

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

April 4, 2003

Dear Mr. Secretary:

PCAOB Rulemaking Docket Matter No. 002

KPMG appreciates the opportunity to comment on the Public Company Accounting Oversight Board's (Board) proposed rule, *Board Funding: Proposal for Establishment of Accounting Support Fee* (Proposed Rule), which was released March 14, 2003 pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley).

The overarching objective of the provisions of Sarbanes-Oxley is one of furthering the public interest through improving financial reporting, governance, and audit quality. KPMG wholeheartedly supports the efforts of the Board in striving to achieve this objective.

KPMG International is a Swiss non-operating association which functions as an umbrella organization to approximately 100 KPMG member firms in countries around the world, to whom it licenses the KPMG name. Each KPMG member firm is autonomous, with its own separate ownership and governance structure. The KPMG member firms do not share profits amongst themselves, and they are not subject to control by any other member firm or by KPMG International.

We set out for your consideration our comments on the Proposed Rule, which reflect the assessment by many of the KPMG member firms who have a direct interest in the new rules because of the number of issuers and affiliates of issuers audited by these firms around the world.

Our comments are limited to the provisions of the Proposed Rule that address the role of the independent auditor in the Board's accounting support fee collection process.

The Proposed Rule would seem to establish a new auditing standard that would prohibit a registered public accounting firm from signing an unqualified audit report or issuing a consent to include an audit report issued previously, "unless the auditor has ascertained that the issuer has outstanding no past-due share of the accounting support fee." We do not see the connection, either to the financial statements or the audit process, between the issuance of an auditors' report or consent and the collection process for the Board's accounting support fees.

Proposed Rule Appendix 2 – *Section by Section Analysis of Proposed Rules Relating to Funding*, acknowledges an issuer's failure to pay its share of the accounting support fee is a violation of Section 13(b)(2) of the Securities Exchange Act of 1934 and could, like

any other Exchange Act violation, result in administrative, civil, or criminal sanctions. The Board's determination that non-payment of accounting support fees violates a law, and the Board's ability to refer the matter to the Commission, would appear to provide issuers with all of the incentive necessary to comply with the accounting support fee requirements.

Accordingly, we believe Rule 7103 (b), *Confirmation of Payment of Accounting Support Fee by Registered Accounting Firm*, should not be included in the final rule because this section in the Proposed Rule does not meet the Board's objective of improving financial reporting, governance, or audit quality.

If the Board concludes that an auditing standard will be developed, it needs to consider among other things the matters set forth in the attached Exhibit.

If you have questions regarding any of the information included in this letter, then please call or write to Neil Lerner + (44) 207 311 8620, neil.lerner@kpmg.co.uk or Michael A. Conway, (212) 909-5555, mconway@kpmg.com.

Yours sincerely,

KPMG

Exhibit

Matters for Consideration in a Proposed Auditing Standard

In its Proposed Rule, the Board has not addressed several questions relative to the registered public accounting firm's requirement to confirm payment of fees with the Board prior to issuing an auditors' report, and, potentially, having to modify the auditors' report for non-payment of such fees. We respectfully request the Board to consider the following before issuance of a proposed rule on a new auditing standard with respect to this matter:

- The proposed auditing standard should clearly articulate why a modification of the auditors' report is required and the nature of the modification (e.g., is it a scope restriction, independence impairment or misapplication of generally accepted accounting principles?).
- In the event the issuer's accounting support fees are past due when an issuer files an annual report with the Commission, is the auditor required to qualify the audit report or is the auditor precluded from issuing its report?
- If it is determined that modification of the auditors' report results in a scope restriction, will the Board modify existing auditing standards dealing with such matters or promulgate a new standard with respect to this scope restriction?
- The Proposed Rule, as written, only addresses unqualified audit reports. Would an additional modification be required if the auditors' report was already qualified, adverse or a disclaimer?
- The Proposed Rule prohibits signing an unqualified auditors' report with respect to an issuer's financial statements in situations where the issuer has past-due accounting support fees.
 - Does this prohibition also apply to the statutory or other reports of foreign private issuers? Application of the Proposed Rule to statutory reports of foreign private issuers may result in an auditors' report modification (for non-payment of accounting support fees) that has no basis in local auditing standards.
 - Does this prohibition apply to the printed annual report of an issuer? Applying the Proposed Rule only to audited financial statements filed with the Commission may result in an unmodified auditors' report in the annual report mailed to shareholders and an auditors' report modification (for non-payment of accounting support fees) on identical financial statements filed with the Commission.
- Article 2 of Regulation S-X (Reg § 210.2-01 (c) and (d)) addresses the opinion to be expressed in auditor's reports, including exceptions taken with respect to certain matters. Has the Board considered if the Commission will accept an auditors' report with a modification for past-due accounting support fees? Has the Board considered whether the Commission will need to issue guidance or amend Regulation S-X with respect to such reporting to conform to the Board's rule?
- If an issuer disagrees with the Board on the amount of assessed fees, will this preclude the auditor from issuing an unqualified auditors' report or consenting to the incorporation of a previously issued auditors' report, thereby restricting access to capi-

tal markets? The same issue may relate to an issuer for whom the Board failed to send an invoice or an invoice was mailed but not received.