



Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington D.C. 20006-2803  
United States of America

March 28, 2003

Dear Mr Secretary,

**Rulemaking Docket Matter No. 101**

We are very pleased to have the opportunity to express our comments regarding the registration process of accounting firms around the world as described in the Public Company Accounting Oversight Board's (hereafter "PCAOB") proposed rules, issued on March 7, 2003 in connection with Section 102 of the Sarbanes Oxley Act 2002. We enclose our detailed comments as Appendix 1.

We are conscious of the objectives of the Sarbanes Oxley Act and we fully agree that improvements in the quality of financial reporting, in the corporate governance framework, and in the definition of the role and responsibilities of the audit profession are in the public interest.

The oversight of the accounting profession is, at the moment, a preoccupation in France. As you may be aware, the French government is finalizing "La Loi de Sécurité Financière" (the law on financial security). This law responds to many of the issues addressed in the Sarbanes Oxley Act.

The French auditing profession is committed to playing to the fullest extent appropriate its role in all of the world's capital markets and its leaders and members appreciate that this role carries with it significant responsibilities, not least in terms of ethics. Accordingly, while we are committed to ensuring that French firms meet the requirements of the PCAOB, we would not wish such compliance to be at the expense of non-compliance with our local laws and regulations. In order to work with you to avoid such a risk, we would strongly recommend that the PCAOB consider the French regulatory environment with regard to its registration and oversight process.

In particular, we are concerned that there are significant, specific legal obstacles which would prevent French professionals from complying with the registration process in its current form.

We would suggest that in addition to the ongoing discussion with the European Commission, full co-operation with the French government bodies and, in particular, the French Ministry of Justice and Ministry of Finance is essential to identify solutions to the issues raised.

The extremely tight time-frame for response has not enabled us to examine in detail the possible solutions to these issues at this date. However, we provide in Appendix 1 to this letter our initial analysis of the obstacles which we have identified so that we can work with you and the PCAOB to find appropriate remedies satisfactory to all parties and compliant with the regulatory frameworks in both our countries.

We share your concern regarding the transparency and stability of financial markets around the world and we confirm our firm intention to work closely with you towards a satisfactory resolution of the above issues.

Yours sincerely,

Michel Tudel  
*President,*  
*Compagnie Nationale des Commissaires aux Comptes*

*Enclosures:*

PCAOB registration: Issues concerning the French profession Appendix 1

**PCAOB registration: Issues concerning the French profession      Appendix 1**

The following document summarises the primary concerns of the profession in France in response to the questions raised in the PCAOB briefing paper dated March 4 2003 (pages 4 and 5).

This information has been gathered primarily by the “Comité APE” (the listed companies section of the Compagnie Nationale des Commissaires aux Comptes), the equivalent body in France of the SEC section of the AICPA.

**Question 1 - Is it feasible for foreign public accounting firms to register within 180 days of the date of the Commission’s determination that the Board is capable of operating? Should foreign public accounting firms be afforded some longer period (e.g. an additional 90 days) within which to register?**

- From our discussions with the firms and given that such information has never been requested to date it is essential that extensions be granted for French firms in order to address both the legal obstacles (see below) and practical aspects (e.g. systems, compilation and review of data to be submitted). Given the importance of the legal issues a period of one year to register would be reasonable.

**Question 2 - Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non -U.S. applicants?**

- There are no sections that are inapplicable *per se*. However, compliance with a number of requirements as currently set out would be illegal under French law. Please see response to question 4 below.

**Question 3 - In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants?**

- No.

**Question 4 - Do any of the Boards registration requirements conflict with the law of any jurisdiction in which foreign public accounting firms that will be required to register are located?**

The application of the proposed registration system will potentially lead to conflicts and in some instances will be illegal. In France, although not exhaustive, the following legal issues have been identified:

***Client confidentiality***

In France, legal issues would arise if audit work papers or other information (i.e. testimony) were required to be disclosed and communicated to the Board as part of the registration process. Articles L.225-240 of the French Commercial Code provides that audit firms are

prohibited from communicating to a third party any information gained by the auditor in the course of his engagement. There are criminal (e.g. up to one year imprisonment) and disciplinary sanctions as well as possible civil liabilities for violation of this provision. Client consent could allow the auditor to waive any civil liability but not the criminal liability associated with transmission of any such information.

Current French legal provisions provide for a release from professional confidentiality obligations to the benefit, *inter alia*, of the French market regulator (i.e. Commission des opérations de bourse (COB)). However, no specific French legal provision provides such a waiver for the benefit of a foreign controlling authority such as the Board. Therefore, any disclosure and/or communication to the Board would amount to a breach of client confidentiality.

We emphasise the importance of this point.

### ***Data privacy and protection***

The registration process requires transmission of accountants' names, social security numbers and diplomas. While this may seem straight forward to the Board, stringent conditions are placed on the gathering and transmission in electronic form of data relating to individuals in France (as for all countries within the European Union). In this respect, it should be noted that the law dated January 6, 1978 ("Loi informatique et liberté") requires private entities to make a prior declaration to the Commission Nationale Informatique et Libertés ("CNIL"), an independent administrative authority, before such entity carries out any automatic processing of personal data. In addition, the trans-border flow of personal data could be subject to a prior authorization. Details on criminal, civil or administrative actions or disciplinary proceedings pending against the employees of a firm would fall into the "sensitive personal data" category and would be subject to further restrictions.

### ***Confidentiality and legal issues associated with information on criminal, civil and disciplinary proceedings***

French corporate law characterize as a criminal offence a wide range of minor facts or events which would not be characterized as such under several foreign legislations (e.g. the fact that statutory auditors do not report to the appropriate authority that a company has been delayed in the preparation and approval of its statutory accounts is subject to a criminal penalty under French law). Hence, it is likely that criminal proceedings be disclosed and communicated to the PCAOB although the underlying facts of such proceedings would not constitute a criminal offence under US laws. We believe that reporting of such proceedings is beyond the scope of what the PCAOB requires for oversight purposes.

Certain criminal sanctions can be waived under certain circumstances. Reporting an individual's name for a criminal penalty in the last ten years which has been waived would potentially make the public accounting firm liable for legal and criminal consequences.

Civil proceedings and disciplinary actions: This information may not be public or is published on an anonymous basis. As such collection and completion of the data could prove difficult. As mentioned above, the publication of the data and transfer outside of the

EU would prove to be difficult in France because of data privacy protection law. It would be impossible to obtain information for cases still pending.

In addition, it is worth noting that the President of the French Republic is empowered to grant amnesty in relation to certain criminal and disciplinary sanctions. Further to such amnesty, any reference to an amnestied sanction would constitute a criminal offense under French law.

We believe any information on criminal, civil or disciplinary cases should be strictly limited to those instances, relative to an Issuer, which are in the public domain.

***Disclosure of information of an economic, commercial, industrial, financial or technical nature***

French law prohibits communications of certain information of an economic, commercial, industrial, financial or technical nature to a foreign authority, without having obtained the appropriate authorization from the relevant ministry. This procedure could be extremely cumbersome in practice. Further restrictions could apply to information in sensitive industries with national security implications.

**Question 5 - In the case of non-U.S. firms that are required to register because they play a substantial role in the preparation and furnishing of an audit report on a U.S. issuer, is the Board's definition of "substantial role" appropriate?**

- The definition is clear.

**Question 6 - Should the requirements to register be different for foreign public accounting firms that are "associated entities" (as defined in the Board's rules) of U.S. registered public accounting firms than for foreign firms that are not associated with U.S. registered firms?**

- No comment.

**Question 7 - Should registered foreign public accounting firms be subject to Board inspection? Could the Board, in some cases, rely on home-country regulation in lieu of inspection of foreign public accounting firms? If so, under what circumstances could this occur?**

- To enable the Board to respond to this issue it is important to have a full understanding of the organization and structure of the accounting profession in France.
- The accounting profession is currently self-regulated. The *Companie Nationale des Commissaires aux Comptes* (the "CNCC"), the over-arching authority representing all auditors registered in France, has created jointly with the COB the *Comité de Déontologie de l'Indépendance* (the "CDI"). The aim of the CDI is to guarantee the independence and objectivity of auditors auditing listed companies.

- A well organized peer review system, reporting to the COB, for listed companies has existed for a number of years. The annual results of these reviews are public.
- In addition, a new law called the “Loi de Sécurité Financière”(law on financial security) is currently in the final stages of discussion and approval by the French Parliament. This law, which addresses corporate governance and financial marketplace issues, also includes significant provisions relating to the organization and governance of the accounting profession in France. It creates a board comprised of independent members (including judges, government representatives, the President of the stock exchange, a renowned panel of experts, a university professor, and three designated accounting professionals), who will be responsible for the control of the accounting profession. Registration as statutory auditor, determination of auditing standards, independence rules, quality control and disciplinary procedures of the profession will fall under the responsibility of this board. Conceptually, many aspects of this law are similar to the provisions of the Sarbanes Oxley Act. The PCAOB should consider to what extent the provisions of this law satisfy some of their requirements.
- Furthermore, French corporate law provides criminal sanctions for pursuing an engagement as auditor if not independent and participation or association by an auditor with the publication of false or misleading financial information. Corporate law also renders the withholding of significant information from auditors a criminal offence. These aspects of corporate law are very much in line with the objective of certain provisions of the Sarbanes Oxley Act.
- Under French law, any company preparing consolidated accounts (and therefore all listed companies) is required to have a joint statutory audit.
- Although the French accounting profession has been to some extent self regulating to date, the role of the auditor and his responsibilities are clearly set out in corporate law. The statutory auditor has specific legal responsibilities, and is required to report to the French equivalent of the district attorney if he discovers fraud or other specific violations of corporate law .
- Licences to practice are granted by the court under the authority of the Minister of Justice. An individual can only obtain a practising licence if he does not have a criminal record when applying for such a licence.
- Given the above factors we believe that there is potential for the PCAOB to rely on French regulations and control instead of foreign inspection

**Question 8 - Aside from Board inspection, are there other requirements of the Act from which foreign public accounting firms should be exempted? If so, under what circumstances?**

- We refer you to the issue described above on client confidentiality. The PCAOB may wish to enter into an agreement with the French regulatory authorities on this issue.
- We reiterate as follows: Sections 102, 105, and 106 of the Act require audit firms to disclose information, documents or audit work papers to the SEC or to the Board when

required by them to do so. These provisions are problematic under French Law, because audit firms are subject to specific confidentiality (i.e. non-disclosure) requirements in France. Article L.225-240 of the Code provides that auditors are prohibited from communicating to a third party any knowledge gained by them in the course of their engagement. Any breach of such obligation may entail a one-year imprisonment sentence and/or a fine of 15,000 euros (article 226-13 of the French Criminal Code). Since there is no express provision under French law authorizing the disclosure of confidential information by auditors to the SEC or to the Board, auditors cannot disclose information, documents or audit work papers without breaching confidentiality obligations under French law. In addition, please note that Article 66 of the Decree dated August 16, 1969 lists entities (including courts) to which audit workpapers may be disclosed. Neither the SEC nor the Board are included in this list..

In addition, please note that the SEC has entered into a cooperation agreement with the COB pursuant to which such parties have undertaken to assist each other and exchange information regarding investigations on the breach of laws and regulations in both countries. In addition, France and the U.S. are party to the Den Haag Treaty since 1974 and 1972, respectively. Such treaty provides for rules regarding the exchange of information in civil and commercial investigations among the countries part to it. The prolongation or application of such agreements needs to be considered by the PCAOB.

- The disciplinary system envisaged by the Act could potentially be difficult and complicated to enforce as described under French law.

**Question 9 - Are there requirements different from those the Act imposes on all registered public accounting firms that the Board should apply to foreign public accounting firms?**

- See above.

**Question 10 - Should the Board's oversight of foreign registered public accounting firms that are "associated entities" (as defined in the Board's rules) of U.S. registered public accounting firms be different than its oversight of foreign public accounting firms that are not associated entities of U.S. registered firms? Should the U.S. registered firm have any responsibility for the foreign registered firm's compliance with the Board's rules and standards?**

- No specific comment on this matter.