction on the transfer of the information outside the European Economic Area (the legislation derives from a European Community directive). Again, transfer of data on individuals to jurisdictions including the U.S.A. requires one of a number of criteria to be met. These include consent (where similar issues to those referred to above apply), adherence by the recipient (i.e. the PCAOB in this context) to a European Union set of model clauses, a bespoke contract (which would probably have to include terms similar to the model clauses) or specific approval by the European commission that the data will be adequately protected. In our view, a discussion between PCAOB and European Commission personnel is important to clarify a way forward in respect of this.

In addition to the specific legislation referred to above, there are specific or implied general duties of confidentiality between the firm and its clients and between the firm and its employees. The exemptions are not dissimilar to those referred to above in connection with the Data Protection Act. Consent is usually sufficient to deal with this issue, though it cannot override a fundamental principle of English law of privilege against self-incrimination. That might be particularly pertinent in terms of employers

[2] The U.K. equivalent of social security numbers

requiring employees to testify. Your proposed registration form requires the firm to agree to secure consent from associated persons in respect of requests to testify. Taking into account the matters expla ined above and the requirement of employment law that sanctions must be proportionate to the employee's act or omission, this may not always be possible. The agreement to secure consent, required by your registration process, should be subject to the requirements of local law.

Question 5: Definition of 'substantial role'

The financial services sector in London has a particularly large number of subsidiaries of U.S. issuers and the extension of the registration requirements to auditors of substantial subsidiaries will be felt keenly in the U.K.

We refer to our comments above (general and in response to questions 1 and 2), relating to the need to include auditors of substantial subsidiaries at all, the impact on competition and on timing of registration, and who should provide any information that is necessary.

If your proposal in this respect is to be retained, we believe that percentages of audit fees and / or audit hours are unsuitable criteria. They do not recognise differences in charging processes and audit methodologies, which could result in a quite small subsidiary being considered 'substantial'. In our view, the defining criteria should be based on the financial statements of the individual subsidiaries and should certainly not be apply an even lower percentage than that advocated.

Question 6: Registration requirements for 'associated entities' of U.S. registered public accounting firms

We have referred in our response to question 4 above, to the potential impact on U.K. Audit Regulations of an a ssumption that U.S. firms are able to control or influence their U.K. associates' audit conduct. We do not believe it would be a breach of such Regulations if the registration process were to allow associated FPAFs to cross refer to common network information provided by their U.S. associate (for example, the description of quality control processes).

Question 7: Board inspection of FPAFs

As noted in our general comments, we consider it vital that recognition of national regulatory arrangements is explored and in particular that as an absolute minimum, the inspection processes applied factor this into account. Otherwise, where national quality reviews are also in place, as in the UK, this will result in firms being subject to two reviews. The PCAOB quality review would presumably be conducted by US nationals who might not be familiar with UK legislation, accounting and auditing standards, the local commercial and banking environment, business practice etc. Any differences in review conclusions might be expected to undermine rather than promote public confidence in the capital markets.

In principle, the PCAOB should be able to rely on national monitoring regimes that comply with high minimum standards: for example the IOSCO Statement, Principles for Auditor Oversight, or the European Commission Recommendation, Quality Assurance for the Statutory Audit. This would provide the PCAOB with a more

continuous basis for comfort than remote monitoring with occasional visits from the U.S.

We would be pleased to demonstrate compliance with these standards in the United Kingdom by the Joint Monitoring Unit (operated by this Institute but subject to independent oversight). We would also be willing to speak to the new Professional Oversight Board (being set up following a restructuring of the U.K. arrangements for independent oversight of the accountancy profession). The POB is charged with setting up a new Audit Inspection Unit to deal with auditors of listed entities and we are sure they would be most interested in a recognition dialogue.

Question 8: Other FPAF exemptions

We have referred to the need to ensure that inclusion of all the required information is in compliance with local laws, and the potential issue relating to European data protection legislation. It needs to be made clear what the impact would be if FPAFs had to submit incomplete information or declarations as a result of a conflict with national law or regulations.

We note that the PCAOB is open to requests for confidentiality but reserves the right not to grant them. Given that the public availability of information varies from country to country, we believe exemption should be granted automatically where the PCAOB is notified that the information is not publicly available in the home country.

The consent to provide testimony or make papers available should be amended for FPAFs to allow at least for situations where there is an investigation in the local jurisdiction. It cannot automatically be presumed that the PCAOB investigation will take precedence. Even if the national regulator were not investigating at the time the PCAOB instigates an enquiry, we believe it would be more appropriate for investigations to be carried out through that regulator where possible. We would be pleased to have discussions with you on lines of communication.

We have already referred to the importance of ensuring that the processes for dealing with monitoring and investigation factor recognition of national regulators procedures into account. It follows that we believe that there should be an exemption from the Board being responsible for undertaking investigations and disciplinary actions where a national regulator already fulfils this role well , as we do in the UK. Otherwise there could be conflicts between the two regulators' findings resulting in double jeopardy.

Question 9: Application of different requirements to FPAFs

We refer to our general comments and responses to the other questions.

Question 10: Treatment of associates of U.S. firms.

We refer to our response to question 6.

We have noted in a number of places in our comments and responses above, that further dialogue is vital on issues of recognition and lines of communication. we have common objectives and I believe that such discussion would be of mutual benefit and should be initiated urgently.

Yours faithfully

PETER WYMAN
President, Institute of Chartered Accountants in England & Wales