

PCAOB

Public Company Accounting Oversight Board

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RULE AMENDMENTS)
CONCERNING THE TIMING OF)
CERTAIN INSPECTIONS OF)
NON-U.S. FIRMS, AND OTHER)
ISSUES RELATING TO)
INSPECTIONS OF NON-U.S. FIRMS)

PCAOB Release No. 2008-007
December 4, 2008

PCAOB Rulemaking
Docket Matter No. 027

Summary:

The Public Company Accounting Oversight Board ("Board" or "PCAOB") is adopting an amendment to the inspection frequency requirements of Rule 4003 that will give the Board the ability to postpone, for up to one year, certain inspections of foreign registered public accounting firms that the Board is otherwise required to conduct before the end of 2008. The Board is also proposing, and seeking comment on, an amendment to Rule 4003 that would give the Board the ability to postpone, for up to three years, certain inspections of foreign registered public accounting firms that the Board is otherwise required to conduct before the end of 2009.

In addition, the Board is inviting comment on certain other issues and concepts related to inspections of non-U.S. firms. Specifically, the Board seeks comment on possible Board action in the event a non-U.S. firm declines to comply with an inspection demand because of a concern that doing so may violate the firm's local law.

Public Comment:

Interested persons may submit written comments by sending them to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, DC 20006. Comments also may be submitted by e-mail to comments@pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 027 in the subject or reference line and should be received by the Board no later than 5:00 p.m. (EST) on February 2, 2009.

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Board Contacts: Rhonda Schnare, Director of International Affairs (202-207-9167; schnarer@pcaobus.org).

Overview

In this release, the Board is addressing and seeking public comment on a group of interconnected issues that relate to the Board's responsibility to conduct inspections of registered firms, including registered non-U.S. firms, and the corresponding obligation of firms to cooperate with Board inspections. Part I of the release deals with amendments to the Board's rule that implements the provisions of the Sarbanes-Oxley Act of 2002 ("the Act") governing the minimum frequency with which the Board must conduct inspections. The Board is adopting a final rule amending the inspection frequency requirement as it applies to the first inspection of certain non-U.S. firms that would otherwise be required before the end of 2008. The Board is also seeking comment on a proposed rule that would amend the inspection frequency requirement as it applies to a specific group of other non-U.S. first inspections that are currently required to be conducted no later than 2009.

Part II of the release discusses registered firms' obligations to cooperate with Board inspections. The Board invites comment on that discussion, which includes a description of possible Board action in the event non-U.S. firms decline to provide information requested by the Board because of a concern that providing the information may violate their local law.

I. Rule Amendments Concerning the Timing of Certain Inspections

A. Background

Under the Act and PCAOB Rules, it is unlawful for any public accounting firm to prepare or issue an audit report with respect to any issuer or play a substantial role in the preparation or furnishing of any such audit report without being registered with the PCAOB.^{1/} For non-U.S. firms, this registration requirement took effect on July 19, 2004.

^{1/} See Sections 102(a) and 106 of the Act and PCAOB Rule 2100. For these purposes, the term "issuer" is defined by Section 2(a)(7) of the Act and generally encompasses entities that have issued securities that are registered under Section 12 of the Securities Exchange Act of 1934, or that otherwise have certain reporting obligations to the Securities and Exchange Commission ("Commission"), or that have filed registration statements with the Commission that have not yet become effective.

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The Act directs the Board to conduct a continuing program of inspections to assess registered public accounting firms' compliance with certain requirements.^{2/} With respect to each registered firm that regularly provides audit reports for 100 or fewer issuers, the Act requires the Board to conduct an inspection at least once every three years.^{3/} The Act authorizes the Board to adjust that inspection frequency requirement by rule if the Board finds that a different inspection schedule is consistent with the purposes of the Act, the public interest, and the protection of investors.^{4/}

Inspection frequency requirements adopted by the Board are set out in PCAOB Rule 4003, "Frequency of Inspections."^{5/} Under Rule 4003, when a firm issues an audit report while registered,^{6/} the Board must conduct an inspection of that firm within a certain number of calendar years following the year of the audit report.^{7/}

^{2/} See Section 104(a) of the Act.

^{3/} See Section 104(b)(1)(B) of the Act.

^{4/} See Section 104(b)(2) of the Act.

^{5/} Registered non-U.S. firms are subject to the Act and the Board's rules "in the same manner and to the same extent as" registered U.S. firms (see Section 106(a) of the Act), including the requirement to cooperate in periodic PCAOB inspections.

^{6/} Section 2(a)(4) of the Act defines "audit report" to mean, in essence, an audit report with respect to the financial statements of an "issuer," and that is how the term is used in this release.

^{7/} In general, if a firm issues audit reports for 100 or fewer issuers in a calendar year, Rule 4003(b) requires that the Board inspect the firm within the following three calendar years. Rule 4003(d), however, provides that the first such inspection of firms that registered in 2003 or 2004 is not required sooner than the fourth calendar year (after the first calendar year in which the firm, while registered, issues an audit report). This release focuses on firms that become subject to Board inspection by virtue of issuing an audit report, but Rules 4003(b) and (d) also describe inspection frequency requirements for firms that play a substantial role in the preparation or furnishing of an audit report (as defined in PCAOB Rule 1001(p)(ii)) but do not issue an audit report. The Board has adopted and submitted for Commission approval amendments that would eliminate the requirement that the Board regularly inspect such firms.

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The Board began a regular cycle of inspections of U.S. firms in 2004 and has conducted 911 such inspections, including repeat inspections of several firms. Inspections of non-U.S. firms began in 2005, and the Board has inspected 123 non-U.S. firms^{8/} located in 24 jurisdictions.^{9/} Under Rule 4003's current inspection frequency requirements, there are 134 additional non-U.S. firms in 42 jurisdictions that, by virtue of their having issued audit reports, the Board is currently required to inspect but has not yet inspected.^{10/} Those 134 pending "first inspections" of non-U.S. firms (with deadlines ranging from 2008 to 2012 under the existing rule) are in addition to pending second, and later, inspections of non-U.S. firms that the Board has already inspected once.

This release discusses rule amendments that would affect a portion of those 134 pending first inspections. Specifically, these amendments would affect 21 of the 52 first inspections that existing Rule 4003 requires the Board to conduct no later than 2008,^{11/} and 50 of the 70 first inspections that the rule requires the Board to conduct no later than 2009. Nothing in this release affects inspection frequency requirements

^{8/} The Board has issued reports on 799 of the 1,034 inspections conducted to date, including reports on 42 of the 123 non-U.S. inspections. Reports on the other inspections are in process.

^{9/} The Board has inspected non-U.S. firms located in Argentina, Australia, Bermuda, Brazil, Canada, Chile, Colombia, Greece, Hong Kong, India, Indonesia, Ireland, Israel, Japan, Kazakhstan, Mexico, New Zealand, Panama, Peru, Singapore, South Africa, South Korea, Taiwan R.O.C., and the United Kingdom.

^{10/} Those 134 firms are located in Argentina, Australia, Austria, Belgium, Canada, Cayman Islands, China, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hong Kong, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Luxembourg, Malaysia, Netherlands, New Zealand, Norway, Papua New Guinea, Philippines, Poland, Portugal, the Russian Federation, Singapore, South Korea, Spain, Sweden, Switzerland, Turkey, the United Arab Emirates, the United Kingdom, and Venezuela.

^{11/} Thirty-one of those required 52 first inspections have been, or will be, conducted in 2008. In addition, the Board has conducted 16 other first inspections of non-U.S. firms in 2008 even though the deadline for the Board's inspection of those firms is not until a later year.

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concerning any other first inspections or concerning any second, or later, inspections of a firm.

The Board is adopting an amendment to Rule 4003 that will give the Board the ability to postpone, for up to one year (i.e., to the end of 2009), first inspections of the remaining non-U.S. firms that the Board is currently required to conduct before the end of 2008. The Board is also proposing, and seeking comment on, an amendment that will give the Board the ability to postpone, for up to three years, first inspections that the Board is currently required to conduct before the end of 2009 in jurisdictions where the Board has conducted no inspections before 2009.

B. Conducting Inspections of Non-U.S. Firms

The PCAOB has recognized since the outset of its inspection program that inspections of non-U.S. firms pose special issues.^{12/} In its oversight of non-U.S. firms, the Board seeks, to the extent reasonably possible, to coordinate and cooperate with local authorities. Since 2003, when the PCAOB began operations, a number of jurisdictions have also developed their own auditor oversight authorities with inspection responsibilities or enhanced existing oversight systems.^{13/} The Board has a specific framework for working cooperatively with its non-U.S. counterparts to conduct joint inspections and, to the extent deemed appropriate by the Board in any particular case,

^{12/} See Briefing Paper, Oversight of Non-U.S. Public Accounting Firms (October 28, 2003); Final Rules Relating to the Oversight of Non-U.S. Public Accounting Firms, PCAOB Release No. 2004-005 (June 9, 2004) (hereinafter "Oversight of Non-U.S. Firms").

^{13/} In 2006, for instance, the European Union enacted a directive requiring the creation of an effective system of public oversight for statutory auditors and audit firms within each Member State. See The Directive 2006/43/EC of the European Parliament and the Council (May 17, 2006) (the "Eighth Directive"). In addition, among others, Canada created the Canadian Public Accountability Board, and in Australia, the responsibilities of the Australian Securities and Investments Commission were expanded to include auditor oversight. In Asia, Japan created the Certified Public Accountants and Auditing Oversight Board, South Korea gave responsibility for auditor oversight to its Financial Supervisory Service, and Singapore created the Accounting and Corporate Regulatory Authority.

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relying on inspection work performed by that counterpart.^{14/} The Board has previously expressed the view that it is in the interests of the public and investors for the Board to develop efficient and effective cooperative arrangements with its non-U.S. counterparts.^{15/} In jurisdictions that have their own inspection programs, this may include conducting joint inspections of firms that are subject to both regulators' authority. Even where the Board does not work with a local regulator to conduct joint inspections, the Board communicates with its counterpart or other local authorities (such as securities regulators or other government agencies and ministries) regarding its inspections to be conducted in the jurisdiction.

In some jurisdictions, the PCAOB's ability to conduct inspections, either by itself or jointly with a local regulator, is complicated by the need to address with local authorities potential legal obstacles and sovereignty concerns. The Board seeks to work with the home-country authorities to try to resolve potential conflicts of laws.^{16/}

In addition, PCAOB Rule 4011 permits non-U.S. firms that are subject to Board inspection to formally request that the Board, in conducting its inspection, rely on a non-U.S. inspection to the extent deemed appropriate by the Board. If a Rule 4011 request is made, Rule 4012 provides that the Board will, at an appropriate time before each inspection of the firm, determine the degree, if any, to which the Board may rely on the non-U.S. inspection. Rule 4012 describes aspects of the non-U.S. system that the Board will evaluate in making that determination.

Where the need arises to try to resolve potential conflicts of law, or to evaluate a non-U.S. system in response to a Rule 4011 request, the effort can be substantial. The effort typically involves negotiating the principles of an arrangement for cooperation consistent with the inspection obligations that the Act imposes on the Board. It also involves the Board gaining a detailed understanding of the other jurisdiction's auditor oversight system in order for the Board to determine the degree of reliance it is willing to place on inspection work performed under that system in a particular inspection year. Additional effort is involved in coordinating the scheduling of specific inspections.

^{14/} See PCAOB Rules 4011 and 4012; see also Oversight of Non-U.S. Firms at 2-3.

^{15/} See Oversight of Non-U.S. Firms at 2-3.

^{16/} See Oversight of Non-U.S. Firms at 3.

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Where possible, the Board seeks to conduct inspections jointly with local authorities both to take advantage of potential efficiencies and to avoid imposing unnecessary regulatory burdens on the firm. Like the PCAOB, several of these other authorities proceed according to inspection frequency requirements. While some of the Board's counterparts are established and have inspection programs, many are new organizations still building up their inspections resources. As a result, synchronizing the inspections schedules of these authorities and the PCAOB's requirements may sometimes require one-time scheduling adjustments by the PCAOB and/or the other authority.

Notwithstanding these challenges, the Board has so far conducted 123 non-U.S. inspections. Moreover, 57 of those inspections, in five jurisdictions, have been conducted jointly with other auditor oversight authorities, while 66 have been conducted solely by the PCAOB.

C. Extension of the Deadline for Certain 2008 Inspections

There are 52 non-U.S. firms in 22 jurisdictions that, by virtue of when they first issued audit reports while registered, the current inspection frequency rule requires the Board to inspect for the first time by the end of 2008. In 13 of those jurisdictions,^{17/} the PCAOB expects to have conducted 31 of those inspections by the end of 2008.^{18/} Eighteen other first inspections of non-U.S. firms that are currently required by the end of 2008, however, face challenges to being conducted in 2008.^{19/} Those inspections involve firms in nine jurisdictions, several of which have newly established auditor oversight entities that have just recently started their own inspections programs. In some of those nine jurisdictions, the auditor oversight authority's 2008 inspections

^{17/} Those jurisdictions are Australia, Canada, Greece, Hong Kong, India, Ireland, Israel, Japan, Norway, the Russian Federation, Singapore, South Africa, and the United Kingdom.

^{18/} This is in addition to first inspections of 16 other non-U.S. firms that the Board will conduct by the end of 2008 even though the deadline for the Board to conduct those inspections is in later years.

^{19/} Three other required 2008 non-U.S. inspections appear unlikely to be conducted in 2008 for reasons other than those described here, as discussed in footnote 21 below.

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schedules did not include some or any of the firms the PCAOB is required to inspect in 2008. In still other jurisdictions, local authorities have raised sovereignty concerns or potential legal conflicts, and efforts to resolve those issues are incomplete.

The Board has made an effort to resolve issues with authorities in the nine jurisdictions in time to conduct these inspections in 2008.^{20/} The Board remains hopeful that ongoing discussions with these authorities will result in the resolution of outstanding issues. It is now apparent, however, that this will not occur in time to conduct those inspections this year. Accordingly, the choice the Board now faces is whether to (1) postpone these inspections while continuing discussions on the outstanding issues or (2) proceed with inspections by making inspection demands on the individual firms over the objection of local authorities, including in circumstances where local authorities take the position that a firm's cooperation in a Board inspection would violate local law.

Neither option is ideal. While the Board sees value in cooperation and joint inspections, that value must be balanced against the statutory presumption that PCAOB-registered firms will be subject to timely PCAOB inspections in order to protect the interests of investors in U.S. markets. On balance, in light of the status of the ongoing discussions with authorities in the nine jurisdictions described above, the Board believes that a rule amendment allowing the Board to postpone those inspections for up to one year is the appropriate course. For that reason, the Board is adopting a new paragraph (f) to Rule 4003, allowing the Board to postpone for up to one year the first inspection of any non-U.S. firm that the Board is otherwise required to conduct by the end of 2008. The Board is adopting Rule 4003(f) as a final rule to take effect upon Commission approval.^{21/}

^{20/} In two of these jurisdictions, the Board was able to arrange for and conduct some joint inspections in 2008, but, due to scheduling conflicts, could not conduct joint inspections of all firms with 2008 deadlines.

^{21/} In addition to postponing the 18 required 2008 inspections discussed above, the Board would use Rule 4003(f) to postpone three other required 2008 inspections that now appear unlikely to be conducted in 2008 for a different reason than that discussed above. In October 2007, after soliciting public comment, the Board adopted and requested Commission approval of an amendment to Rule 4003 that would give the Board discretion not to conduct any otherwise required inspection of a firm if, after the firm issued the audit report that triggered the inspection requirement, the firm went two consecutive years without issuing an audit report. The three firms in question fall into that category. The proposed amendment remains pending before the

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In the Board's view, this adjustment to the inspection frequency requirement is consistent with the purposes of the Act, the public interest, and the protection of investors. The Board believes that its approach to implementing Rules 4011 and 4012, developing cooperative arrangements, and conducting joint inspections with foreign regulators is enhancing the Board's efforts to carry out its inspection responsibilities. There is long-term value in accepting a limited delay in inspections to continue working toward cooperative arrangements where it appears reasonably possible to reach them. The Board recognizes that some non-U.S. firms may be reluctant to comply with PCAOB inspection demands because of a concern that doing so might violate local law. Up to a point, the purposes of the Act, the public interest, and the protection of investors are better served by delaying a first inspection to work toward a cooperative resolution than by precipitating legal disputes involving conflicts between U.S. and non-U.S. law that could arise if the Board sought to enforce compliance with its preferred schedule without regard for the concerns of non-U.S. authorities.

The Board does not intend, however, to make any further adjustments to the inspection frequency requirements applicable to firms whose first inspection was due no later than 2008. While the Board will continue to work toward cooperation and coordination with authorities in those jurisdictions, the Board will make inspection demands on the firms early enough in 2009 to allow the Board to conduct the inspections during 2009.^{22/} As noted above, the Board is aware of the possibility that, in the absence of resolution of cross-border legal and other issues, a PCAOB-registered firm might in some cases be reluctant to comply with a PCAOB inspection demand because of a concern that doing so might violate local law. Issues related to that possibility are discussed in Part II of this release.

Commission, and in the event it is not approved this year, the Board would need to postpone the inspections of these three firms pursuant to the amendment described here.

^{22/} Nothing in this release is inconsistent with the Board's willingness to place reliance on a non-U.S. inspection consistent with Rules 4011 and 4012, or suggests any position on the nature of the inspection process in circumstances in which the Board relies on a non-U.S. inspection to the maximum extent that would be consistent with the Board's responsibilities under the Act.

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D. Proposed Extension of the Deadline for Some 2009 Inspections

Under existing Rule 4003, there are 70 non-U.S. firms that, by virtue of when they first issued audit reports while registered, the Board is required to inspect for the first time by the end of 2009.^{23/} Those firms are located in 37 jurisdictions, including several jurisdictions in which the Board has already conducted first inspections of other firms. Of those firms, 50 are located in 24 jurisdictions where the Board will not have conducted any inspections by the end of 2008. Many of those 24 jurisdictions have or soon may have a local auditor oversight authority with which the Board would seek to work toward cooperative arrangements before conducting inspections, but has not yet begun to do so. Because of the steps involved in concluding such arrangements and to evaluate the local system, the Board has concerns about proceeding as if that work can be completed for all of the jurisdictions in which the PCAOB has not previously conducted inspections in time to conduct the required inspections in 2009.

In part, the Board views the challenge before it as how to reasonably allocate that jurisdiction-level work over time without unduly delaying inspections of firms whose audit work has the broadest impact on U.S. investors. As a starting point, a reasonable, and perhaps the most readily measurable, indicator of the impact of a firm's audit work on U.S. investors is the total U.S. market capitalization of the firm's issuer audit clients.^{24/} The Board believes that the most practical approach to the jurisdiction-level work is to allow three years beyond 2009 to perform that work. At the same time, the Board intends, within that framework, to have inspected by no later than 2010, firms whose issuer audit clients account for more than 90 percent of the aggregate U.S. market capitalization of the issuer audit clients of all 50 firms.

Accordingly, the Board is proposing a new paragraph (g) to Rule 4003. Proposed Rule 4003(g) would allow the Board to postpone, for up to three years, the first inspection of any non-U.S. firm that the Board is currently required to conduct by

^{23/} This is in addition to at least 16 non-U.S. firms that the PCAOB will inspect for the second time in 2009.

^{24/} The U.S. market capitalization of a firm's issuer audit clients is not the only relevant measure of the impact on U.S. markets of a firm's audit work. For example, even a firm that has no issuer audit clients could have an impact on U.S. markets by virtue of referred work that the firm performs on audits for which it is not the principal auditor.

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the end of 2009 and that is in a jurisdiction where the Board has not conducted an inspection before 2009. The Board believes that this approach will provide appropriate time for the Board reasonably to pursue cooperative arrangements and evaluate the relevant systems in response to Rule 4011 requests. The Board will, however, conduct first inspections in some number of these jurisdictions in each of the years from 2009 to 2012.

The proposed adjustment should not be understood as a reprieve that allows all affected firms to view 2012 as their deadline for PCAOB inspections. The Board intends to set a schedule of inspections for the period 2009 to 2012, as described below, for the 50 affected firms. The Board will work toward cooperation and coordination with the relevant local authorities, but the Board will not delay making inspection demands on the selected firms early enough in the year chosen by the Board to allow the Board to conduct the inspections in that year.

In determining the schedule, the Board intends to sequence these 50 inspections such that certain minimum thresholds would be satisfied in each of the years from 2009 to 2012. The minimum thresholds would relate to U.S. market capitalization of firms' issuer audit clients. The Board would begin by ranking the 50 firms according to the total U.S. market capitalization of a firm's issuer audit clients.^{25/} Working from the top of the list (highest U.S. market capitalization total) down, the Board would distribute the inspection of the 50 firms over 2009 to 2012 such that, at a minimum, the following criteria would be satisfied:

- by the end of 2009, the Board would inspect firms whose combined audit clients' U.S. market capitalization constitutes at least 35 percent of the aggregate U.S. market capitalization of the audit clients of all 50 firms;
- by the end of 2010, the Board would inspect firms whose combined audit clients' U.S. market capitalization constitutes at least 90 percent of that aggregate;

^{25/} For purposes of the ranking described here, the Board would use the average monthly market capitalization on which each issuer's share of the Board's 2008 accounting support fee was based.

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- by the end of 2011, the Board would inspect firms whose combined audit clients' U.S. market capitalization constitutes at least 99.9 percent of that aggregate; and
- the Board would inspect the remaining firms in 2012.^{26/}

Along with meeting those market capitalization thresholds, the Board would also satisfy certain criteria concerning the number of those 50 firms that would be inspected in each year. Specifically, the Board would conduct at least four of the 50 inspections in 2009, at least 11 more in 2010, and at least 14 more in 2011.^{27/}

The distribution described above, however, would not operate to prevent an inspection from occurring earlier than called for by the schedule.^{28/} Any inspection may be moved to an earlier year for a variety of reasons, such as the presence of risk factors (including risk factors relating to referred work that the firm performs on audits for which it is not the principal auditor), synchronization of schedules with a local regulator for purposes of a joint inspection, or simply the opportunity to do an inspection earlier and the availability of resources to do so (including availability of inspectors with specialized industry knowledge and relevant language skills). In addition, the Board will at least annually review updated market capitalization data and consider whether there have been any changes that warrant moving a particular inspection forward to an earlier

^{26/} Under existing provisions of Rule 4003 that the Board does not propose to change, 2012 would also be the deadline for the Board to conduct the second inspection of those of the 50 firms whose first inspection occurs in 2009.

^{27/} The issuer audit client U.S. market capitalization currently associated with a significant number of the 50 firms is relatively low, and even zero in a number of cases where firms appear to have stopped issuing audit reports for issuers. As a result, a substantial portion of the relevant issuer market capitalization is associated with a relatively small number of the 50 firms.

^{28/} If the Board should fail to make an inspection demand on any firm included in the inspection schedule in a particular year, the Board would publicly describe that fact and the reasons.

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year.^{29/} The Board encourages commenters to address whether there are other factors that should be treated as a reason to consider moving an inspection to an earlier year.

If the proposed rule is adopted, the Board would, no later than January of each year from 2009 to 2012, and after providing advance notice to the authorities in the relevant jurisdictions, publicly announce all of the non-U.S. jurisdictions in which there are firms whose inspection the Board will conduct in that year (including, but not limited to, jurisdictions relevant to the 50 inspections discussed above). Once that announcement was made, the Board would conduct inspections that year in each of those jurisdictions unless the Board made a subsequent public announcement explaining why that had changed with respect to a particular jurisdiction.^{30/}

For the same reasons as described above in connection with the adoption of Rule 4003(f), the Board believes that proposed Rule 4003(g) would be consistent with the purposes of the Act, the public interest, and the protection of investors. The Board invites commenters to address that issue.

^{29/} The Board does not intend to make changes that would move an inspection of one of these 50 firms to a later year than in the initial distribution except as the result of a development relating to factors described in the text. For example, if a firm's issuer audit client market capitalization drops significantly and the firm performs no significant amount of referred work on audits, its inspection might be delayed to a later year. In any event, the Board would not, for any reason, move one of these 50 inspections to a later year than in the initial distribution without publicly describing the change and the reason for it.

^{30/} Even apart from whether the Board eventually adopts the proposed rule, the Board will announce in January 2009 non-U.S. jurisdictions in which the Board will conduct inspections in 2009. While the Board may later add jurisdictions to its 2009 plan (as could occur for various reasons, including if the Board does not adopt the deadline extension proposed in Rule 4003(g)), the Board will conduct 2009 inspections in at least the announced jurisdictions unless the Board makes a subsequent public announcement explaining why that had changed with respect to a particular jurisdiction. The Board also intends to maintain on its web site an up-to-date list of those jurisdictions in which there are registered firms that the Board has inspected. The current list of those jurisdictions is provided in footnote 9 above.

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E. Transparency Concerning Delayed Inspections

The Act and the Board's inspection frequency rule give rise to an expectation among investors, and the public generally, that the Board will inspect certain firms within a specific timeframe. Under existing Board rules, the Board must conduct the first inspection of most registered firms that issue audit reports no later than the fourth calendar year after the firm first issues an audit report while registered (and at least every third year thereafter).^{31/} Because of the postponement of certain 2008 non-U.S. inspections, the end of 2008 will mark the first time in which first inspections of any firms that issue audit reports will not have been conducted within that timeframe. The Board is also proposing, as discussed in Part I.D., that some inspections now due no later than the end of 2009 be postponed.

The Board recognizes that investors may have an interest in the identity of firms that have not been inspected within the timeframe that investors could reasonably have expected an inspection to occur. Accordingly, the Board is considering maintaining on its web site an up-to-date list of all registered firms that have not yet had their first Board inspection even though more than four years have passed since the end of the calendar year in which they first issued an audit report while registered with the Board.^{32/} Inclusion on the list would not be an indication that a firm has not cooperated with the Board or is at fault in any way, nor would the list be intended as a substitute for action the Board might take in the event that a firm did fail to cooperate. The list would be intended only to provide public transparency related to delayed inspections.

No rulemaking is required in order for the Board to maintain this public list. Nevertheless, the Board invites comment on this proposed practice.

^{31/} See PCAOB Rules 4003(b) and 4003(d); see also Amendments to Board Rules Relating to Inspections, PCAOB Release No. 2006-008 (December 19, 2006).

^{32/} The name of any firm on the list would link to that firm's registration application on Form 1 and to any annual or special reports the firm may have filed on Form 2 or Form 3.

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II. Registered Firms' Obligations

The Board intends to continue its efforts to develop cooperative relationships with its foreign counterparts. As discussed in Part I, however, in light of its statutory obligation, the Board will need to make inspection demands on non-U.S. firms even in circumstances where the sovereignty concerns or legal objections of local authorities have not been overcome. The Board recognizes that, in those circumstances, some non-U.S. firms may be reluctant to comply with PCAOB inspection demands because of a concern that doing so may violate local law. The Board cannot, however, let the prospect of such refusals dictate delays in the Board's efforts to conduct inspections.

Firms must register with the Board in order to engage in certain professional activity directly related to, and affecting, U.S. financial markets, and all registered firms are subject to the Act and the rules of the Board irrespective of their location.^{33/} A registered firm is subject to various requirements and conditions, including PCAOB Rule 4006's requirement to cooperate in an inspection. In addition, as reflected in Section 102(b)(3) of the Act, a firm's compliance with Board requests for information is a condition of the continuing effectiveness of the firm's registration with the Board.^{34/}

^{33/} See Section 106(a)(1) of the Act.

^{34/} Section 102(b)(3) requires that a firm's registration application include a statement that the firm consents to cooperate in and comply with Board requests for information and that the firm understands and agrees that such cooperation and compliance is a condition to the continuing effectiveness of the firm's registration with the Board. Some non-U.S. firms, invoking PCAOB Rule 2105, declined to include such statements in their applications on the ground that, because of the possibility that the Board might someday request information that local law would restrict the firm from providing, the firm could not represent in advance that it would comply with every request that the Board might make. As long as certain criteria are satisfied, PCAOB Rule 2105 allows a firm's registration application to be considered complete, for purposes of registering the firm, even in the absence of the consent to cooperate. The absence from the application of the broad consent to cooperate, however, does not absolve a firm of the underlying obligation to cooperate if and when the Board seeks information, a point that the Board conveys in writing to any such firm when notifying the firm that its application is approved. See also Oversight of Non-U.S. Firms at A2-15 – A2-19.

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A registered firm's failure or refusal to provide requested information is a violation of Rule 4006 and is inconsistent with the condition reflected in Section 102(b)(3). The Board could impose disciplinary sanctions in any case where a violation of Rule 4006 is established.^{35/} There are, of course, a range of disciplinary and remedial sanctions available to the Board, including revocation of a firm's registration. Conceivably, however, there might be circumstances in which the Board initially addresses a Rule 4006 violation with sanctions short of revocation. For example, the Board could restrict a firm from accepting any new issuer audit clients, or performing referred work on the audit of any issuer for which it has not previously performed referred work, until the firm cooperates in an inspection. But even if the specific facts seemed to make that sanction appropriate initially, the Board would be unlikely to allow that situation to continue indefinitely without another inspection request being made and, in the event of noncooperation, more serious sanctions being imposed.

The Board's consideration of any actual noncooperation case will be based on the facts of the case. The Board must, however, take into account the importance of the inspection process to the oversight regime established by the Act. Moreover, the Board must be sensitive to the legislative premise reflected in Section 102(b)(3) – that firms that cannot or will not cooperate with Board requests for information should not be registered. At the same time, the Board recognizes that a refusal to provide information based on non-U.S. legal restrictions or the sovereignty concerns of local authorities implicates considerations not present in other noncooperation circumstances. The Board invites public comment generally on whether and how the fact of a non-U.S. legal restriction or sovereignty concern should be factored into the Board's consideration of the appropriate sanction to impose for a violation of Rule 4006.

Apart from the sanctions the Board would impose on a firm after a Rule 4006 violation is established, the Board is also considering whether there are possible rulemaking approaches that would help address aspects of the problems created by a refusal to produce information. One example that the Board has begun to consider would involve requiring a principal auditor to make certain public disclosures as part of, or in connection with, each audit report it issues for an issuer, including, among other possibilities:

^{35/} The Board does not view non-U.S. legal restrictions or the sovereignty concerns of local authorities as a sufficient defense in a Board disciplinary proceeding instituted under Section 105(c) of the Act for failing or refusing to provide information requested in an inspection.

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- If the principal auditor has failed to provide information in response to an inspection demand on the basis of non-U.S. legal restrictions or sovereignty concerns, the principal auditor would need to disclose that fact as part of, or in connection with, its audit report.
- In each case, the principal auditor would need to make a representation about whether the principal auditor used the work of any registered firm that has declined to provide information or documents in response to a Board inspection demand on the basis of non-U.S. legal restrictions or sovereignty concerns. The principal auditor would have an obligation to make this inquiry to any registered firm whose work the principal auditor uses, regardless of whether that work constituted a "substantial role" as defined in PCAOB Rule 1001(p)(ii). The principal auditor would also have to retain documentation of the inquiry and response.
- If the principal auditor uses the work of any such firm and assumes responsibility for that work (under AU § 543.04), the principal auditor would have to disclose (a) the identity of the firm, (b) the nature of the work performed by the firm, (c) any steps the principal auditor took to assure itself concerning the firm's and the relevant individuals' familiarity with relevant professional standards, ability to perform the work adequately, and the adequate performance of the work, (d) any other procedures on which the principal auditor relies to monitor or assess the firm's performance of audit procedures in the audits of issuers, and (e) a brief summary of any information available to the principal auditor about deficiencies in the firm's performance of any such procedures in the two-year period preceding the date of the audit report.
- If the principal auditor used the work of any such firm and makes reference to the audit of the other auditor (under AU 543.06), the principal auditor would have to disclose, in addition to the division of responsibility described in AU 543.07, the identity of the firm and the other information described in the preceding sentence.

The Board invites comment on the potential benefits and drawbacks of a rule along the lines described above. The Board also invites comment more generally on

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other possible rulemaking approaches relating to those issues that might provide useful disclosure to investors or otherwise be in the public interest.

III. Opportunity for Public Comment

Interested persons may submit written comments on proposed Rule 4003(g) (extending the deadline for the Board to conduct first inspections of non-U.S. firms otherwise required by 2009), on the disclosure point discussed in Part I.E., and on the issues discussed in Part II by sending them to the Office of the Secretary, PCAOB, 1666 K Street, N.W., Washington, DC 2006. Comments also may be submitted by e-mail to comments@pcaobus.org. All comments should refer to PCAOB Rulemaking Docket Matter No. 027 in the subject or reference line and should be received by the Board no later than 5:00 p.m. (EST) on February 2, 2009.

* * *

On the fourth day of December, in the year 2008, the foregoing was, in accordance with the bylaws of the Public Company Accounting Oversight Board,

ADOPTED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Secretary

December 4, 2008

APPENDICES –

Amendment to PCAOB Rule 4003
Proposed Amendment to PCAOB Rule 4003

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Appendix A – Amendments to Rule 4003

The Board is amending Section 4 of its rules by amending Rule 4003. The relevant portion of the rule, as amended, is set out below. Language added by the amendments is shown in bold italics. Other text in Section 4, including notes to the Rules, remains unchanged and is indicated by " * * * " in the text below.

RULES OF THE BOARD

* * *

SECTION 4. INSPECTIONS

* * *

Rule 4003. Frequency of Inspections

* * *

(f) With respect to any foreign registered public accounting firm concerning which the preceding provisions of this Rule would set a 2008 deadline for the first Board inspection, such deadline is extended to 2009.

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Appendix B – Proposed Amendments to Rule 4003

The Board proposes to amend Section 4 of its rules by amending Rule 4003. The relevant portion of the rules, as amended, is set out below. Language added by the proposed amendments is shown in bold italics. Other text in Section 4, including notes to the Rules, would remain unchanged and is indicated by " * * * " in the text below.

RULES OF THE BOARD

* * *

SECTION 4. INSPECTIONS

* * *

Rule 4003. Frequency of Inspections

* * *

(g) With respect to any foreign registered public accounting firm concerning which the preceding provisions of this Rule, other than paragraphs (a) and (f), would set a 2009 deadline for the first Board inspection and that is headquartered in a country in which no foreign registered public accounting firm that the Board inspected before 2009 is headquartered, such deadline is extended to 2012, provided, however, that from among the group of all such firms, the Board shall conduct some first inspections in each of the years from 2009 to 2012, scheduled according to such criteria as the Board shall publicly announce.