
Frequently Asked Questions
Regarding Issues Relating to Non-U.S. Accounting Firms

January 18, 2012

1. *[FAQ # 1 has been deleted because it is no longer applicable.]*

2. My firm is a foreign public accounting firm intending to register with the Board, but we intend to make a submission under PCAOB Rule 2105 explaining that a non-U.S. law prohibits the firm from providing some of the information required by the Board's Form 1. How will this affect consideration of the firm's application?

Rule 2105(a) allows an applicant to withhold information from its application for registration "when submission of such information would cause the applicant to violate a non-U.S. law if that information were submitted to the Board." Rule 2105(b) describes the submission an applicant must make if it claims that the Rule 2105(a) standard is satisfied with respect to information that the applicant withholds from its application.

In reviewing a Rule 2105 submission, the staff will consider whether the submission both conforms to the requirements of Rule 2105(b) and raises issues of non-U.S. law that are sufficient under Rule 2105(a) to warrant treating the application as complete even though certain information is omitted.

If, in the staff's view, both criteria are satisfied, the staff will recommend that the Board treat the application as complete and take action on the application, consistent with PCAOB Rule 2106(b), within 45 days of the date the application is received (as determined pursuant to PCAOB Rule 2102). Any such action by the Board would not constitute a concession that the non-U.S. law does in fact prohibit the applicant from supplying the information, and would not preclude the Board from contesting that assertion in other contexts. In addition, a decision to treat the application as complete does not mean that the absence of the information will be irrelevant to the Board's consideration of the application. The Board could determine that the absence of particular information from a particular application, even though sufficiently justified by

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reference to non-U.S. law, leaves the Board unable to make the determination that the Board must make under PCAOB Rule 2106(a) in order to approve the application.^{1/}

If, in the staff's view, (1) the submission does not conform to the requirements of Rule 2105(b) or (2) the cited non-U.S. law does not satisfy the Rule 2105(a) test (*i.e.*, the applicant would not violate non-U.S. law by submitting the information to the Board as part of the registration application), the staff may recommend that the Board treat the application as materially incomplete and request additional information from the applicant under PCAOB Rule 2106(b)(2)(i).

Three foreseeable issues warrant particular mention. First, Rule 2105(b)(2)(ii) requires submission of "a legal opinion that *submitting the information would cause the applicant to violate* the conflicting non-U.S. law" (emphasis added). Accordingly, the legal opinion must pertain to whether non-U.S. law would be violated by the specific applicant submitting the specific information in the specific context of registration with the Board. A legal opinion that does not opine on that point does not conform to the requirements of the rule. If the legal opinion included as part of a Rule 2105 submission does not opine on that point as to each category of information that the applicant does not provide, the staff will recommend that the Board treat the application as materially incomplete and request additional information under Rule 2106(b)(2)(i).

Second, professional standards are not "laws" for purposes of Rule 2105. Accordingly, a Rule 2105 submission that relies on professional standards alone (*i.e.*, without citing something in the jurisdiction's legislated law that requires compliance with the standard) as a basis for withholding information from an application does not conform to the requirements of the rule. In the event of such a submission, the staff will recommend that the Board treat the application as materially incomplete and request additional information under Rule 2106(b)(2)(i).

^{1/} PCAOB Rule 2106(a) describes the standard of approval for registration applications. The rule requires the Board to determine –

whether approval of the application for registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.

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Third, the Board staff will recommend that the Board treat as materially incomplete, and request additional information on, an application that does not include the applicant's consent to cooperate with the Board (Item 8.1) if the only basis for not providing that consent is a non-U.S. law that prohibits a firm from disclosing documents or information without a client's consent. As described in more detail in response to question number 4 below, the staff does not view the absence of a client's consent as relieving a firm of its obligation to cooperate with the Board.

The three issues discussed above are only examples and do not constitute the only circumstances in which the Board might request additional information under Rule 2106(b)(2)(i). If the Board does request additional information, then, under Rule 2106(c), a new 45-day period within which the Board must act on the application commences when the applicant provides the information. Consistent with the terms of Rule 2106(c), however, the Board and the staff work to ensure action on such supplemented applications as soon as practicable.

3. If non-U.S. law prohibits my firm from providing certain specific identifying information required by the Board's Form 1, is the firm nevertheless required to answer any associated yes/no questions that do not require specific identifying information?

Yes. For example, Item 5.1(a) of Form 1 requires an applicant to indicate, by checking "yes" or "no," whether the applicant or any associated person of the applicant is a defendant or respondent in any of certain specified types of proceedings (including, for example, an administrative or civil action arising out of the applicant's or associated person's conduct in connection with an audit report). If the correct answer to Item 5.1(a) is "yes," Item 5.1(b) requires the applicant to supply certain identifying information related to the matter and the individuals involved. An assertion that non-U.S. law prohibits an applicant from supplying the identifying information required by Item 5.1(b) is not by itself sufficient to relieve the applicant of the obligation to supply a "yes" or "no" answer in Item 5.1(a). If an applicant's Rule 2105 submission does not specifically describe a legal conflict that prohibits the applicant from supplying an answer to Item 5.1(a), then the applicant must supply that answer even if a legal conflict prohibits the applicant from supplying additional details in response to Item 5.1(b). The same principle applies to other "yes/no" questions in the Form, including Items 5.2(a), 6.1(a), and 6.1(b).

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4. Does a registered firm's obligation to cooperate with the Board include an obligation to obtain from non-U.S. clients a consent or waiver sufficient to allow the registered firm to provide the Board with documents and information concerning the issuer?

The Sarbanes-Oxley Act requires public accounting firms to register with the Board in order to engage in certain audit work. The Act imposes on registered firms an obligation to cooperate and comply with Board requests for testimony or documents made in furtherance of the Board's authority and responsibilities under the Act.

The Board's responsibilities under the Act include conducting inspections under Section 104 of the Act and investigations under Section 105. To carry out these responsibilities, the Board will need to review documents and information in a firm's possession concerning the firm's audit clients. (Section 104, for example, requires that Board inspections include reviews of individual audit engagements.) In addition, Section 106 of the Act provides that any non-U.S. public accounting firm that chooses to engage in certain work, and any registered U.S. firm that chooses to rely on certain work by a non-U.S. firm, are each deemed to have consented to produce the non-U.S. firm's audit workpapers to the Board or the Commission.

A registered firm's failure to cooperate with Board requests in these contexts may subject the firm to disciplinary sanctions, including substantial civil money penalties and revocation of the firm's registration. In the staff's view, if a firm fails to cooperate with the Board, the fact that the firm has not obtained a client consent that might be necessary (under non-U.S. law) to allow the firm to cooperate is not a defense to a disciplinary action for failure to cooperate.

As a practical matter, therefore, a firm must choose whether (1) to satisfy itself in advance that the non-U.S. client will provide any necessary consent if and when the Board demands documents or information concerning the client, (2) to proceed without such assurance and take a risk that it may later have to choose between providing information without the client's consent or facing a Board sanction for failing to provide the information, or (3) to decline the audit engagement. The Board has not attempted to dictate which of these choices a firm should make.

Accordingly, a firm might conclude that it is in the firm's interest to obtain a non-U.S. client's advance assurance that the client will provide its consent when necessary for the firm to comply with a Board demand. A firm's compliance with its obligations to the

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Board, however, is judged not by the existence, form, or content of any such assurance from a client, but by whether the firm provides documents and information when the Board requires them. Whether and how a firm assures itself that it will be in a position to comply with Board demands is a matter for each firm to decide and, if necessary, to work out with its non-U.S. clients.

5. My firm is a registered U.S. firm, but some of my firm's "associated persons" are non-U.S. firms that assert that their local law prohibits them from executing the consents that the Act and PCAOB Rules require registered firms to secure from all associated persons. What are the consequences of my firm's failure to secure such a consent from those associated persons?

If the Board discovers that a registered firm has failed to secure the required consent from an associated person, the Board could take disciplinary action against the registered firm solely on the basis of that failure. Where the failure to secure such a consent is based on an asserted conflict with non-U.S. law, however, a registered firm may be able to obtain advance assurance that the staff will not recommend that the Board take disciplinary action solely on the basis of that failure.

To seek that assurance, a registered firm should submit the same information that PCAOB Rule 2105 would require in the context of a registration application. After considering the asserted conflict, the staff will generally provide the requested assurance if the staff determines that the issues raised by the non-U.S. law are sufficient to warrant doing so.

If the staff does provide the requested assurance, the staff's position will not constitute acknowledgement that the firm's assertions about non-U.S. law are correct and will not preclude the Board from contesting those assertions in any context. If the staff does not provide the requested assurance, the registered firm may wish to take that into account in determining whether to use the non-U.S. firm in an "associated person" capacity.

6. My firm is located in a non-U.S. jurisdiction in which PCAOB inspections are currently prevented because of the position taken by local authorities. Should my firm provide any additional information because of this circumstance?

In light of current obstacles to inspections, the staff intends to begin recommending that the Board obtain certain additional information from applicants in the relevant jurisdictions, which are listed below. In order to avoid the Board seeking such

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information through a formal request for additional information, which could delay Board action on the application until 45 days after all requested additional information is submitted, applicants located in these jurisdictions may provide the information when they initially submit their application on Form 1. The information may be provided in Exhibit 4.1 (in addition to the required description of the firm's quality control policies) in the form of a separate file listing:

- (a) all issuers with respect to which, during the year of or the year preceding submission of the firm's registration application, the firm or any of its personnel or predecessors performed any work used by any registered public accounting firm in its audit of the issuer's financial statements, including the business address of each such issuer, the identity of the registered public accounting firm, and the date of the registered public accounting firm's audit report;
- (b) all issuers with respect to which the firm currently anticipates performing any future work to be used by another registered public accounting firm in an audit of the issuer's financial statements, including the business address of each such issuer and the identity of the other registered public accounting firm; and
- (c) all registered public accounting firms with which the firm has any arrangement or understanding that the firm will or may perform work to be used by that registered public accounting firm in the audit of an issuer.

The staff intends to recommend that the Board request such information from applicants in the jurisdictions listed below, and will update this list as warranted by any change in circumstances:

China

Hong Kong

Certain of the countries subject to the European Union's Directive on Statutory Auditors (see Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accountants (OJ EU L 157), specifically –

Austria
Belgium

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Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden