

June 26, 2003

Office of the Secretary  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0609  
USA

**Re: File-No. PCAOB 2003-03  
PCAOB; Notice of Filing of Proposed Rules Relating to Registration System**

Dear Sir(s):

We thank you for the opportunity to comment on the above-mentioned proposed rules that are filed with the SEC for approval.

The German Institut der Wirtschaftsprüfer (IDW), a private organization, and the Wirtschaftsprüferkammer (WPK), a professional self-regulatory body under public law, represent the German audit profession.

IDW and WPK welcome the accommodations and modifications to the original rule proposal for foreign public accounting firms, including:

- Permitting foreign accounting firms an additional 180 days before registration will be mandatory.
- Allowing an applicant to withhold information from its application for registration where disclosure of the information would cause the applicant to violate non-U.S. laws.
- Eliminating or narrowing the scope of information required by Form 1.

However, we do not share the view of the PCAOB that the above mentioned regulatory modifications treat foreign and domestic firms fairly and equally and minimize the administrative burden for non-U.S. firms. The Board's determination not to exempt foreign public accounting firms from the Board's registration requirements as permitted under section 106 (c) of the Sarbanes-Oxley affects the conditions of fair competition between U.S. and non-U.S. applicants. Particularly in the European Union each

EU member state has established or is planning to establish an effective system for the approval, registration and professional oversight of statutory auditors with regard to the single EU capital market from 2005 onwards. Therefore, public accounting firms affected by the Sarbanes-Oxley Act are subject to a twofold professional oversight, including registration requirements, which may result in conflicts of laws and imposes additional administrative and financial burden.

Moreover, in order to avoid a violation of non-U.S. law by furnishing information in the registration process to the PCAOB the proposed rules require the applicant to provide a legal opinion that the law would in fact prevent disclosure of required information as well as an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict and, if applicable, a representation that the applicant was unable to obtain such consents or waivers to eliminate the conflict. The explanation of the applicant's efforts to seek consents or waivers adds no value to investor protection and will result in extremely time-consuming and ineffective attempts to seek consents or waivers, as employees would in many cases refuse to give their consent. We would like to point out, that mainly foreign accounting firms have to bear the burden of this obligation; U.S. accounting firms are usually not affected.

Furthermore, we do not agree to the Board's view that the cost and effort for smaller firms to register with the Board will not be significantly disproportionate to that for larger firms and therefore would not have a significant impact on competition. The considerable administrative and financial burden borne by foreign public accounting firms subject to the registration requirements of the PCAOB may cause many firms other than the so-called "big four" to consider whether they should withdraw from current engagements or not accept new engagements by which they are or would become subject to the provisions of the Sarbanes-Oxley Act. These circumstances will lead to an increased concentration of audits of publicly listed clients towards the so-called "big four" firms. This does not appear to be an outcome that government authorities in the U.S., including the SEC, desire: Section 701 of the Sarbanes-Oxley Act even contains a provision requiring a study of concentration within the audit market.

Both U.S. authorities and the European Commission are in the process of implementing new arrangements in these areas and broadly share the same policy objectives. The new U.S. developments arising from the Sarbanes-Oxley Act are in many aspects similar to the initiatives of the European Commission to restore confidence in the capital markets. In May 2003 the EU Commission launched a Communication to reinforce the statutory audit in the EU. In our opinion, the U.S. should consider recognizing European professional oversight systems as being equivalent to and as effective as that exercised by the PCAOB in the U.S. Equivalence of these systems does not require that the systems are identical. Due to historical and cultural differ-

ences and the different legal environment in the U.S. and the EU member states, an appropriate and effective professional oversight system can be organized in various ways.

To this end, the dialogue between U.S. authorities and the European Commission should be continued with a view towards developing principles and criteria upon which equivalence will be accepted by the U.S. The acceptance of the equivalence of the European system implies that the U.S. exempts European public accounting firms from being subject to the Sarbanes-Oxley Act and the oversight exercised by the PCAOB and the corresponding obligations, including registration with the PCAOB.

As long as the dialogue between U.S. authorities and the EU Commission continues with a view towards developing principles and criteria upon which equivalence will be accepted by the U.S., the application of the PCAOB registration requirements for European public accounting firms should be deferred.

We believe that capital markets in the U.S. would benefit from the harmonization of standards on a global basis. There is a worldwide need for coordination and reciprocal recognition of the equivalence of quality control and public oversight systems and corporate governance, not on a basis of individual states, but on a mutual basis between the EU and the U.S. and elsewhere. For this reason, the EU and the U.S. should consider what mechanisms could be established to create consistent regulations for global capital markets.

Yours truly,

Hubert Graf von Treuberg  
President, WPK

Prof. Dr. Klaus-Peter Naumann  
CEO, Institut der Wirtschaftsprüfer