



PCAOB  
Office of the Secretary  
1666 K Street, N.W.  
Washington, D.C. 20006  
United States

Date February 2, 2009  
Our reference TA-JFPo-09012114  
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Concerning PCAOB Rulemaking Docket Matter No. 027

Dear Sir, Madam,

On behalf of the Netherlands Authority for the Financial Markets (AFM) we are pleased to respond to the request for comments from the Public Company Accounting Oversight Board (PCAOB) regarding Release No. 2008-007, Rule Amendments Concerning the Timing of certain Inspections of non-US Firms, PCAOB Rulemaking Docket Matter No. 027.

*Inspections – amendments to Rule 4003*

We are pleased to be informed of the proposed amendments to Rule 4003 that will give the Board the ability to postpone, for up to one year (i.e., to the end of 2009), first inspections of the remaining non-U.S. firms that the Board is currently required to conduct before the end of 2008, and to postpone, for up to three years, first inspections that the Board is currently required to conduct before the end of 2009 in jurisdictions where the Board has conducted no inspections before 2009.

*Conflicts of law*

We would like to point out that at present the Sarbanes Oxley Act and Dutch legislation (as based on the European Statutory Audit Directive, 'Directive') are not compatible. Dutch audit firms need to comply with national legislation which is based on the Directive and which requires that certain conditions have to be met before confidential information can be transferred to foreign regulators. We would like to give the PCAOB into consideration that these non-US audit firms cannot be forced to breach their national legislation, and that as such solutions need to be found for solving the existing conflicts of law.

*Violation of rule 4006 due to conflicts of law*

We are of the opinion that the sanctions against non-US audit firms as proposed in Release No. 2008-007, Rule Amendments Concerning the Timing of certain Inspections of non-US Firms, PCAOB Rulemaking Docket Matter No. 027 are not an effective solution for the above mentioned situation where a violation of Rule 4006 is the result of conflicts of law. These conflicts of law are outside the control of the concerned audit firms who also have reported on these conflicts upon registration with the PCAOB using Rule 2105. We therefore would like to ask the PCAOB to reconsider whether the proposed example of a sanction, being a disclosure in the audit report of the fact that no inspection has taken place by the PCAOB, is an effective solution for the structural problem of

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conflicts of law. In this respect we like to point out that a sanction does not contribute to a structural solution of the problem of conflicting legislation and it also impacts the audit client negatively. Furthermore, we like to raise the issue of how the users of the audit report should understand the proposed additional disclosure in connection with the audit opinion expressed.

*Exchange of information*

In our view, the core element of cooperation between foreign audit oversight bodies consists of the possibility to exchange information. The Sarbanes Oxley Act does not provide the PCAOB with the possibility to exchange information with the AFM. Under Dutch legislation a foreign competent authority like the PCAOB must have the ability to cooperate with the AFM on the exchange information. As such we consider the principle of mutual recognition and reciprocity as an important prerequisite for effective cooperation.

Furthermore we would like to point out that as the PCAOB is not part of the "Safe Harbor" scheme. The transfer of information to the PCAOB is only possible on the basis of a transfer agreement concluded under Article 26 (2) of Directive 95/46. Such agreement should contain special safeguards which are put in place with respect to the protection of the privacy and fundamental rights and freedom of individuals and as regards the exercise of the corresponding rights.

Due to the above, in order to be able to share confidential information with the PCAOB in view of inspections, there needs to be sufficient time to solve the existing legal barriers and to enter into a transfer and cooperation agreement.

*Possible way forward*

We understand that in accordance with Section 106 (c) of the Sarbanes Oxley Act, the Securities and Exchange Commission ("SEC") and the PCAOB may, by rule, regulation, or order, and as the SEC or the PCAOB determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of the Sarbanes Oxley Act or the rules of the Board or the SEC issued under the Sarbanes Oxley Act.

In relation to what is mentioned in the above section on 'Violation of Rule 4006 due to conflicts of law' we would like to give the PCAOB into consideration to exempt EU audit firms from Rule 4006, in so far these audit firms cannot provide information in response to an inspection demand on the basis of non-U.S. legal restrictions or sovereignty concerns.

Furthermore, as solving the existing conflicts of law is key for an effective future cooperation between the PCAOB and AFM, we are of the opinion that it is worthwhile first taking the necessary time to have these conflicts of law solved and to conclude on the working arrangements by a transfer and cooperation agreement. According to the Commission Decision of 29 July 2008 the transitional period for audit activities of certain third country auditors and audit entities is applicable to the United States (OJ L 202/70). This means that EU Member States shall not apply Article 45 of Directive 2006/43/EC in relation to audit reports concerning annual accounts or consolidated accounts, as referred to in Article 45(1) of that Directive, for financial years starting during the period



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from 29 June 2008 to 1 July 2010, which are issued by auditors or audit entities from the United States, in cases where the third-country auditor or audit entity concerned provides the competent authorities of the Member State with all of the information mentioned in Section 1 of the Commission Decision.

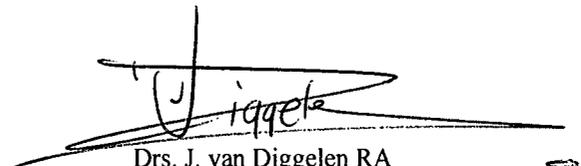
Based on this, we would like to give the PCAOB and/or SEC into consideration to apply a similar transitional period for audit activities of EU audit firms in the United States and exempt these EU audit firms from Section 106 of the Sarbanes Oxley Act and from the PCAOB Rules. The transitional period could be used by the PCAOB and the Member States' oversight bodies to further continue their dialogue on cooperation, to become more familiar with each others structure, operations and approach to inspections and to enter into the necessary working arrangements by means of a transfer and cooperation agreement. Moreover, a transitional period would allow the PCAOB, the European Commission and Member States to address and solve conflicts of law regarding confidentiality issues.

We would welcome the PCAOB to take the above mentioned points into consideration when deciding on the proposed amendments to its Rule 4003.

Yours sincerely,  
Netherlands Authority for the Financial Markets



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