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Mr. J. Gordon Seymour
Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

PCAOB Rulemaking Docket Matter No. 029
Concept release on requiring the engagement partner to sign the audit report

Dear Mr. Seymour:

Ernst & Young LLP (Ernst & Young) is pleased to submit comments on the Public Company Accounting Oversight Board's (PCAOB or the Board) concept release on requiring the engagement partner to sign the audit report (the Concept Release). While we support Board initiatives that are designed to improve audit quality for the users of financial statements, in our view, requiring the engagement partner to sign the audit report would not provide appreciable benefit in audit quality.

In the Concept Release, the Board postulates that an engagement partner signature requirement may lead to improved audit quality through enhanced accountability and increased transparency. Specifically, the arguments offered are that a signature requirement "might increase the engagement partner's sense of personal accountability to financial statement users" and "would increase transparency about who is responsible for performing the audit, which could provide useful information to investors for investment decisions, audit committees for retention decisions, and in turn, provide additional incentive to firms to improve the quality of all of their engagement partners." In our view, consistent with the debate in the U.S. on this issue over the last few years, the discussion provided in the Concept Release around these two hypotheses does not make a compelling case that users of the financial statements would benefit from the engagement partner signing the audit report or that there would be a resulting benefit to audit quality.

In the remainder of this letter we discuss our views that sufficient mechanisms are already in place to heighten the engagement partner's sense of personal accountability to financial statement users. We also discuss our view that added transparency about who is responsible for performing the audit will not provide meaningful information to users and could be used in an adverse and unfair way toward audit professionals. Finally, we share our concerns about the additional liability exposure that would result from this proposal.

Accountability

At a theoretical level, we agree that requiring the engagement partner to sign the audit report may in some degree increase the engagement partner's sense of accountability to financial statement users. However, at a practical level in terms of audit quality, we do not believe there will be any appreciable benefit in light of the accountability already provided through a firm's system of quality control, the exposure of the engagement partner to personal sanction and penalty as provided under SEC and PCAOB rules and regulations, potential proceedings by State boards of accountancy and the threat of private litigation. With all of these considerations in mind, our engagement partners already have a strong sense of personal accountability today when they sign an internal form at the completion of the audit authorizing the use of the firm's signature on an audit report.

The PCAOB and other regulatory bodies recognize that successful, high quality audits depend on a firm's quality control system. Rule 3400T of the PCAOB's Interim Quality Control Standards set forth minimum quality control standards for a registered public accounting firm. A firm's system of quality control is designed to provide the firm with reasonable assurance that audits performed by its personnel, including the work performed by personnel of its domestic or foreign affiliates or correspondents, are in accordance with professional standards in the United States when such standards are applicable. Moreover, through its inspection process, the PCAOB monitors whether the audit firm has appropriately implemented and complied with these professional standards.

The signing of the firm's name demonstrates the effort of the entire firm behind the audit opinion. An audit report represents the work of many individual CPAs and often involves many partners in the field, national offices and foreign affiliated firms. Public company audits are not simply the work of the engagement partner. We believe it is a mistake to impose a signature requirement suggesting a unique degree of accountability or responsibility for an individual working on a public company audit as this detracts from the concept that the firm as a whole has the responsibility to stand behind the quality of its work. We believe this is true whether an individual were to sign alone or in addition to the firm's name.

The consultative process that is at the center of our firm's system of quality control is designed to prevent any individual from making unilateral decisions around critical accounting and auditing decisions and other significant judgments that could significantly affect our firm's audit opinion. History has shown that a consultative culture and firm decision-making are key drivers of audit quality. We are concerned that an engagement partner signature requirement would send the wrong message and suggest individual responsibility and autonomy over firm responsibility and a consultative quality control system.

The Concept Release suggests that requiring the engagement partner signature on the audit report correlates with the policy requirement of the CEO or CFO signing financial statements. However, we believe this is a false analogy and that the correct analogy supports the firm's signature on the audit report. The CEO or CFO signature for financial reports is evidence that they, at the top of the company, stand behind the information that is being provided and take responsibility for the quality controls and processes that feed into that work product. Requiring the audit firm (and not the engagement partner) to sign the report does the same thing. It sends the message that the entire firm stands behind the audit report and that the firm has the necessary quality controls in place to be confident in its signature.

Requiring the engagement partner to sign the audit report may have the effect of focusing attention on information (i.e., identity of the engagement partner) that is not relevant to the user's ability to rely on the financial statements. Financial statement users primarily are interested in the quality of the financial information and their interest in audit quality is derived from this primary interest. In evaluating the quality of the financial information, users of the financial statements traditionally have focused on whether the financial statements have been subject to audit, the nature of the audit opinion that was issued and any indications of disagreements or other matters that raise concerns about the quality of the financial information. The audit opinion provides reasonable assurance that the financial information presented does not contain material misstatements. Knowing who signed the auditor's report would not change the conclusion of the report and the added signature of the engagement partner does not further inform users as to the quality of the information in the financial statements.

We believe requiring the engagement partner to sign the audit report will simply be for the sake of transparency, which we discuss below, without any appreciable benefit to audit quality.

Transparency

The identity of the engagement partner is readily known or available to the board of directors, management and regulators who, because of their respective roles as representatives of the financial statement users, are in positions to benefit from this information. Responsibility for evaluating the audit firm and the engagement partner rests with the audit committee of the board of directors. The audit committee recommends the audit firm, and through the board of directors puts the firm name before the shareholders for ratification.

In the situation of a large, widely held company, the engagement partner typically attends the annual shareholder's meeting and is available to answer appropriate questions. While this does not result in the identity of the engagement partner being readily known to all shareholders, it illustrates that the identity of the engagement partner generally is available to shareholders. However, on its own such information is vastly inadequate to form any judgments regarding the work of any individual or more importantly the work of the firm on this particular audit. We are puzzled as to how the general public might responsibly benefit from or act upon this information. While the PCAOB, as regulator, is in a position to interact with and evaluate the qualifications and work of the audit firm, including the engagement partner, and therefore have a frame of reference from which to benefit from the identification of professionals involved in the audit, the public is not.

We are concerned that third parties may begin to trade on information about engagement partners without any ability to discern any correlation with audit quality. Providing the name of the engagement partner through a report signature requirement may risk a simple "guilt-by-association" conclusion in certain circumstances. If an engagement partner is associated with a company with financial reporting difficulties (or alleged or even rumored financial reporting problems), what is the public to do with such limited information? The general public does not have access to information to allow them to make informed judgments as to the significance of the audit partner's association with the company with financial reporting difficulties, whether actual, alleged, or rumored. What if the reality is that the auditor's work helped to bring to light underlying matters that are the cause of the financial reporting difficulties? Or that notwithstanding the financial reporting issues, the auditor's work was conducted in accordance with professional auditing standards? The public is well served by the most challenging audits, audit committees and management being matched with engagement partners possessing the knowledge, experience and temperament appropriate for the circumstances. If a partner is repeatedly tasked with handling the toughest of audit engagements, the public may gain an inaccurate impression of the partner due to a perception of guilt-by-association with companies with financial reporting difficulties. As a result, the willingness of audit partners to serve as the engagement partners for certain audit clients might wane.

Because third parties will have no further insight beyond an individual's identity into the qualifications, track records or actual work of individual partners, they therefore are left to infer distinctions without basis. We believe the public and investors appropriately look to the PCAOB and the corporate governance structure of the board of directors and its audit committee to represent their interests in monitoring the work of audit firms and individual auditors.

Liability of engagement partners

The Concept Release notes certain potential liability concerns with requiring the engagement partner to sign the audit report and poses a series of questions about liability in private litigation. For the reasons discussed below, we think requiring the engagement partner to sign the audit report would have an adverse effect on liability and on accounting firm litigation.

In our experience, plaintiffs typically do not name individual partners as defendants in accounting malpractice or accounting fraud lawsuits. Generally, only the firm itself is sued. This is likely because the firm provides the "deep pocket" for recovery of damages; the individual partner is not likely to have personal assets that are substantial enough to warrant pursuit. But it might also be because, in lawsuits under Section 10(b) and Rule 10b-5 of the Securities Exchange Act, it is difficult to establish that the individual has "made" a statement under the post-Central Bank case law in most judicial circuits. As the Concept Release notes, the secondary liability argument based on Central Bank "of course, would not be available if the engagement partner signed the audit report."

The absence of the Central Bank legal impediment might lead to additional claims being filed against individual partners. But we do not think that this would be the primary reason that plaintiffs might add individual partners as defendants. Rather, we think it possible that some law firms that routinely practice in this area might simply conclude that, with a partner's signature on the auditor's report, it would be difficult to explain to a jury why the partner is not named as a defendant - the reasoning might go that since he or she signed the opinion then of course he or she should be sued together with the accounting firm. Indeed, the Concept Release analogizes the signature requirement to the CEO/CFO certification requirement imposed by Section 302 of the

Sarbanes-Oxley Act; at least in part as a result of that requirement, CEOs and CFOs are almost always named as defendants together with their corporate employer.

We have no way of knowing for certain whether this might be the reasoning of some plaintiffs' law firms, but many changes in the laws or regulations have affected litigation in ways that are impossible to predict. For example, the Private Securities Litigation Reform Act's lead plaintiff provision, section 21D of the Exchange Act, has significantly changed the way securities litigation is conducted today, in ways that were not foreseen. Moreover, uncertainty as to the effect on litigation also exists because accounting firms often are sued by bankruptcy trustees, litigation trustees, creditors, and others bringing negligence, negligent misrepresentation, and fraud claims under applicable state laws. These lawsuits have many permutations, but we think, based on having experienced scores of such lawsuits over the past couple of decades, that individual partners would likely be named in many of these lawsuits if the PCAOB were to require the engagement partner to sign the audit report.

What would be the effect of naming the individual partner as a defendant? The personal effect would be significant - merely being sued for fraud or negligence could lead to the loss of clients for the individual partner, emotional and personal financial difficulties, and so on. It may mean that the accounting firm defendant would need to retain separate counsel for the individual partner, thereby complicating the litigation and adding substantially to defense costs. It may well mean that, because of these consequences, the accounting firm would opt more readily for settlement rather than for prolonged litigation (indeed, this may be a reason why the plaintiffs' bar, over the course of time, would conclude that adding the individual partner as a defendant is an effective litigation strategy). And it could, of course, result in a verdict, and the award of damages, that is adverse to the partner.

Absent evidence - certainly, stronger evidence than is set forth in the PCAOB's Concept Release - that requiring the partner to sign the audit report would improve audit quality, we recommend against moving forward with this proposal.

Summary

As discussed previously, it is our view that the engagement partner's signature would dilute if not put at risk the benefits gained from the collective, firm signature. We believe that the engagement partner's strong sense of personal accountability is already well in place and supported by a firm's system of quality control and PCAOB oversight. It therefore is our view that requiring the engagement partner to sign the audit report will not enhance his or her accountability but rather potentially could have an adverse effect on audit quality. It further is our view that the benefits of transparency with regard to the identity of the engagement partner that might be afforded by requiring the engagement partner to sign the audit report are significantly overstated. The identity of the engagement partner is readily known to members of the board of directors and in particular to the audit committee that, on behalf of the shareholders, is vested with the responsibility of evaluating the audit firm, including the engagement partner, and proposing the firm for ratification by the shareholders. Given the limited nature of information that would be afforded by such a requirement, we believe the general public would be at risk of reaching unjust and inappropriate conclusions regarding the quality of work of an individual engagement partner, which is already subject to not only the firms' practice monitoring programs but also the PCAOB's inspection process. We also believe that the potential increased liability risks associated with the engagement partner signing the audit report are not justified by the arguments for enhanced accountability and transparency.

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We would be pleased to discuss our comments with members of the Public Company Accounting Oversight Board or its staff.

Sincerely,

Ernst & Young LLP