

Ernst & Young LLP

April 4, 2003

Mr. Ronald S. Boster
Acting Secretary
Public Company Accounting Oversight Board
1666 K Street N.W.
Washington, D.C. 20006-2803

PCAOB Rulemaking Docket Matter No. 002, Proposal for Establishment of Accounting Support Fee

Dear Mr. Boster:

Ernst & Young LLP is pleased to comment on the proposed rule to implement public company funding of the operations of the Public Company Accounting Oversight Board (the "Board"), as required by Section 109 of the Sarbanes-Oxley Act of 2002. Our comments are limited to proposed Rule 7103(b), which would require a registered public accounting firm, before issuing an unqualified opinion or its consent to the use of a previously issued opinion, to ascertain that an issuer's assessment of the accounting support fee is not past due.

The Board's proposal states:

"The Board intends the requirement that auditors confirm payment of an issuer's share of the accounting support fee before issuing an unqualified audit opinion to serve as a reliable and cost-effective means of maintaining integrity in the assessment and collection process."

However, the Board's proposal in effect would set a new auditing standard for audits of public companies - a standard that not only is without precedent, but also is one that, as described below, could work against the public interest. There are alternative ways for the Board to effectively achieve its goal of timely collection of fees to support its operations.

Proposed Rule 7103(a) provides that the assessment of the accounting support fee is due on the 30th day after the Board sends the initial assessment notice to the issuer, and that thereafter the fee would be past due with interest. At that time, a registered public accounting firm also would be required to withhold its unqualified opinion or consent under proposed Rule 7103(b), thereby potentially depriving the marketplace of important information about the issuer. Currently, under U.S. generally accepted auditing standards, there are no circumstances in which an auditor would be required to withhold an opinion or consent solely due to an issuer's delinquency in the payment of any taxes, fees, or assessments to governmental agencies or regulatory bodies.¹ We believe that the Board's proposed rule would establish an inappropriate

¹ The only circumstance of which we are aware that would require us to withhold our audit opinion due to a client's non-payment of a fee is where the client has failed to pay us a prior year's audit fee, or other fees for professional services provided more than one year ago. However, the auditor

precedent. In addition, denying issuance of an auditor's opinion or consent is a disproportionate penalty for an unpaid fee – a penalty that would be imposed not only on issuers, but also on investors, creditors, employees and other users of the registrant's financial statements. Without its auditor's opinion or consent, an issuer might become delinquent in its reporting obligations under the Exchange Act, and it would be unable to have a registration statement declared effective under the Securities Act.

The Board's proposal notes that non-payment of the accounting support fee would constitute a violation of Section 13(b)(2) of the Exchange Act, which might subject an issuer to an enforcement action by the SEC. Ultimately, we believe that the consequences of such a violation will serve as a strong incentive to issuers to pay the Board's assessed fees. However, we recommend that the Board work with the Securities and Exchange Commission (the "SEC") to develop sufficient additional incentives for timely payment of the Board's assessments. We note that under proposed Rule 7103(c) the Board may send a notice to the issuer in the event of non-payment 60 days following the Board's transmission of its initial assessment notice. As an additional deterrent to delinquencies, the SEC could require an issuer to publicly disclose, such as in a Form 8-K, its receipt of such a notice from the Board. We believe that the potential public disclosure that its assessment is 30 days past due would be a more appropriate incentive for an issuer to pay the fee than the Board's proposed requirement under Rule 7103(b). Moreover, public disclosure of an issuer's delinquency in paying its assessment would be consistent with the public interest, without causing unnecessary harm to investors and other users of public company financial statements.

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We would be pleased to discuss our comments with the Board or its staff at your convenience.

Very truly yours,

/s/ Ernst & Young LLP

independence rules of both the AICPA and SEC impose that restriction out of a concern that such unpaid fees create a direct financial interest in the audit client that would be considered to impair our independence. It is, therefore, a very different requirement from the proposal being made by the Board.