

Michael T. Williams, Esq.
Williams Law Group, P.A.
Tampa, FL 33611
Phone: 813-831-9348
e-mail: wmslaw@tampabay.rr.com

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Public Company Accounting Oversight Board

Via e-mail and attachment

Release No. 2003-17

Dear Sirs:

I am writing to comment on the above-release.

I am a former SEC staff member now in private practice. I primarily represent small businesses seeking to secure a qualification for quotation for their securities on the over-the-counter bulletin board. I currently represent 10 companies trading on the over-the-counter bulletin board.

It was with great dismay that I note numerous references to an audit committee and independent directors in the Release. The Release presupposes that all OTCBB issuers must have independent directors and audit committees. The release implies that the failure of an OTCBB SEC reporting issuer to have an audit committee could lead to a conclusion that the issuer is somehow in violation of Section 404 of the Sarbanes-Oxley Act and/or that an auditor of such an issuer would not be able to issue an unqualified 404 certification.

THIS CONCLUSION IS INCORRECT AND IS IN FACT DIRECTLY CONTRARY TO CONGRESSIONAL INTENT.

Although most provisions of the Sarbanes-Oxley Act apply to small business OTCBB issuers, in Section 301 of the Act, Congress specifically exempted OTCBB issuers from the independent director/audit committee requirements.

“Section 301. Public Company Audit Committees” of the Act provides as follows:

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

(m) STANDARDS RELATING TO AUDIT COMMITTEES –

(1) COMMISSION RULES

(A) IN GENERAL - Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

As noted on the SEC's website:

Will the rules relating to Section 301 apply to issuers whose securities are traded on the over-the-counter bulletin board market?

Answer: No. Securities traded on the over-the-counter bulletin board market currently are not considered listed securities.

In Section 301, Congress clearly indicates that the lack of an audit committee or independent directors should not be considered in determining compliance by an OTCBB issuer with the Act, including Section 404, so long as the OTCBB issuer otherwise was in compliance with the Act, including Section 404. Certainly Congress was not saying OTCBB issuers explicitly don't need independent directors and audit committees in Section 301 but somehow do need them to be in compliance with the Act, including Section 404. Such a conclusion would be illogical.

If Congress thought independent directors and audit committees were a consideration in determining compliance by OTCBB issuers with the Act, including Section 404, they would not have written Section 301 the way they did. Indeed, a conclusion that the lack of an audit committee or independent directors should be considered in determining compliance by an OTCBB issuer with the Act, including Section 404, would make Section 301 irrelevant, which is certainly not consistent with congressional intent.

As Congress clearly and explicitly concluded that OTCBB reporting issuers do not need independent directors or an audit committee to comply with the Act, it would be completely inappropriate for the PCAOB to bootstrap in such requirement, in a manner directly contrary to congressional intent, through an implication that the failure to have independent directors or audit committee should somehow be a consideration in determining compliance by and OTCBB issuer with the Act, including Section 404, or that an auditor of such a company would have to consider the issue in making an unqualified 404 certification in these circumstances.

What should the PCAOB do: Revise the release to be consistent with congressional intent by clarifying that the lack of independent directors or an audit committee in small business OTCBB issuers who are not required to have them under Section 301 of the Sarbanes-Oxley Act will not be a consideration in determining compliance by an OTCBB issuer with the Act, including Section 404 and that auditors for these issuers need not consider the issue in making an unqualified 404 certification so long as the same type of communication, analysis and interaction the Release indicates must be made with an audit committee is made to or with the entire board of the OTCBB issuer.

This is consistent with Section 205(58) of the Act which provides:

SEC. 205. CONFORMING AMENDMENTS.

DEFINITIONS- Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

(58) AUDIT COMMITTEE- The term `audit committee' means--

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

Thank you for your consideration.

Sincerely,

/s/ Michael T. Williams, Esq.

Michael T. Williams, Esq.