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April 4, 2003

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

Re: PCAOB Rulemaking Docket Matter No. 002
Proposal For Establishment Of Accounting Support Fee

Deloitte & Touche LLP is pleased to respond to the request for comments from the Public Company Accounting Oversight Board (the “PCAOB” or the “Board”) on its *Proposal For Establishment Of Accounting Support Fee*, PCAOB Rulemaking Docket Matter No. 002 (March 14, 2003). We support the goals of the Sarbanes-Oxley Act of 2002 (the “Act”) to restore investor confidence, as well as the Board’s efforts faithfully to implement the Act.

Introduction

The Act requires that funds to cover the Board’s annual budget are to be collected from “issuers.”¹ The Board’s proposal to implement § 109 of the Act sets forth the manner in which

¹ See Act, § 109; see also Act, § 2(a)(7) (defining “issuer”).

these fees from issuers, the “accounting support fees,” are to be calculated and collected.² The Board’s proposal also provides that “no registered public accounting firm may provide an unqualified audit opinion (or issue a consent) with respect to an issuer’s financial statements if that issuer has outstanding any past-due share of the accounting support fee.”³

Our comments below relate to that aspect of the Board’s proposal that would forbid a registered accounting firm from signing an unqualified opinion or issuing a consent to include a previously issued audit report, unless the issuer has paid the accounting support fee. This aspect of the proposal raises significant concerns. In summary, we believe (1) this aspect is not necessary given several other provisions in the proposal serve to ensure that issuers will pay the accounting support fees in a timely manner, and (2) this additional mechanism would place an inappropriate and unworkable burden on the registered public accounting firm to police the collection of accounting support fees. We explain these concerns in more detail below.

Other Appropriate Mechanisms Will Help Ensure Payment By Issuers

The release accompanying the Board’s proposal suggests that proposed Rule 7103(b) has been included “to serve as a reliable and cost-effective means of maintaining integrity in the assessment and collection process.”⁴ The proposal, however, already includes several other mechanisms to ensure the reliability and integrity of the assessment and collection process. Specifically, the proposal provides that the Board will send notice to issuers of payments due with respect to the accounting support fee, and issuers will be required to pay the fee within

² PCAOB Proposed Rule 1001(a)(1) (defining “accounting support fee”).

³ PCAOB Release No. 2003-2, at 9.

⁴ *Id.*

thirty days thereafter.⁵ If the issuer has not paid the accounting support fee within sixty days after the notice was sent, the Board can send a second notice demanding payment.⁶ Thereafter, in the event an issuer is more than ninety days past due in paying its accounting support fees, the Board would be able to report the delinquency to the Securities and Exchange Commission (“SEC”), and the failure to pay would be deemed a violation of Section 13(b)(2) of the Exchange Act of 1934 and could result in administrative, civil, or criminal sanctions.⁷

It seems unlikely that an issuer would routinely risk a securities law violation by failing to pay its accounting support fee in a timely fashion. Moreover, if an issuer is more than thirty days past due in paying its accounting support fees, interest will accrue at a rate of 6% per annum.⁸ Thus, the proposal already contains ample incentive for issuers to timely pay their accounting support fees.

The Board Itself Should Monitor The Assessment And Collection Of Fees

The release accompanying the Board’s proposal states that the Board “plans to build systems to enable auditors quickly and easily to ascertain whether their issuer audit clients have outstanding any past-due shares of the accounting support fee.”⁹ With this system in place, the Board itself, rather than registered accounting firms, should use this additional mechanism to monitor assessment and collection of the fee system. Indeed, if the Board develops this system,

⁵ PCAOB Proposed Rule 7103(a).

⁶ PCAOB Proposed Rule 7103(c).

⁷ *Id.*

⁸ PCAOB Proposed Rule 7103(a).

⁹ PCAOB Release No. 2003-2, at 10.

the Board will be in the best position to design and operate the system so that it can oversee assessment and collection of the fee in the most efficient and comprehensive manner. We do not think it would be in the Board's interest to become dependent on the registered accounting firms – the entities they regulate – to help preserve the financial viability of the Board.

As proposed, Rule 7103(b) would obligate the registered accounting firm to “ascertain” that the issuer has no past-due accounting support fees outstanding. Numerous unintended consequences could arise from requiring the registered accounting firm to “ascertain” if the issuer has paid the accounting support fee. As noted above, the Board indicates in its proposal that it plans to establish a system that will disclose whether an issuer has any past due amount with respect to the accounting support fee.¹⁰ Notwithstanding this intent, the text of proposed Rule 7103(b) contains no such reference and in the absence of language in the rule to the contrary or an identifiable system that provides the fee information, a registered accounting firm may feel compelled to perform the necessary calculations and investigate the payment records of the issuer to assure itself that it can issue an unqualified audit opinion or a consent to use a previously issued opinion.

Additionally, during the process, discrepancies could arise between the issuer's and the registered accounting firm's calculation of the fee amount; in these situations, it is unclear whether the registered accounting firm would be able to issue an unqualified opinion or a consent with respect to a previously issued opinion. A registered accounting firm that is being asked to issue a consent with respect to a previously issued opinion also may not be in a position to review an issuer's payment records or perform the necessary calculations if the issuer is no

¹⁰ PCAOB Release No. 2003-2, at 10.

longer an audit client. For these reasons, the Board itself should monitor assessment and collection of the fees without reliance on the registered accounting firms.

Requiring Private Accounting Firms To Enforce A Federal Statute Is Not Appropriate And May Create Additional Risk For Firms

Finally, the accounting support fee is a fee that will be set by an SEC-approved regulation and is imposed by federal statute.¹¹ Accordingly, we believe it is inappropriate to commandeer private accounting firms as agents for the assessment and collection of this federally mandated fee, as contemplated by proposed Rule 7103(b). Unlike private accounting firms, the Board has complete control over the fee system and the information generated thereby, and is charged by statute with the “assessment . . . and collection” of the fee.¹²

We also are concerned that by its terms, the proposed rule would expose registered accounting firms to additional risk. As proposed, Rule 7103(b) would forbid the registered accounting firm to sign an unqualified audit opinion or issue a consent if the issuer has not paid the accounting support fee to the PCAOB. Such a rule poses the threat that issuers may miss critical deadlines related to the issuance of the audit opinion on the financial statements - such as those related to completing vital financing agreements or meeting essential debt covenant requirements. The consequences of forbidding firms from signing unqualified opinions, solely for non-payment to the PCAOB, could be severe for such issuers and may in turn create additional risk for the firms. The non-payment of fees should not impact the type of audit opinion issued on the financial statements or the timing of the issuance of the audit opinion.

¹¹ See Act, § 109(d).

¹² See Act, § 109(d)(2). Indeed, the reference in § 109(d)(2) to “agent[s] appointed by the Board” to collect the fees further suggests that Congress did not intend that accounting firms be entangled in the collection process.

Conclusion

For the reasons discussed above, requiring the accounting firm to police an issuer's payment of the accounting support fee is needlessly duplicative of the proposal's other enforcement mechanisms and will raise needless policy concerns. The Board also states in its release that its rules governing the accounting support fees will be used as the basis for the rules governing fees to be collected by any standard-setting body designated by the Board.¹³ In light of this statement, our concerns are multiplied because the problems identified above could be carried through to fee collection schemes for various standard-setting bodies. We therefore urge the Board to refrain from extending to registered accounting firms any obligation to oversee the collection process for fees established to support any standard-setting body designated by the Board. Accordingly, we recommend that the Board delete in its entirety proposed Rule 7103(b).

* * *

We appreciate the opportunity to comment, and would be pleased to further discuss the Board's proposed rule. If you have any questions or would like to discuss these issues further, please contact Robert J. Kueppers at (203) 761-3579.

Very truly yours,

/s/ Deloitte & Touche LLP

cc: Charles Niemeier, Acting Chairman of the PCAOB
Kayla Gillan, Member
Daniel Goelzer, Member
Willis D. Gradison, Jr., Member

¹³ See PCAOB Release No. 2003-2, at 10.

