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Secretary
Securities and Exchange Commission
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20 July 2009

File Number PCAOB 2008-04
Notice of Filing of Proposed Rules on Annual and Special Reporting by Registered Public Accounting Firms

Dear Ms. Murphy:

Ernst & Young LLP ("Ernst & Young"), the US member firm of Ernst & Young Global Limited ("EYG"), appreciates the opportunity to submit comments on the *Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Annual and Special Reporting by Registered Public Accounting Firms* (the "Notice of Filing"). The comments below reflect the views of Ernst & Young and other member firms of EYG.

The Notice of Filing seeks public comment on rules and forms adopted by the Public Company Accounting Oversight Board (the "PCAOB" or "Board) to implement an annual and special reporting regime for registered audit firms (the "Rules"). Ernst & Young previously submitted comments to the PCAOB on the rules as proposed in its Release No. 2006-04, and we are pleased that the Board in its final rules addressed certain of the comments that we made.[1] However, we believe that the Rules, if approved by the Securities and Exchange Commission (SEC), could require a non-US firm to violate its domestic law in order to comply with the PCAOB reporting requirements unless clarified.

We suggest that the SEC encourage the PCAOB to publish implementing guidance or Frequently Asked Questions (collectively, "FAQs") to address most of the comments provided below.

I. Rule 2207, Assertions of Conflicts with Non-US Laws

As we have noted before, other countries have legitimate interests in enforcing their laws, including those related to confidentiality and bank secrecy. The PCAOB should not put non-US firms in the position where they would need to violate their laws to comply with PCAOB requirements. Therefore, we ask the SEC to recommend that the PCAOB issue additional guidance in order to provide greater accommodation for the legitimate legal regimes of non-US countries.

1. Rule 2207(c)(1) and Rule 2207(e)

As currently proposed, Rule 2207 may require non-US firms to collect, process and potentially produce, information to the Board in violation of their domestic law.

[1] See comment letter of Ernst & Young LLP , http://www.pcaobus.org/Rules/Docket_019/Comments/All.pdf

Specifically, Rule 2207 would require non-US firms to gather and process the information in electronic form as though the firm were going to submit the information (Rule 2207(c)(1)) and, thereafter, produce the information on the request of the PCAOB (Rule 2207(e)). However, the mere act of gathering, processing and/or retaining the information could violate non-US law, particularly in European Union countries, with respect to the relevant point of law.[2] Further, consent by the non-US firm does not necessarily alleviate the issue under non-US law. Moreover, the suggestion within Rule 2207(e) that the PCAOB may possibly request the information at a later date – even when a conflict of law has been substantiated by a legal opinion – causes significant concern. Not only could collecting and processing the information be a violation of law, providing it subsequently to the PCAOB as required under Rule 2207(e) could be a separate legal violation.

Accordingly, we encourage the SEC to recommend that the PCAOB issue guidance clarifying that non-US firms would not be required to violate their domestic law. Short of modifying Rule 2207, in the near-term this clarification could be achieved by FAQs to provide that compliance with Rule 2207(c)(1) and Rule 2207(e) would only be required to the extent permitted by applicable domestic law with respect to the relevant point of law at issue in the Form.

2. Rule 2207(c)(3)

As currently proposed, certain requirements under Rule 2207 are ambiguous and, therefore, compliance could be challenging. If a non-US firm believes it must omit information on Form 2 or Form 3 because of a conflict with non-US law, under Rule 2207(c)(3), it must have "[a] legal opinion, in English, addressed to the foreign registered public accounting firm and that the foreign registered public accounting firm has reason to believe is current with respect to the relevant point of law, that the firm cannot provide the omitted information . . . on the form filed with the Board without violating non-US law."[3]

In connection with the original registration process, non-US firms that were not able to provide information for Form 1 undertook to obtain legal opinions on the relevant points of law. Rather than requiring firms to obtain new legal opinions, Rule 2207(c)(3) provides that a firm have in its possession a legal opinion that the firm has "reason to believe" is current with respect to the relevant point of law." We note that there are challenges involved in establishing and maintaining processes to do so.

We encourage the SEC to recommend that the PCAOB issue clarification in an FAQ that firms need only undertake the process once per year to determine if their legal opinions are current. We believe that this proposal would be sufficient to capture relevant changes and provide the protection sought by the Board. The proposal would also build consistency in the reporting process, provide the registered firms the clarity required to satisfy the requirements of Rule 2207 and enable the firms to implement appropriate processes to gather the relevant information.

II. Form 3

After the initial Form 3 or Catch-up Report, registered firms must file a Form 3 within 30 days of becoming aware of specified matters. The Note to Part II of Form 3 states that "the Firm is deemed to have become aware of the relevant facts on the date that any partner, shareholder, principal, owner, or member of the Firm first becomes aware of the facts."

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[2] While it is impossible to generalize given the variants of non-US law, privacy or data protection law may prohibit the "processing" of personal information, which is a broad term that could include any activity associated with the data.

[3] A corresponding issue arises with respect to Rule 2207(c)(2), which requires the firm to have "[a] copy of the provisions of non-US law that the foreign registered public accounting firm asserts prohibit it from providing the required information."

While we appreciate the Board's effort to clarify when a firm is deemed to be aware, we respectfully submit that the standard set forth in the Note will be difficult to satisfy. We reiterate the view set forth in our previous comment letter, suggesting that awareness should be on the part of the firm's management, and we would recommend the adoption of a "controlling influence" standard analogous to that adopted in existing SEC regulations.[4] The SEC should recommend that the PCAOB issue implementing guidance or an FAQ to clarify that awareness on the part of a firm's management is the appropriate standard for the start of the time limit.

III. Form 2 Item 4.1

As currently proposed, the third Note of Item 4.1 of Form 2 would require a firm to provide information about issuers for which the firm issued no audit reports during the twelve month reporting period, including information about a consent to an issuer's use of an audit report that was previously issued. It would be difficult to gather information on former clients, and we do not believe this information would be sufficiently meaningful to warrant the potential burden of gathering and reporting it. We believe that the PCAOB should address this point when it amends the rules and forms.

We understand the need for the SEC and the PCAOB to move forward on the Rules. Accordingly, where appropriate, we have suggested that the guidance and/or FAQs identified above be issued by the PCAOB so that firms can prepare and be ready to comply with the Rules at their effective date. We believe that the issue relating to consents and, in the longer term all of the issues raised in this letter, would be best addressed by modification to the Rules at such time as the Board may reconsider them. In addition, our view is that Board should be encouraged to enhance channels for information sharing and cooperation directly with its non-U.S. counterparts, which may help address some of the concerns we have raised.

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

Respectfully submitted,

Ernst & Young LLP

[4] Examples discussed in more detail in our July 24, 2006 letter to the Board are in Item 5.01 of Form 8-K related to change in control and 17 CFR §275.206.(4)-4 related to investment advisors.