Date

31 March 2003

Secrétariat
Général

Fédération
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Mr Ronald S Boster
Acting Secretary
Public Company Accounting Oversight Board
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Dear Mr Boster,

We thank you for inviting FEE, the European Federation of Accountants, to participate in the Round Table which we were pleased to attend earlier today.

Background

FEE represents 41 bodies of professional accountants from 29 countries. Details can be found on the FEE website www.fee.be. On 19 December last year, I was elected as FEE President for a period of two years, after serving for several years on FEE's Council and Executive. FEE represents the profession as a whole and not any particular type of audit firm. However, in our comments Mr Niemeier has asked us to emphasise in particular the position of other than the four major firms in Europe, as to how FEE considers the PCAOB proposals might affect them. Please bear in mind that Europe has a requirement for statutory audit for all larger companies whether they are public or not. In this context, FEE has always promoted the view that an "audit is an audit", so that the public expectations of, and confidence in, an audit are uniform.

FEE is committed to high quality financial reporting and auditing for capital markets, including effective enforcement. For example, FEE has for many years been active in the area of quality assurance. In 1998, we issued a discussion paper on the topic and performed a detailed survey which have provided valuable input for the EC Recommendation on Quality Assurance in 2000 which includes recommendations on public oversight. FEE fully supports the EC Recommendation and is contributing to the further development of public oversight in Europe. We are firmly of the opinion that robust oversight works best at national level; especially investigation and discipline are most effective at EU Member State level, due to the legal, institutional and cultural differences. However, FEE believes that there needs to be coordination at EU level to deal with cross-border issues and to continue to develop the quality assurance systems in the single EU market as public expectations increase. This coordination mechanism could also have a role in explaining EU arrangements in the global regulatory dialogue.

FEE strongly supports the transatlantic regulatory dialogue between the European Commission, with the support of the Member States and the US authorities, with a view to establishing principles and criteria for oversight, and such matters as inspection, investigation and discipline. Global principles, criteria and standards are needed in globalised capital markets to ensure the consistent high quality of financial reporting, auditing and related enforcement.

A principles based approach, as supported in the EU and as envisaged for the European coordination of oversight, with strict criteria and sufficient detail, allows for a variety of mechanisms of equivalent quality to provide consistent public oversight to achieve the shared objective of restoring confidence in financial reporting. The benefits of such an approach are that national laws and sovereignty can be respected; sanctions can be applied effectively, and that all possible situations are addressed.

FEE has a policy of supporting the efforts of the authorities in Europe continually to improve and develop financial reporting, audit and related enforcement. Therefore, we are also very supportive of the PCAOB efforts to establish itself and to fulfil its mandate. FEE is strongly of the opinion that discussion with European authorities will provide the PCAOB with a possible means of relying on home-country regulation as far as Europe is concerned, an approach which FEE considers will be the most consistent and effective in term of oversight and such matters as inspection, investigation and discipline. You have published certain questions for consultation, which illustrate some of the issues with which the PCAOB is confronted. Our contribution will be mainly related to these questions and in particular to questions 1, 3, 4, 5 and 7.

Questions on registration

Question 1: Is it feasible for foreign public accounting firms to register within 180 days of the date of the Commission's determination that the Board is capable of operating ? Should foreign public accounting firms be afforded some longer period (e.g., an additional 90 days) within which to register ?

FEE Member Bodies have not been able to make a comprehensive examination of the legal consequences of, and any impediments to, registration. A comprehensive legal study, at least by those firms which may consider registration, would seem to be a necessary and demanding task. This alone suggests that additional time would be advisable to enable full consideration of the legal position in each country by the firm concerned. This is even more the case if such firms consider it necessary to check the evaluation with European and national regulatory authorities. It would seem likely on the preliminary evidence that there are serious impediments, at least in some countries, to firms providing the information and/or consents sought. Two examples are confidentiality and professional secrecy in relation to the inspection of working papers and the privacy of information about individual employees. We provide more details later.

FEE's initial discussion on this question also indicates that, given the extensive nature of the information sought, the practical collection and verification of it is likely to be challenging. Even for smaller firms, where such information might be thought to be more readily available, this is a major issue, as collection of all the data seems likely to require very extensive special exercises. If they have only a few clients registered with the SEC or are auditors to some significant subsidiaries of US registrants, they may prefer to withdraw from the engagements, where permitted, on the grounds of the disproportionate cost and effort involved. There is serious concern in FEE that this could lead to a concentration of the audit market. It could inhibit new entrants to the what could easily become a very specialised audit market in Europe for SEC related work. This may have further distorting consequences for the market in audit services for EU listed companies generally and for prospective new issuers, which are not SEC registered but may wish to preserve the option doing so at any point in future.

FEE is aware that in some European countries there are joint audit appointments to listed companies, for example at present in Denmark and France. It is frequently the case that one of the four major firms is appointed together with a smaller firm. The proposed registration requirements may have a particularly severe impact on smaller firms in these circumstances.

Because of our support of the transatlantic regulatory dialogue and our firm belief that oversight and inspections are most effective at home-country level and because of the legal and practical problems that initial consideration of the PCAOB's proposals have indicated, we think that a substantial extension of time is warranted before any registration requirements are imposed on foreign audit firms. We believe that the appropriate period should be determined by the PCAOB on the basis of its obligations under the Sarbanes-Oxley Act, the evidence provided to it through the roundtable and otherwise, its own resources, and the outcome of consultation with authorities elsewhere, especially the European Commission.

FEE is concerned that if registration is applied to auditors in some countries in the EU, but not in others due to legal impediments, this will have unforeseeable consequences for the reputation of the profession in the single EU market and could lead to public confidence in the uniform quality of audit in Europe being seriously undermined. On the one hand, if it is seen that registration is likely to enhance

quality, then auditors from other countries not registered may be thought to be of lesser quality. On the other hand, precisely the opposite inference could be drawn also. We believe that such potentially harmful effects would not be likely to enhance confidence in audit in globalising markets.

We understand that section 106 of the Sarbanes-Oxley Act permits exemption of foreign audit firms or any class of such firms, if in the public interest or for the protection of investors. This is a decision that can be made only by the PCAOB. However we anticipate that a prime consideration might be the quality of the audit infrastructure in the particular country from which the firm comes and we refer again to our earlier observations on the possibility of reaching agreement with European regulators on oversight, inspection and discipline. Such an approach might assist the PCAOB in making known its views on appropriate principles and criteria for oversight and related arrangements and in considering whether to exercise its discretion in this respect.

Question 2: Are there any portions of Form 1 that are inapplicable, or that should be modified, in the case of non-U.S. applicants ?

We have not been able to give this full consideration, but we can offer some observations. There are differences in legal systems which make the requirement difficult to understand in all circumstances and systems. For instance, it may not always be easy to interpret when a criminal case should be considered as pending. Might preliminary investigations by the prosecutor sufficient cause to consider a case to be pending ? Is the case pending when a judge has been appointed to investigate ? Is the case pending only when the case is submitted to tribunal or court ?

Question 3: In addition to the information required by Form 1, is there any additional information that should be sought from non-U.S. applicants ?

Certain of the information sought is related to the audit infrastructure, notably arrangements for licensing, quality assurance and disciplinary actions in the particular country. We believe that it would be helpful and efficient for the PCAOB to obtain an understanding of such systems through interaction with European and national regulators. We do not suggest that this information should be sought from applicants, since this would be duplicative.

For example in Ireland, there is a new Office of the Director of Corporate Enforcement to enforce company law across the board. Also, the Irish government has carried out a major review of the auditing profession, financial reporting and related corporate governance issues. Legislation to implement the review recommendations was published very recently and is due to be enacted soon. It will establish a new Irish Auditing and Accounting Supervisory Authority to oversee the accounting profession, rather like the new US arrangements. Other elements include enforcement of high quality financial reporting and a requirement in law for significant companies to have audit committees which are given specific responsibilities.

Question 4: Do any of the Board's registration requirements conflict with the law of any jurisdiction in which foreign public accounting firms that will be required to register are located ?

We found this a difficult question to answer in any comprehensive way at this stage and therefore regret that our response must be limited and is not as helpful for the PCAOB as otherwise would be desirable.

We are aware of the following examples:

1) The Sarbanes-Oxley Act provides that a foreign audit firm shall be deemed to have consented to produce its audit working papers for the Board on the Commission in connection with any investigation by either body with respect to an audit report. According to the survey made by FEE in most European countries, such a communication would be impossible without the previous consent of the firms clients. In certain countries such as Belgium, France, Finland, Luxembourg and Sweden, the law seems even more strict. Consequently, an audit firm cannot

commit itself to doing something which would be in contradiction with a domestic regulation and which in many cases is subject to criminal sanctions. The issue might appear to be soluble in countries where only the clients consent may be necessary, but such consent could be withdrawn. Neither is it clear that the information and papers sought will necessarily be confined to those relating to SEC registrants and their significant subsidiaries.

2) In countries such as Denmark and France, listed companies must have joint audits. The question can be raised of what a company should do if one of the audit firms does not register. We assume that the second audit firm will not be authorised for US purposes to sign the joint audit report. The problem, for example in France, is that the audit firm is elected or appointed by the General Assembly of shareholders for a period of years, in the case of France six years, and that the law requires the firm to report as auditor under national law.

3) Furthermore, the possible consequence of a decision by PCAOB to refuse registration of an audit firm must be considered. In most European countries, the General Assembly of shareholders is the only body competent to appoint the auditor. In several countries, notably Germany, the auditor cannot easily resign from the engagement. A statutory audit firm duly appointed by the shareholders will remain in office at least until it has been replaced. In this interim period, it might then be subject to sanctions in the US. There is also a clear difficulty for the foreign registrant company where its appointed audit firm is not registered.

We expect that these issues need extensive legal study and careful evaluation, ideally in conjunction with European and national regulatory authorities, before the possible conflicts of law in each country and their implications for the work of PCAOB can be fully understood.

Question 5: In the case of non-U.S. firms that are required to register because they play a substantial role in the preparation or furnishing of an audit report on a U.S. issuer, is the definition of "substantial role" in Rule 1001(n) appropriate ? In particular, should the 20 percent tests for determining whether a foreign firm's services are material to the audit, or whether the foreign firm performs audit procedures with respect to a significant subsidiary, be changed ? Would a 10 percent threshold more realistically capture firms that materially participate in the preparation or furnishing of an audit report ?

We expect that this requirement arises from US practice, since under US GAAP auditors of consolidated financial statements may refer to the audit opinion issued by the auditors of the financial statements of subsidiaries. However, this is not considered a desirable practice under International Standards on Auditing (ISAs) and national auditing standards in Europe generally preclude division of responsibility.

It is difficult to evaluate how well the proposed definition of 20% might work, as far as it refers to 20% or more of the total engagement hours or fees, respectively, provided by the registered public accounting firm. The impact of such criteria could vary considerably from year to year.

So far as smaller firms are concerned, not alone are they impacted by acting as auditors to foreign SEC registrants but they could also be required to register by operation of this proposed rule. With a view to avoiding the difficulties explained above regarding the risk of further concentration in the market and the special burden for smaller firms, FEE would support a 20% rather than a lesser figure.

We would point out that there are no statistics available of which we are aware on the extent to which foreign audit firms services are material to the audit of US SEC registrants.

Question 6: Should the requirements to register be different for foreign public accounting firms that are "associated entities" (as defined in the Board rules) of U.S. registered public accounting firms than for foreign firms that are not associated with U.S. registered firms ?

FEE is committed to promoting high quality audit in Europe and globally. We are anxious that public confidence in statutory audit in Europe should be maintained at a uniform level. This leads us to

suggest that there should not be differences in requirements for associated or non-associated firms unless this can be arranged in such a way as to avoid the risk to public confidence referred to.

Questions on oversight

Question 7: Should registered foreign public accounting firms be subject to Board inspection? Could the Board, in some cases, rely on home-country regulation in lieu of inspection of foreign public accounting firms ? If so, under what circumstances could this occur ?

Consistent with the views expressed above, we are firmly of the belief that inspection is best conducted at national level and therefore that foreign public accounting firms should not be subjected to Board inspection. The Board could in our opinion rely on home-country regulation in lieu of inspection of foreign public accounting firms.

This approach would be facilitated by an agreement or understanding reached through the transatlantic regulatory dialogue. Such an arrangement could, as we have pointed out above, establish principles and criteria for inspection, investigation and discipline.

Question 8: Aside from Board inspection, are there other requirements of the Act from which foreign public accounting firms should be exempted ? If so, under what circumstances ?

As with other issues we expect that closer examination and fuller understanding of the implications of the Sarbanes-Oxley Act and the PCAOB proposals may reveal substantial issues not yet identified but which need to be resolved. This is a further reason why we believe that a substantial extension of time before any registration requirements are imposed on foreign audit firms and discussion with European regulatory authorities are imperative.

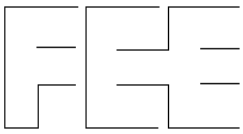
Question 9: Are there requirements different from those the Act imposes on all registered public accounting firms that the Board should apply to foreign public accounting firms ?

Please see our points above under question 1 on registration which describes why we believe that a substantial extension of time for registration is warranted and should be linked to the regulatory dialogue previously referred to.

Question 10: Should the Board's oversight of foreign registered public accounting firms that are "associated entities" (as defined in the Board's rules) of U.S. registered public accounting firms be different than its oversight of foreign public accounting firms that are not associated entities of U.S. registered firms ? Should the U.S. registered firm have any responsibility for the foreign registered firm's compliance with the Board's rules and standards ?

FEE believes that uniform standards of audit are important to the public perception and confidence in the audit process. FEE therefore does not favour distinctions in the Board's approach to those foreign public accounting firms that are "associated entities" of US registered public accounting firms and its approach to other foreign public accounting firms and that are not so associated.

We would like to reiterate our willingness to support the work of the PCAOB through offering comment on its proposals, participation in future round tables and otherwise; not least we attach real importance to the potential benefits for your work of the transatlantic dialogue with European regulators, in particular the European Commission, which we are also ready to support in every way.



We trust that you will find our comments in this letter helpful. Please do not hesitate to contact us if you would like us to clarify any aspect of our comments.

Yours sincerely,

David Devlin
President