
CONSIDERATION OF REGISTRATION)
APPLICATIONS FROM PUBLIC)
ACCOUNTING FIRMS IN NON-U.S.) PCAOB Release No. 2010-007
JURISDICTIONS WHERE THERE ARE) October 7, 2010
UNRESOLVED OBSTACLES TO)
PCAOB INSPECTIONS)
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The Public Company Accounting Oversight Board ("PCAOB" or "Board") is issuing this release to provide notice of a development in its approach to registration applications from public accounting firms in non-U.S. jurisdictions where, because of asserted legal restrictions or objections of local authorities, the Board is denied access to information from PCAOB-registered firms that is necessary to inspect those firms.

Background

Public companies, whether located in the United States or abroad, access U.S. capital markets by complying with certain U.S. legal requirements, including the requirement to periodically file audited financial statements with the U.S. Securities and Exchange Commission. Under the Sarbanes-Oxley Act of 2002 ("the Act"), the auditor of those financial statements – whether a U.S. auditor or a non-U.S. auditor – must be registered with the PCAOB, and the PCAOB must regularly inspect the firm to assess its compliance with U.S. law and professional standards in connection with those audits. These inspections are fundamental to the Board's ability to carry out its oversight responsibilities "in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports."^{1/} Obstacles to those inspections frustrate the oversight system put in place by the Act and, in turn, threaten the public interest by impeding the Board's ability to detect conduct that violates U.S. law and professional standards.

In each year since 2005, the Board's inspection program has included inspections of PCAOB-registered firms in non-U.S. jurisdictions. In many of those jurisdictions, the PCAOB and local authorities in the non-U.S. jurisdiction have worked together to overcome potential impediments to PCAOB inspections, and in several of

^{1/} Section 101(a) of the Act.

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those jurisdictions PCAOB inspections have been conducted in coordination with inspections by local authorities.

In some non-U.S. jurisdictions, however, asserted legal restrictions or objections of local authorities pose unresolved obstacles to PCAOB inspections. From 2004 to the present, the Board has approved registration applications of many firms in those jurisdictions without raising the inspection obstacle as a potential basis for disapproval. This practice was rooted in a belief that the PCAOB and authorities in those jurisdictions would, working cooperatively, overcome any obstacles to registered firms' compliance with PCAOB inspection demands for documents and information, and would do so without undue delay relative to the inspection schedule mandated by the Act.^{2/}

The Board has tried for several years to negotiate arrangements with authorities in the affected jurisdictions to eliminate asserted obstacles to Board inspections, but obstacles persist in several jurisdictions. In some of those jurisdictions, there have been recent indications of progress,^{3/} and the Board continues to try to work through the

^{2/} The registered firms that the Board is required to inspect in the affected jurisdictions are firms that the Act requires the Board to inspect at least once every three years, a frequency that is determined by reference to the number of issuers (i.e. companies whose securities trade in U.S. markets) whose financial statements filed with the SEC are audited by the firm. See Section 104(b)(1)(B) of the Act. The Act authorizes the Board to adjust that frequency requirement if the Board finds that doing so is consistent with the purposes of the Act, the public interest, and the protection of investors. In 2008 and 2009, the Board adjusted the frequency requirement applicable to firms in jurisdictions where obstacles had not yet been overcome, but the Board did so both in the belief that progress was being made to overcome the obstacles and with a caveat that it would not make further schedule adjustments for firms in those jurisdictions. See PCAOB Release No. 2009-003 and PCAOB Release No. 2008-007 (cited in note 1 above).

^{3/} For example, recently there has been progress in negotiations with the audit regulator in Switzerland. Further, on September 1, 2010, the European Commission adopted a decision recognizing the "adequacy" of the PCAOB for purposes of the European Union's Statutory Audit Directive. This decision permits the individual Member State audit regulators to enter into bilateral arrangements with the PCAOB,

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issues with the relevant foreign authorities. Currently, however, even the recent progress in some jurisdictions still leaves substantial uncertainty about whether and when PCAOB inspections of registered firms will be able to go forward.

Consideration of Registration Applications

In light of the length of time that has elapsed without successful resolution of the obstacles, and the continuing inability of the Board to inspect PCAOB-registered firms in some jurisdictions, the Board has re-evaluated its approach to new registration applications from firms in those jurisdictions. The Board has determined that its consideration of new applications from firms in those jurisdictions will no longer be premised on an expectation that those obstacles will be resolved without undue delay to any necessary PCAOB inspection of a firm.

Accordingly, effective for all pending and future applications from firms in such jurisdictions,^{4/} the Board, in addition to addressing any other issues raised by the application, will proceed as follows. Through a request for additional information pursuant to section 102(c)(1) of the Act and PCAOB Rule 2106(b)(i), the Board will ask the applicant to state its understanding of whether a PCAOB inspection of the firm would currently be allowed by local law or local authorities and, if the response is that the inspection would be allowed, to supply written confirmation of that point from the appropriate local regulatory authority. An applicant that receives such a request would have essentially three options. One option would be to allow its application to remain pending by not responding to the request until it was able to provide written confirmation from the appropriate local regulatory authority that an inspection would be allowed. A second option would be to withdraw its application. The third option would be to respond by stating the firm's understanding that a PCAOB inspection of the firm would currently not be allowed by local law or local authorities.

subject to certain conditions. The PCAOB is currently negotiating with several EU audit regulators and hopes to resolve the remaining obstacles to inspections.

^{4/} The jurisdictions to which the approach described here applies may, and the Board expects will, change over time depending upon developments in particular jurisdictions.

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In the event the applicant chooses the third option, and its application is otherwise complete, the Board will issue a notice of hearing pursuant to PCAOB Rule 2106(b)(2)(ii) specifying as a proposed ground for disapproval of the application the obstacle to the Board's ability to inspect the firm. A notice of hearing on the registration application would give the applicant an opportunity to elect to have a hearing on the question of whether, taking into account the obstacle to the Board's ability to inspect the firm, approval of the application would be 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. See PCAOB Rule 2106. If an applicant receives a notice of hearing and neither elects a hearing nor withdraws its application, the application is disapproved on the basis of the grounds stated in the notice of hearing.^{5/}

BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Secretary

October 7, 2010

^{5/} Under section 102(c)(2) of the Act, Board disapproval of a registration application is treated as a disciplinary sanction, and the applicant may seek Securities and Exchange Commission review of the disapproval.