# Consumer Federation of America

February 2, 2009

Office of the Secretary
PCAOB
1666 K Street, N.W.
Washington, D.C. 20006

Re: PCAOB Rulemaking Docket Matter No. 027

Dear Sir or Madam:

I am writing on behalf of the Consumer Federation of America (CFA)[1] to offer our reluctant and conditional support for the proposal to delay for up to three years first inspections of some foreign audit firms that play a significant role in the audits of U.S. public companies. It is highly unfortunate that such a delay is necessary. We do not share the Board's view that this proposal is "consistent with the Act, the public interest, and the protection of investors." However, it does not appear that the Board has left itself any options for addressing the current situation that meet that standard. This proposal appears to offer the best solution available.

Our support for the proposed inspection delay is conditioned on the following factors:

- **There must be no further delays.** Inspections of foreign audit firms must not follow the pattern of Section 404 implementation for small public companies, where delay follows delay and investors are denied essential protections promised by the Sarbanes-Oxley Act. Nothing is more central to the act than its requirement for independent oversight, including regular inspections, of those firms that audit U.S. public companies. Application of that requirement to foreign audit firms was adopted after thorough debate and must not be undermined either by the Board or by foreign entities that seek to impede its compliance with the law. Under no circumstances will we support further delays beyond those contemplated by this rulemaking.

- **There must be transparency.** The proposal includes two provisions designed to ensure the transparency both of the schedule for conducting inspections and those firms that have not been inspected. Publishing an inspection schedule should make it more difficult for countries to exert behind-the-scenes pressure to further delay implementation. Our experience to date indicates this is a necessary discipline on the process. In addition,

[1] CFA is a non-profit association of nearly 300 national, state and local pro-consumer organizations. It was founded in 1968 to represent the consumer interest through research, education and advocacy.

publishing the names of uninspected firms will not only provide investors with valuable information they are entitled to receive, it will also provide those firms and the U.S. firms and public companies that rely on their work with an incentive to support timely inspections rather than seek continued delays. We do not support the proposal unless both these conditions are included without weakening amendments.

- **There must be accountability.** Going forward, it is not enough that we simply publish the names of firms that have not been inspected; there must be meaningful sanctions for firms that fail to comply with the U.S. inspection requirement. Recently, our policy in this area has been all carrot and no stick. Foreign jurisdictions have been given to understand that there will be no serious consequences for those who erect barriers to prevent U.S. inspections; on the contrary, they have been led to believe that the reward for non-cooperation would be a policy change from one of joint inspections to one of full reliance. That must end. While we support a cooperative approach to inspections where possible, we adamantly oppose fully relying on foreign oversight bodies to perform those inspections (as we have explained in detail elsewhere). We are hopeful that a decisive statement from the new administration that the full reliance proposal is off the table, combined with a clear commitment from the PCAOB to pursue sanctions for non-compliance, can bring foreign jurisdictions to the table to discuss a cooperative approach to joint inspections that benefits investors both here and abroad.

- **There must be improvements to the quality of foreign audits.** While the delay is unfortunate, investors could ultimately benefit if the Board uses the added time provided by the delay to address troubling weaknesses that have been identified with the quality of its inspections of foreign firms. In particular, steps must be taken to improve the risk assessments and pre-audit planning for foreign inspections, to better evaluate regional quality control functions relied on by global accounting networks, and to focus on risks related to referred work on audits of multi-national companies. Going forward, we must be confident that the audits of foreign firms are not only timely but of high quality.

Certain objections to this proposal are easy to predict. The first likely objection relates to respect for "sovereignty." However, the requirement for PCAOB audits of foreign audit firms is designed to protect U.S. investors by ensuring compliance with U.S. laws and regulations in the audits of U.S. public companies. It is simply unreasonable for foreign oversight bodies – which do not have extensive expertise in U.S. laws and regulations – to erect and maintain barriers that prevent the Board from fulfilling its investor protection obligation in this regard. This would be a concern even if significant deficiencies in the independence, inspection procedures, and operational capacity of foreign oversight bodies had not been identified. Under the circumstances, it is unacceptable. It is also frankly incomprehensible why foreign oversight bodies don't welcome the opportunity to have added resources brought to bear on a function that is essential to protect investors and promote market integrity.

A second, related objection certain to be raised is one of fairness. Foreign firms are likely to object that they should not be sanctioned for violations that result from home country laws preventing U.S. inspections, restrictions over which they have no control. This argument elevates concerns over repercussions to audit firms over concerns over repercussions to

investors, who have a right to expect that those firms that play a significant role in the audits of U.S. public companies are subject to oversight on the same terms as and to the same degree as U.S. firms. Moreover, it understates in our view the degree to which foreign audit firms have worked hand-in-hand with their home-country oversight bodies to impede U.S. inspections. Imposing meaningful sanctions for non-compliance – specifically the threat that their ability to audit U.S. public companies will be forfeit – may force those firms, and the companies they audit, to reconsider where their interests lie and use their influence with home-country oversight boards to encourage a more cooperative approach to joint inspections. That would benefit all investors.

The sanctions must be meaningful, however. Simple disclosure requirements, as outlined in the proposal, would not be adequate, first, because they do not satisfy the demands of the Sarbanes-Oxley Act and, second, because they do not offer adequate assurances of a quality audit to investors.

To some extent, the Board is responsible for the awkward situation in which it now finds itself, forced to choose between delaying statutorily mandated inspections or forcing firms to comply with inspection requests over the objections of their home-country regulatory authorities. By rolling out its full reliance proposal, the Board sent a clear message that non-cooperation by foreign oversight boards would be rewarded. The proposal's statement that "the Board does not intend … to make any further adjustments to the inspection frequency requirements" is long overdue. We expect the Board to keep that pledge with respect to firms due to be inspected in 2008 and beyond.

Respectfully submitted,

Barbara L.N. Roper

Barbara Roper
Director of Investor Protection

cc: Mark Olson, Chairman, PCAOB
Daniel Goelzer, PCAOB Board Member
Bill Gradison, PCAOB Board Member
Steven Harris, PCAOB Board Member
Charles Niemeier, PCAOB Board Member
Mary Schapiro, Chairman, U.S. Securities and Exchange Commission