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Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 29, Concept Release on Requiring the Engagement Partner to Sign the Audit Report

Dear Sir:

PricewaterhouseCoopers LLP ("PwC") appreciates the opportunity to comment on the Public Company Accounting Oversight Board's ("PCAOB" or "Board") *Concept Release on Requiring the Engagement Partner to Sign the Audit Report.*[1]

Currently, under PCAOB Auditing Standards audit reports issued by an accounting firm on the financial statements of an issuer are manually signed in the name of the firm by the partner responsible for the audit (the "engagement partner"). The Concept Release considers whether the Board should require that the engagement partner sign the audit report in his or her own name, in addition to the firm's name. We appreciate that the Board has begun this process with the issuance of a concept release, rather than a proposed standard, given the need to carefully study the merits and consequences of proposing changes to the Board's standards in this area. The Concept Release seeks comment on whether adopting a signature requirement would improve audit quality by (1) increasing an engagement partner's sense of personal accountability and (2) increasing transparency about the qualifications of individual auditors.

PwC supports the goal of improving audit quality and agrees that accountability and transparency are relevant components of audit quality. In PwC's view, however, the proposal set forth in the Concept Release reflects an incomplete assessment of the factors that may contribute to improved audit quality, as well as of the nature of the auditing process and the role of the engagement partner in that process. It is premised on an unsupported assumption that engagement partners, as a class, need to have an increased sense of accountability in order to achieve improved audit quality.

Contrary to the assumption underlying the Concept Release, an audit opinion reflects the cumulative effort of myriad individuals rather than the professionalism or competence of the engagement partner alone. The engagement partner has final responsibility for the audit, but the audit is conducted by a team that may be composed of many other partners, managers and other

[1] PCAOB Release No. 2009-005 (July 29, 2009) ("Concept Release")
http://www.pcaob.org/Rules/Docket_029/2009-07-28_Release_No_2009-005.pdf.

professionals, many of whom bring specific substantive expertise to important areas of the audit such as valuation, information technology, treasury and taxation. Engagement teams often consult with the firm's national office and with other specialists within the firm. Some of these consultations are required by firm policy, while others are the result of an engagement team's judgment based upon the facts and circumstances of the engagement and the specific expertise of the engagement team. The engagement is subject to an engagement quality review by a partner who is not part of the engagement team but who must provide concurring approval of the issuance of the audit report. Additionally, the firm provides a variety of quality control mechanisms in support of the performance of audits.

The current practice of signing the audit report in the name of the firm appropriately reflects the reality that the quality of an audit depends not just on the qualifications and competence of the engagement partner, but on the qualifications and competence of many people at the firm with involvement in the audit, as well as on the quality controls established and monitored by the firm. An additional requirement that the engagement partner sign the report in his or her individual capacity would inappropriately and incorrectly suggest that the audit was the product of one person rather than of the firm.

PwC believes the proposal to require the engagement partner to sign the audit report would provide no additional benefit over and above the numerous quality control measures currently in place to assure an engagement partner's performance of his or her function with the appropriate level of care. PwC also believes the proposed requirement could result in unintended adverse consequences and burdensome complexities that would be counterproductive to the efficiency, timeliness and cost effectiveness of the audit process. Finally, and in direct conflict with the Board's stated intentions, the proposed requirement could significantly increase the likelihood that engagement partners will be named in private litigation brought pursuant to the federal securities laws. Accordingly, PwC does not support the Board's proposed requirement.

The Proposal Will Not Enhance Audit Quality

Requiring an engagement partner to sign the audit report in his or her own name would not provide any additional benefit over and above existing mechanisms for accountability and transparency, and, in fact, could result in unintended adverse consequences.

Accountability

The Concept Release states that having an engagement partner sign the audit report would enhance audit quality because it "might increase the engagement partner's sense of accountability to financial statement users, which could lead him or her to exercise greater care in performing the audit."[2] Given that the Board explicitly disclaims an intention to enhance the engagement partner's personal liability, it appears that the Board is considering whether the mere physical act of affixing one's manual signature to the report in and of itself would increase an engagement partner's sense of accountability, or, perhaps more pointedly, improve the engagement partner's commitment to audit quality. During the July 28, 2009 open meeting, one

[2] *Id.* at 5.

Board member stated that "members of the profession, public companies and academics noted the psychological affects of putting your 'John Hancock' in an official and public document."[3]

PwC respectfully disagrees with this premise. In addition to resting on an unsupported assumption that engagement partners, as a class, need to have an increased sense of accountability in order to achieve improved audit quality, it also disregards the many accountability mechanisms, controls, and incentives that already exist to ensure that the engagement partner—along with all other members of the engagement team and the firm as a whole—conduct the audit with the necessary due care and professionalism.

First, engagement partners are already strongly motivated by many tangible and intangible factors to ensure that audits are conducted with due professional care, thereby contributing to audit quality. These motivations include the partner's sense of personal responsibility to the firm and his or her partners and clients, and to investors; the partner's desire to maintain his or her personal reputation within the firm and the profession; and the importance of audit quality to the partner's compensation. Numerous internal firm quality controls exist today that identify the engagement partner and require personal sign-off as evidence of his or her approval of issuance of the firm's audit report. It is also worth noting that the engagement partner already manually signs the audit report, just in the name of the firm, not his or her own name. There should be little doubt that this act itself, which binds the firm, causes the engagement partner to feel a strong sense of personal responsibility that guides his or her actions throughout the engagement.

Second, there are multiple internal firm and external mechanisms that make the engagement partner accountable and impel him or her—along with the firm as a whole—to exercise care in conducting the audit. A principal driver, of course, is the PCAOB's auditing standards themselves. An engagement partner and his team conduct an audit with the knowledge that the firm's audit report, in the end, must state "that the financial statements present fairly, in all material respects, an entity's financial position, results of operations, and cash flows in conformity with generally accepted accounting principles," and that "[t]his conclusion may be expressed only when the auditor has formed such an opinion on the basis of an audit performed in accordance with generally accepted auditing standards."[4] One of the most fundamental of these standards is that the audit be conducted with due professional care—a standard to which the engagement leader, as well as the other members of the team, is subject.[5] The Board should not presume that an engagement partner will not consistently meet the standard of due professional care absent a requirement to sign the report in his or her own name. In addition, firms' internal quality control programs are required to be designed to provide reasonable assurance that individual auditors, including engagement partners, comply with professional standards.[6] Such mechanisms include an assessment of the results from internal and external

[3] PCAOB Open Meeting, July 28, 2009 *available at* http://www.pcaob.org/News_and_Events/Events/2009/Podcasts/pcaob-072809-P2.mp3 (statement of Steven B. Harris).

[4] Reports on Audited Financial Statements, PCAOB Interim Auditing Standards, AU Section 508.07.

[5] Due Professional Care in the Performance of Work, PCAOB Interim Auditing Standards, AU Section 230.

[6] System of Quality Control for a CPA Firm's Accounting and Auditing Practice, PCAOB Interim Quality Control Standards, QC 20.03

audit quality reviews, as well as an assessment of related compensation penalties and other remedial measures designed to reinforce the importance of achieving consistently high audit quality.

Third, an auditor's sense of personal accountability is not just driven by a sense of obligation to abide by professional practice standards but also by strong regulatory oversight. Personal accountability is reinforced by the Board's broad inspection powers and its investigatory and disciplinary authority over acts by an accounting firm and individuals associated with the firm that may violate the Sarbanes-Oxley Act, PCAOB rules, securities laws, or professional standards. The possibility that a board inspection could result in findings of deficiencies in an audit also reinforces accountability for the engagement partner.

Fourth, the SEC's powers to enforce the securities laws against auditors provide yet another important means of reinforcing auditor accountability above those already discussed. The SEC can charge an auditor, as an individual, for violations of the securities laws and it can, in certain circumstances, bar an accountant from appearing and practicing before the SEC under Rule 102(e).

In light of the strength of the above-described existing auditor accountability framework provided by PCAOB auditing standards, PCAOB and SEC inspection, disciplinary, and enforcement authority, and internal firm quality and accountability controls, the conclusory assertion in the Concept Release that the act of signing one's name to a report would cause an auditor to "perform a higher quality audit" seems without merit. Accordingly, if and before it proposes any changes to the Board's existing standards, we would encourage the Board to appropriately study whether meaningful support exists for the assumption that an individual signing in his or her own name would actually promote positive behavioral changes and enhance audit quality.

Finally, PwC believes strongly that all members of an audit team must be accountable for the quality of an audit and that a shared sense of accountability among the entire professional staff on the engagement should be encouraged. Singling out the engagement partner as proposed in the Concept Release may operate counter to that shared sense of responsibility.

The Concept Release and many advocates of the signature requirement rely on an analogy to Section 302 of the Sarbanes-Oxley Act,[7] which requires an issuer's CEO and CFO to certify the company's annual and quarterly reports, to support the notion that the act of signing one's name results in increased accountability. Those certification requirements, along with the parallel provision of Section 906 of the Sarbanes-Oxley Act,[8] were enacted to address a specific problem—a perceived abdication by these senior officers of responsibility for the accuracy and completeness of a company's financial statements and SEC reports. Those provisions, along with other Sarbanes-Oxley requirements, including management responsibility for establishing

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[7] 15 U.S.C. § 7241. Pursuant to Section 302, the SEC adopted rules implementing the officer certification requirement in Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q. Regulation S-K, Item 601(b)(31), 17 C.F.R. § 229.601(b)(31).

[8] 18 U.S.C. § 1350.

disclosure controls and procedures and internal control over financial reporting, were designed to impose on CEOs and CFOs accountability that Congress believed was lacking.[9] Indeed, a major consequence of the Sarbanes-Oxley certification requirements was to impose personal liability—and in the case of Section 906, even criminal liability—on the CEO and CFO as an incentive to ensure the accuracy of the company's reports. This stands in direct contravention to the statements in both the Concept Release and the Final Report of the Treasury Department Advisory Committee on the Auditing Profession ("ACAP") that they do not intend the engagement partner signature requirement to increase an engagement partner's personal liability.[10] Here, there is simply no basis whatsoever to conclude that there has been a comparable abdication of responsibility by engagement partners warranting imposition of individual certification requirements. In fact, as noted by one Board member in discussing the Board's proposal and the analogy to the Sarbanes-Oxley certification requirements, "In contrast, engagement partners rarely, if ever, deny responsibility for the audit report."[11]

Transparency

In addition to enhanced accountability, the Concept Release states as its second goal "increase[d] transparency about who is responsible for performing the audit, which could provide useful information to investors and, in turn, provide an additional incentive to firms to improve the quality of all of their engagement partners."[12] The release suggests that providing financial statement users, audit committees, and others with the name of the engagement partner might help them evaluate that engagement partner's experience and skill. Of course, audit committees and regulators already have quite ready access to information about the identity of the engagement partner. So the only question is whether the signature requirement would provide meaningful information to financial statements users. PwC submits that a signature requirement is unlikely to assist users of audit reports to evaluate an engagement partner's qualifications or to predict the quality of an audit.

As discussed previously, including an individual engagement partner signature on the audit report could create the misimpression that a single person is responsible for the quality of an audit, when, in fact, an audit is the result of the effort and collaboration of many individuals in the firm, including accountants, subject matter experts, and the national office. While

[9] *See e.g.*, 149 Cong. Rec. S5325-31 (daily ed. Apr. 11, 2003) (statement of Sen. Biden); Certification of Disclosure in Companies' Quarterly and Annual Reports, Securities Act Release No. 8124, Exchange Act Release No. 46427, and Investment Company Act Release No. 25722, 67 Fed. Reg. 57,276, 57, 285 ("We believe that investor confidence in corporate disclosure has suffered, in part, because of a belief that corporate officers may not devote sufficient attention to the preparation of their companies' periodic reports and to the disclosure controls and procedures that generate the data from which they are prepared."); John T. Bostelman, 2009 Sarbanes-Oxley Deskbook, § 4:2, § 4:2.1, at 4-15 ("One effect, and presumably purpose, of the management certification requirement is . . . to require that the CEO and CFO become sufficiently personally involved in the preparation of SEC annual and quarterly reports that their personal liability under the securities laws for material misstatements or materially misleading statements can be readily established . . .").

[10] Concept Release at 11; Advisory Comm. On the Auditing Profession, U.S. Dep't of the Treasury, Final Report VII.20 (2008) ("ACAP Final Report").

[11] PCAOB Open Meeting, July 28, 2009 (statement of Charles D. Niemeier).

[12] Concept Release at 5.

engagement partners necessarily have final decision-making authority in applying the firm's policies, procedures, and methodologies, an audit necessarily represents a collaborative effort that involves many individuals and relies upon various elements of the firm's system of quality control.

Moreover, it is unclear exactly what an investor will learn from public disclosure of the name of the individual who signs the audit report. In virtually all cases, an engagement partner will not otherwise be known to the investing public and his or her sole identifying characteristic will be nothing more than that he or she is a partner of the firm. The provision of the engagement partner's signature, or identity, would not provide any useful information regarding "an engagement partner's experience on a particular type of audit" or "his or her track record."[13]

Worse, given that the only information to be provided to an investor is the name of one individual, a signature requirement could have negative implications. It could result in the creation of databases or other clearinghouses that attempt to create a "box score" of the skills and qualifications of individual auditors—resulting in what is likely to be incomplete and misleading information. It is likely such "scorecards" would not appropriately consider the importance of the firm's system of quality control to audit quality and could potentially lead to investors' making unwarranted conclusions about the qualifications of individual auditors or their firms. For example, such databases could produce misleading statistical analyses based on the number of audits performed by an engagement partner or they could level unfair criticism or create adverse publicity for the individual auditor simply because he or she was named as an engagement partner for an audit of a controversial company. Proliferation of these types of databases, in turn, could interfere with an audit firm's or audit committee's informed judgment with respect to, for example, auditor rotations or partner assignments.

A more reliable resource to an investor regarding the qualifications and skills of an engagement partner is the issuer's audit committee. In the Sarbanes-Oxley Act, Congress mandated that an issuer's audit committee "shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer . . . "[14] Investors in a public company appropriately rely on the judgment of the audit committee to engage the appropriate independent accounting firm for the company, to oversee and communicate with the engagement team regarding important aspects of the audit, and to evaluate the accounting firm's performance. The audit committee's responsibilities with respect to the company's independent auditor necessarily includes informing itself, on behalf of investors, about the qualifications, experience, skills and performance of the engagement partner. Indeed, the New York Stock Exchange's corporate governance rules require that the audit committee's written charter include in its purpose that the audit committee will assist in board oversight of the independent auditor's qualifications. The commentary to that rule states that, "After reviewing the [audit] report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. *This evaluation should include the review and evaluation of the lead partner of the independent*

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[13] *Id.* at 9.

[14] 15 U.S.C. § 78j-1(m)(2).

auditor."[15] Although this requirement applies only to NYSE-listed companies, it reflects best practice that we believe is followed by most audit committees. Once engaged, audit committee members interact regularly with the engagement partner throughout the course of their oversight of the company's audit process. As such, they are best positioned to assess the qualifications and performance of the engagement partner on behalf of financial statement users.

The Proposal Will Create Unintended Consequences

Not only would the proposed signature requirement not, in our view, achieve the stated goals of improving audit quality through increased accountability and transparency, it could lead to behavior that detracts from the stated goals.

As previously discussed, an engagement partner signature requirement is not consistent with the fundamental reality that the entire firm stands behind the audit report. Requiring an engagement partner to individually sign the audit report could create the perception that engagement partners are following a "go-it-alone" approach rather than engaging in meaningful consultation and collaboration with others. Further, heightened concerns about personal liability may cause engagement partners to be less willing to make the professional judgments imperative to the execution of timely and cost effective, high quality audits. Such hesitancy could result in increased audit costs without a corresponding improvement in audit quality and demand for more "bright lines" in auditing standards—similar to the issues the Board addressed when it replaced Auditing Standard No. 2 with Auditing Standard No. 5 to address concerns regarding the cost effectiveness and degree of professional judgment applied in audits of internal control over financial reporting.

Finally, it would be difficult to implement this proposal. In certain circumstances, such as a reissuance of an audit report or after an engagement partner rotation, an audit report might contain financial statements for periods in which the current engagement partner may not have been involved. This could require multiple engagement partner signatures and/or an explanation as to what part of the report each individual signature relates. These potential practical complexities underscore that this proposal fosters the incorrect assumption that the engagement partner, rather than the firm as whole, is ultimately responsible for the particular years that he or she serves as engagement partner.

The Proposal Could Expose Engagement Partners to Unwarranted Lawsuits and Claims of Personal Liability under the Federal Securities Laws

Although PwC believes that a signature requirement would not enhance audit quality in any meaningful respect, the proposal might be less problematic if it did not raise the very real possibility of significantly increasing the exposure of the engagement partner to claims of personal liability. The statement in the Concept Release that, "[t]he Board's intent with any

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[15] New York Stock Exchange Listed Company Manual, Rule 303A.07 commentary (emphasis added) *available at* http://nysemanual.nyse.com/LCMTools/PlatformViewer.asp?selectednode=chp%5F1%5F4&manual=%2Flcm%2Fsections%2Flcm%2Dsections%2F.

signature requirement would not be to increase the liability of engagement partners"[16] correctly acknowledges that it would be unfair to impose special liability on one partner in an accounting firm on the basis of an audit that is the work of the firm as a whole. Similarly, merely the increased possibility of being named as a defendant in a private law suit brought under the federal securities laws would have unjustifiable consequences for the partner—including the personal and reputational consequences of being named as a defendant, the potential distractions of having to separately defend oneself in the lawsuit, and the potential negative consequences in such circumstances of a partner having to consider his or her interests as opposed to those of the firm and its other partners.

We appreciate that the EU's Eighth Company Law Directive requires the adoption of a requirement that an engagement partner sign the audit report. However, the EU nations and other countries do not have the unique litigation environment that exists in the United States. For example, UK law does not allow shareholder class actions to be brought against auditors based on a drop in share price.[17] Thus, we believe that there are good reasons why a signature requirement will be more problematic in the United States than it would be in other countries.

As discussed below, we believe that there is a significant risk that requiring an engagement partner signature on audit reports would result in an unwarranted increase in purported claims asserted against the signing partner, with potentially inconsistent results from the courts. These risks and attendant costs clearly outweigh any possible benefits that might be obtained from an engagement partner signature requirement.

Section 10(b)/Rule 10b-5 Claims

Section 10(b) of the Securities Exchange Act of 1934,[18] and Rule 10b-5 promulgated thereunder,[19] permit private plaintiffs to bring suit for damages against persons alleged to have made materially false or misleading statements in connection with the purchase or sale of securities. Under the *Central Bank* decision, only "primary" actors can be liable under Section 10(b).[20] As the Board notes on pages 11-12 of the Concept Release, under current law there are different standards in different federal appeals courts about when a person who did not make a statement that is alleged to be false or misleading can nonetheless be deemed a primary actor for purposes of Section 10(b) liability. Some circuits follow a "bright line" approach to primary liability for secondary actors, holding that a secondary actor cannot be held liable unless he or

[16] Concept Release at 11. The Release also cites language from the ACAP report, which states, "the signature requirement should not impose on any signing partner any duties, obligations, or liability that are greater than the duties obligations and liability imposed on such person as a member of an auditing firm." ACAP Final Report at VII.20.

[17] *See Caparo Indus. Plc v. Dickman*, [1990] 2 A.C. 605 (holding that auditors are only liable to individual shareholders for economic loss due to negligent misstatements if the auditor had directly assumed responsibility to the shareholder for the accuracy of particular information for its use by the shareholder for a particular known purpose).

[18] 15 U.S.C. § 78j(b).

[19] 17 C.F.R. § 240.10b-5.

[20] *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 114 S. Ct. 1439 (1994); *see also Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 128 S. Ct. 761, 773-74 (2008).

she actually makes a publicly attributable false or misleading statement. Other circuits apply other tests, each of which holds that secondary actor can be held liable, depending on the facts, for the statements of others and/or for statements that are not publicly attributable to that actor. In these circuits the determination of whether a person can be considered to have made a "statement" for the purposes of Section 10(b) liability depends on the facts and circumstances of each case.[21]

The Board suggests that in certain of these jurisdictions, individual accountants might already be subject to primary liability, even without having signed the audit report in their own names.[22] Putting aside its legal merit, this suggestion simply misses the point. It is entirely foreseeable that a plaintiff would seek to use an engagement partner's signature on the audit in an attempt to cut through all of the law regarding when secondary actors may or may not be deemed to be primarily liable. As the Board correctly notes in the Concept Release, "when the firm signs the audit report it makes the statements within it and may be held liable for them" under Section 10(b).[23] While there would be strong legal (and likely factual) arguments to the contrary, plaintiffs are very likely to allege that the engagement partner who signs the report in his or her name is making a "statement." Obviously, there is no assurance that some courts would not be persuaded by plaintiffs' allegations, resulting in potentially inconsistent outcomes in the courts. It seems certain, therefore, that firms and their partners, as individuals, would likely be subjected to many years of expensive litigation in various trial and appellate courts to resolve this question.

"Expert" Liability

Sections 7 and 11 of the Securities Act of 1933 impose "expert" liability on an "accountant . . . who has with his consent been named as having . . . certified any part of the registration statement."[24] An engagement partner who signs the audit report on financial statements in a registration statement could well be deemed to have been "named" as having "certified" those financials. Section 7 requires an issuer to obtain the consent of named experts.[25] Thus, the engagement partner would be required to consent to the use of his or her name in the registration statement. A plaintiff could then claim that the engagement partner is subject to Section 11 liability for any materially false or misleading statement in the audit report, without regard to the engagement partner's state of mind and subject only to a due diligence defense. While an engagement partner would have legal and factual defenses, including arguing that signing on behalf of the firm in his or her own name does not amount to being named personally as an expert, one can reasonably anticipate substantial litigation over this question as well.

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[21] Louis Loss & Joel Seligman, Fundamentals of Securities Regulation 1328-32 (5th ed. 2004).

[22] Concept Release at 12.

[23] *Id.* at 11. This proposition is well-established. *See e.g., Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1225-27 (10th Cir. 1996); *McGann v. Ernst & Young*, 102 F.3d 390, 397 (9th Cir. 1996); *In re MTC Electronic Techs. Shareholders Litig.*, 898 F. Supp. 974, 988 (E.D.N.Y. 1995), *decision vacated in irrelevant part on reconsideration*, at 993 F. Supp. 160 (E.D.N.Y. 1997); *In re Kendall Square Research Corp. Sec. Litig.*, 868 F. Supp 26, 28-29 (D. Mass. 1994); *Vosgerichian v. Commodore International*, 862 F. Supp 1371, 1377-78 (E.D. Pa. 1994).

[24] 15 U.S.C. § 77k(a)(4).

[25] 15 U.S.C. § 77g(a).

"Safe Harbor"

In the Concept Release, the Board notes that ACAP, when recommending that the PCAOB undertake the current standard-setting initiative, stated that the requirement "should not impose on any signing partner any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of an auditing firm."[26] The Concept Release also cites ACAP's assertion that "[t]his language is similar to safe harbor language the SEC promulgated in its rulemaking pursuant to Sarbanes-Oxley's Section 407 for audit committee financial experts."[27] The inclusion of these excerpts from the ACAP report in the Concept Release implies that the Board and ACAP think that the Securities and Exchange Commission might be amenable to creating a similar safe harbor provision to avoid imputing any additional liability to the engagement partner who signs an audit report. We think there are significant questions as to whether an effective safe harbor could be designed to shield engagement partners from liability to which they might otherwise be subject under the federal securities laws because they signed an audit report.

With respect to Section 10(b), it is not at all clear that the SEC would be inclined to create a safe harbor provision to exempt a class of potential defendants from liability under the antifraud provisions of the securities laws. For the SEC to do so would seem to run against its own recent arguments urging courts to adopt a broad construction of primary liability for secondary actors under Section 10(b) and Rule 10b-5.[28] While the SEC has from time to time adopted rules deeming certain information not to be "filed" for purposes of liability under Section 18 of the Exchange Act, it typically emphasizes that such exemptions do not excuse an actor from 10b-5 liability.[29]

With respect to potential liability under Section 11, the SEC's rationale for adopting a safe harbor for audit committee financial experts under Section 407 would, if anything, cut against creating a safe harbor for engagement partners who sign audit reports in their own names. The SEC explained that the purpose of the Item 407 safe harbor provision was to:

> clarif[y] that any information in a registration statement reviewed by the audit committee financial expert is not "expertised" unless such person is acting in the capacity of some other type of traditionally recognized expert. Similarly, because

[26] Concept Release at 4.

[27] *Id.* at 4 n.10.

[28] In its Amicus Brief in a pending case in the Second Circuit, *Pacific Management Company v. Mayer Brown LLP*, No. 09-1619-cv (2d Cir. August 7, 2009), the SEC stated, "In the Commission's view, a person . . . creates a statement in this context if the statement is written or spoken by him, or if he provides the false or misleading information that another person then puts in the statement, or if he allows the statement to be attributed to him." *Id.* at 7. In addition, the SEC argued that "[a]n attribution requirement, by allowing a person who created a false or misleading statement to escape primary liability because that person acted anonymously or in another person's name, would shield significant misconduct from liability." *Id.* at 14. In this case, plaintiffs purchased bonds and stocks issued by Refco and are suing Refco's law firm and an individual partner at that firm under Section 10(b) for allegedly false and misleading statements contained in company documents.

[29] *See e.g.*, Regulation S-K, Item 407(d), Instructions to Item 407(d), 17 C.F.R. § 229.407(d); Regulation S-K, Item 407(e), Instructions to Item 407(e)(5), 17 C.F.R. § 229.407(e); Regulation S-T, Rule 406T(b), 17 C.F.R. § 232.406T(b).

> the audit committee financial expert is not an expert for purposes of Section 11, he or she is not subject to a higher level of due diligence with respect to any portion of the registration statement as a result of his or her designation or identification as an audit committee financial expert.[30]

The SEC also stated, "We find no support in the Sarbanes-Oxley Act or in related legislative history that Congress intended to change the duties, obligations or liability of any audit committee member, including the audit committee financial expert, through [Section 407]."[31] Unlike the audit committee financial expert, accountants are expressly identified as experts under Section 11 with respect to audited financial statements contained in a registration statement.

Conclusion

PwC respectfully submits that a requirement that an engagement partner sign the audit report in his or her name in addition to the name of the firm will not achieve its stated objective of improved audit quality. It will not increase individual accountability or transparency beyond already existing professional standards and mechanisms for ensuring that auditors abide by those standards, and the requirement could have unintended consequences. Without any corresponding benefit to audit quality, this proposal creates an unacceptable risk of subjecting engagement partners to substantially increased litigation risk. Therefore, PricewaterhouseCoopers does not support an engagement partner signature requirement.

We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the PCAOB staff or Board may have. Please contact Mike Gallagher (973-236-4328) regarding our submission.

Sincerely,

[30] Securities Act Release No. 8177, Exchange Act Release No. 47235, 68 Fed. Reg. 5110, 5117 (footnote omitted).

[31] *Id.* at 5116.