



California Corporate & Securities Law

At The PCAOB, They Give No Words But “Mum”

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In March, the Public Company Accounting Oversight Board issued its first public [research note](#). Entitled “Activity Summary and Audit Implications for Reverse Mergers Involving Companies from the China Region (January 1, 2007 through March 31, 2010),” the research note was prepared by the PCAOB’s Office of Research and Analysis (aka ORA).

A new fine question – What companies are the list?

The ORA staff identified 159 companies from the China region that have accessed the U.S. capital markets by means of a reverse merger transaction from January 1, 2007 to March 31, 2010. Being filled, like the elephant’s child, with “satiated curiosity”, I decided to ask a new fine question that I had never asked before. So, I wrote to the PCAOB and asked for a list of the 159 companies. Here is the PCAOB’s response:

At this time, the list of companies is not being released. However, we anticipate that the note will be updated this fall (likely September) and the information may be released at that time.

Hush!

Although not delivered in a “loud and dreary tone,” the PCAOB’s response has left me completely nonplussed. After all, it’s not as if I had asked why melons tasted just so or what a crocodile has for dinner.

In fact, the report says that the ORA staff compiled the list from Form 8-K filings (Item 5.06, Change of Shell Company Status). Further, the research report is explicitly based on these data. By refusing to disclose the underlying data, the PCAOB is effectively precluding readers from critically evaluating the research report. My own reason for requesting the list was to see how many Nevada corporations were on it.

The PCAOB’s disclosure gap

This little contretemps has focused me on a larger issue – just what are the PCAOB’s policies regarding public access to information? Congress created the PCAOB as a private “nonprofit corporation,” and PCAOB members and employees are not considered Government “officer[s] or employee[s]” for statutory purposes.

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15 U. S. C. §§ 7211(a), (b). Congress also explicitly mandated that investigation and investigation reports prepared for the PCAOB are to be confidential and exempt from disclosure under the Freedom of Information Act (FOIA). 15 U.S.C. § 7215(b)(5).

The background data that I've asked for is not investigatory information and thus not covered by the statutory cone of silence. Again being filled with "satiableness of curiosity", I've asked the PCAOB to "provide me with copies any rules or guidelines adopted by the PCAOB regarding public access to records." So far, I've received no response.

Mum's the word

Although William Shakespeare didn't coin the phrase "mum's the word", he did use a variation of it in Henry VI, Part II (Act 1, Scene 2):

*Seal up your lips, and give no words but mum:
The business asketh silent secrecy.*

P.S. – See my [post](#) from last June and this [article](#) concerning the U.S. Supreme Court's decision on the constitutionality of the PCAOB.

P.P.S. – If you are wondering about "satiableness of curiosity" and "loud and dreary tone", read Rudyard Kipling's "The Elephant's Child". It's a wonderful book to read to children!

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