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Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 015,
Proposed Rule on Procedures Relating to Subpoena Requests in Disciplinary Proceedings

Dear Mr./Madam Secretary:

Ernst & Young LLP ("E&Y") is pleased to provide these brief comments on the Public Company Accounting Oversight Board's ("Board" or PCAOB") proposed rule to establish procedures relating to subpoena requests in disciplinary proceedings under Section 105 of the Sarbanes-Oxley Act ("the Act").

Our most significant concern about the proposal is that it appears to establish hurdles to the issuance of subpoenas that were not contemplated by the Act. Under the proposal, the hearing officer may recommend that the Board seek the issuance of a subpoena by the Commission only if the hearing officer determines that (1) the general nature and substance of the documents or testimony sought is not a matter of speculation, and (2) the unavailability of the evidence may bear on the Board's ability to provide a respondent with an "opportunity to defend." Even if both conditions are present, the hearing officer retains discretion to deny a subpoena application in light of his or her judgment regarding how best to manage the proceeding. *See* Proposed Rule on Procedures Relations to Subpoena Requests in Disciplinary Proceedings, Release No. 2004-013 at 4 (October 26, 2004).

These elements of the proposal would impose considerably greater burdens on respondents than exist under comparable provisions in the SEC's Rules of Practice, the Federal Rules of Civil Procedure, and the rules of other self-regulatory organizations. For example, SEC Rule of Practice 232(b) places affirmative burdens on the party requesting a subpoena only "[w]here it appears to the person asked to issue the subpoena that the subpoena sought may be unreasonable,

oppressive, excessive in scope, or unduly burdensome. . .” In that case, the person asked to issue the subpoena “may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought.” Thus, the SEC’s Rules of Practice do not require subpoena applicants to clear the hurdles set forth in the Board’s proposed rule.

Nor does the Act itself suggest that a high standard is required. Section 105(b)(2) of the Act merely requires that there be procedures for respondents to obtain the testimony or documents that the Board considers “relevant or material to an investigation under this section.”

Section 105 establishes a process – that is, allowing the SEC to issue subpoenas to enable the respondent in a non-SEC proceeding to defend itself in an administrative proceeding – that is, to our knowledge, unprecedented. This process does not exist, for instance, with respect to NASD or New York Stock Exchange disciplinary proceedings. And, in view of the broad range of sanctions that can be imposed on an accounting firm and its associated persons by the PCAOB, the availability of third-party subpoenas is a matter of considerable importance. Indeed, providing for third-party subpoenas has long been viewed by the accounting profession as an essential prerequisite for the establishment of a fair and effective self-disciplinary process. The nature of the audit function, with its interplay between the auditor, the issuer, and other parties, means that third-party subpoenas will be necessary in many or most disciplinary proceedings.

Accordingly, we urge that the Board not cut back on the Act’s significant innovation and not impose unnecessary hurdles to the issuance of third-party subpoenas. Consistent with the SEC Rules of Practice, the respondent might properly be required to show the general relevance and reasonable scope of the testimony or other evidence sought by the subpoena, but no additional showing should be required.

We would be pleased to discuss our comments with members of the PCAOB or its staff.

Very truly yours,

Ernst & Young LLP