September 11, 2009

Mr. J. Gordon Seymour
Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC 20006-2803

RE: PCAOB Rulemaking Docket No. 029 – *Concept Release on Requiring the Engagement Partner to Sign the Audit Report*

Dear Mr. Seymour:

This letter is in response to the Public Company Accounting Oversight Board's release to solicit public comment on whether it should require the auditor with final responsibility for the audit to sign the audit report as set forth in the PCAOB Rulemaking Docket No. 029 – *Concept Release on Requiring the Engagement Partner to Sign the Audit Report*.

Background

UHY LLP is a firm of certified public accountants that has 112 partners that utilizes staff and administrative resources of approximately 1100 individuals through an alternative practice structure arrangement with an associated entity, UHY Advisors, Inc. and its operating subsidiaries. Our audit clients currently include 73 issuer audit clients.

Overall Comments

Quite frankly, we find the notion of requiring the engagement partner's signature on the audit report to be an ill-considered proposal that is lacking in underlying research. The idea apparently came from an individual in the investment community who testified at the Treasury Department's hearings. His testimony has been taken to underlie the view that having the engagement partner sign the report will somehow ". . . foster greater accountability . . . increase transparency, and . . . improve audit quality. . ." In its report, the Treasury Department quoted both the views of the individual who testified and that individual's same views in a paper he authored. The individual cited no research to support his views—classic argument by assertion. Others who have commented including Board

members seem to agree with the unsupported analogy to CEO and CFO certifications required by SOX legislation but again confirm that there has been absolutely no research on the issue the Board has chosen to address.

We fear the PCAOB members are confusing "certifications" of facts—which can be done by responsible individuals—with "opinions" on financial statements—which can only be expressed by accounting firms. If the proposal were as simple as the Board seems to think it is, it would not be worth comment. However, underlying this proposal is a basic issue—practice as a firm vs. practice as an individual.

Long ago, as quality control standards emerged, audits were identified as being the type of engagement that individuals could not perform as individuals but, indeed, required resources and support of a firm to accomplish. (Those few remaining sole practitioners who perform audits must nevertheless identify themselves as a firm and obtain firm permits to practice in most jurisdictions.)

Today, engagement teams are made up of a team or teams of firm personnel with diverse backgrounds and experience—all under the ultimate direction of the engagement partner. Everyone on the audit engagement team understands that it is the engagement partner who has the ultimate responsibility—on behalf of the firm—to ensure that the audit has been performed according to the appropriate auditing standards and that the financial statements upon which the firm is expressing an opinion have been prepared in accordance with the generally accepted accounting principles so identified in the report. Many others have responsibilities—concurring review partner and other partners and staff who have contributed to the engagement—but it is the engagement partner with the ultimate responsibility to ensure that a high quality audit has been performed. Signing to that effect is already part of the review and approval documentation process that is mandated by auditing standards for public and nonpublic companies in the US and internationally.

Major Concern

So why is there so much concern about a signature of the engagement partner? We will explain this below in a series of questions that the PCAOB must answer, now or as they develop in practice. All of these questions will have to be answered by the PCAOB if the proposed requirement comes to fruition:

Situation 1

The financial statements present balance sheets for two years and income statements for three years as is the general requirement for public companies. The firm and the engagement partner have not changed for four years.

Is the engagement partner required to sign the financial statements only for the current year or for all years presented?

In this instance, since the engagement partner has been the same for all years, it really does not matter because that engagement partner would be in a position to sign both on behalf of the firm and as the engagement partner for all years presented.

Situation 2

The facts are the same except that the engagement partner is new this year.

Is the engagement partner required to sign the financial statements only for the current year or for all years presented?

In this instance, the engagement partner could sign on behalf of the firm for all periods presented but could only sign as engagement partner for the most current year.

Would that suffice or would those who were engagement partners in prior years be required to sign the currently issued financial statements?

If engagement partner signatures for prior years are required, many obstacles are present:

What if the former engagement partner is unavailable to sign because that individual is:

- On vacation in a remote location
- Retired from the firm and no longer practicing public accounting
- Retired from the firm, no longer practicing public accounting, and no longer maintaining a valid CPA license in any jurisdiction
- No longer with the firm, having joined another PCAOB registered firm that refuses to allow that partner to associate his name with his former firm
- No longer with the firm and now practicing with a firm that is not PCAOB registered and not insured for public company practice
- No longer with the firm and currently employed by the SEC or the PCAOB
- Incapacitated
- Deceased

Who will sign as engagement partner for those earlier years?

Situation 3

The facts are the same except that it is a first year engagement for the firm and, as a consequence, the engagement partner's first year on the engagement.

Is the engagement partner required to sign the financial statements only for the current year or for all years presented?

In this instance, the engagement partner could sign on behalf of the firm and as engagement partner for only the current year. Assuming that the predecessor firm had no reason to object, the current audit firm's opinion would refer to the other firm as the predecessor auditor and characterize the nature of its opinion.

- Who would sign as the engagement partner on behalf of the predecessor firm for those prior years? Would it be the former engagement partner of the former firm?
- What if there are restatements that the former firm agrees with but the former engagement partner does not?
- What if the predecessor firm merges or disbands and the former engagement partner is no longer with the surviving firm?
- What if the former engagement partner with the other firm is no longer available for any one of the reasons previously cited in Situation 2?

Before imposing a signing requirement, the PCAOB needs to address the issues in Situations 2 and 3 and have solutions so as not to cause audit firms to withhold reports until these questions are answered.

We fear that in answering the above questions and the endless permutations of such questions, the PCAOB will be misdirecting engagement partner attention from the quality of the audit performed to understanding what will become a new rule book of who must sign as engagement partner under the endless variety of circumstances likely to develop.

Response to PCAOB'S QUESTIONS

In the following section we have responded to the questions posed in the PCAOB's request for information.

1. **Would requiring the engagement partner to sign the audit report enhance audit quality and investor protection?**

   We do not believe that such a requirement will have any impact whatsoever on audit quality or investor protection. Rather, it could become an administrative burden that could serve as a distraction from achieving high audit quality by imposing a logistical burden on the engagement team.

   We believe that current requirements established by the Sarbanes Oxley Act of 2002 are far better designed to increase an auditor's sense of accountability to users. The PCAOB's current inspection process of routinely inspecting the work of registered accounting firms does far more toward establishing this goal, has already weeded out some auditors and firms that do not provide quality audits, and will continue to do so.

2. **Would such a requirement improve the engagement partner's focus on his or her existing responsibilities? The Board is particularly interested in any empirical data or other research that commentators can provide.**

   Engagement partners are well aware of their existing responsibilies on an audit of a public company. No requirement for a signature or signatures should have any effect on the partner's focus. Unquestionably, issuing a report on a public company is the most critical responsibility of an engagement partner in a PCAOB registered accounting firm. Engagement partners know their responsibilities and take those responsibilities very seriously.

   We are unaware of any studies that have addressed engagement partners adding personal signatures to audit reports signed by the audit firm.

   We would caution that a personal signature by an audit partner on an opinion of that partner's firm is quite different than a CEO or CFO's certification of facts. In the former case, you are adding a mere signature to an opinion of a firm. In the latter, you are holding the CEO or CFO responsible for knowledge of facts. Also, keep in mind that the CEO/CFO certification became an element of the SOX legislation to correct a problem that the SEC enforcement personnel encountered regularly—CEO and CFO denial of responsibility and/or participation in the financial reporting process. No such problem has emerged with engagement partners denying that role and seeking to evade responsibility.

Everyone who needs to know the engagement partner knows who he or she is. Very often, the engagement partner attends the annual meeting of shareholders. The engagement partner's role is not a secret. Is there anyone who has read anything about Enron who does not know of David Duncan's role as engagement partner? Would Enron's investors have been served better had he signed his name along with his firm's name?

3. **Would disclosure of the engagement partner's name in the report serve the same purpose as a signature requirement, or is the act of signing itself important to promote accountability?**

   Neither the signature nor the disclosure should have any effect on the accountability of the engagement partner. The engagement partner is known to all in the firm, to all at the client and to its audit committee and to its board of directors. Again, very often, the engagement partner is introduced at the shareholders' meeting.

4. **Would increased transparency about the identity of the engagement partner be useful to investors, audit committees, and others?**

   If the audit committee does not know the identity of the engagement partner, the committee has failed in its purpose and no amount of disclosure can remediate that condition. Investors and other users will invariably state that they would like that information and somehow would make use of it. However, those so responding fail to realize that state confidentiality laws, ethics requirements, and federal securities laws preclude the engagement partner and the team from having free dialogue with anyone who might call with a question about a client's audit. Any engagement partner who engaged in such conversation other than in the most general of terms would be guilty at a minimum of violating client confidentiality and worse could be guilty of providing insider information.

   With regard to Audit Committees, more questions are in order. For example, would audit committee members be more or less likely to approve the appointment of an independent CPA firm if the partner assigned to the engagement rarely issued an adverse or qualified opinion? What about opinions with explanatory paragraphs, such as a going concern paragraph? Would an engagement partner who only issued unqualified audit reports be perceived as "easier" or "less than thorough"?

5. **Would such information allow users of audit reports to better evaluate or predict the quality of a particular audit? Could increased transparency lead to inaccurate conclusions about audit quality under some circumstances? We are particularly interested in any empirical data or other research that commenters can provide.**

   With time, some would assemble statistics on engagement partners and attempt to interpret their meaning. While we doubt partners statistics would be followed like major league baseball players, there would be some who would draw conclusions from those that became available. The concern we would have is that knowing the number or type of reports that an engagement partner has issued over time means little without interpretation.

   A partner that has issued 20 opinions on 20 shell companies has not amassed the same experience as one who has issued 20 opinions on 20 operating companies; yet, the statistics would be identical.

   A partner that has issued only clean opinions may appear to be beyond reproach as one who has only pristine clients. Or, is that a signal that the partner may not subject clients to the healthy skepticism required? Should a partner have some "going concern" opinions in the record book to maintain credibility?

   Is a company seeking a new auditor going to ask for the engagement partner with only clean opinions in the record book? Is an engagement partner with a record of "going concern" opinion modifications going to be asked not to be the engagement partner on new engagements or at partner rotation time? Is having once issued a "going concern" report going to eliminate the engagement partner from ever being assigned to another major public company engagement?

   Section 303 of SOX makes it unlawful for management and others to attempt to unduly influence the audit firm and the engagement team—especially when it involves the assignments of audit partners. Will providing management and others with the wherewithal to calculate the engagement partner's statistics tempt some to exert such influence when it comes to obtaining the new engagement partner – favoring the one with only "clean" opinions over the one with "going concern" modifications? How will the PCAOB be able to police Section 303 to insure that the statistics are not used as the mere excuse to exercise undue influence and avoid those engagement partners viewed to be "tough markers?"

6. **Are there potential unintended consequences of requiring the engagement partner to sign the audit report that the Board should be aware of?**

Might the same behavioral forces, as is postulated, that would cause an engagement partner to feel "more responsible" for audit report also potentially cause the partners best suited for difficult audits to, instead, shy away from the same for fear of besmirching their names and records?

Another unintended consequence is the high probability of the press or of a user's calling the engagement partner directly to obtain confidential or protected insider information. Providing any information beyond that contained in the audit opinion would be tantamount to providing insider information. When an engagement partner states the prohibition on providing additional information, the media and the investing public generally see this as "no comment." This will only adversely affect the public's views of the auditing profession.

7. **The EU's Eight Directive requires a natural person to sign the audit report, but provides that '[i]n exceptional circumstances, Member States may provide that this signature does not need to be disclosed to the public if such disclosure could lead to imminent, significant threat to the personal security of any person." If the Board adopts an engagement partner signature requirement, is a similar exception necessary? If so, under what circumstances should it be available?**

We have no direct knowledge of the reasons leading the EU to conclude as it did about an exemption for personal security of any person. We would however, suggest that the PCAOB contact that international body in Brussels to obtain details of its legislative intent in making the rule as it did.

On the anniversary of the attack on the World Trade Center, it is not difficult to postulate how anyone with a perceived important role in world finance and a detailed knowledge of a large international corporation, especially one with defense department or homeland security contracts, could become a target. An audit engagement partner who is identified to all by a PCAOB mandated signature on the audit report could become the target for those bent on domestic or international terrorism.

Mandated disclosure of the name of the engagement partner coupled with on-line license look up features of the various state boards of accountancy would very often provide all the necessary information—name, address, and phone number—for any domestic or international terrorist bent on doing harm in the form of assassination or kidnapping to the engagement partner and that partner's family.

While kidnapping of senior executives and their family members is not yet commonplace in the United States, we need only look to our southern border where it has become commonplace. We only need to look to the Rubicon and Young advertising executive who was killed outside his New Jersey home a few years ago.

8. **What effect, if any, would a signature requirement have on an engagement partner's potential liability in private litigation? Would it lead to an unwarranted increase in private liability? Would it affect an engagement partner's potential liability under provisions of the federal securities laws other than Section 10(b) of the Securities Exchange Act, such as Section 11 of the Securities Act of 1933? Would it affect an engagement partner's potential liability under state law?**

See Number 10 below.

9. **Are there steps the Board could or should take to mitigate the likelihood of increasing an engagement partner's potential liability in private litigation?**

See Number 10 below.

10. **Some commenters on the ACAP Report who expressed concern about liability suggested that a safe harbor provision accompany any signature requirement. While the Board has no authority to create a safe harbor from private liability, it could, for example, undertake to define the engagement partner's responsibilities more clearly in the PCAOB standards. Would such a standard-setting project be appropriate?**

We do not practice law and, therefore, have no internal expertise to enable us to express a professional view on questions 8, 9, and 10. That said, we do believe that the PCAOB could not impose a personal signature requirement where there was none before without there being a myriad of new legal issues that arise from that very action. And, we would expect that questions 8, 9, and 10 simply do not have crisp answers—even from the experts in accountants' legal liability.

We do believe that the signature or disclosure requirement you propose would increase the litigation exposure to individuals in ways that only members of the litigation bar can evaluate properly.

11. **If the Board adopts an engagement partner signature requirement, would other PCAOB standards, outside AU sec. 508 and Auditing Standard No. 5, need to be amended?**

This depends entirely on what the Board decides to require in the way of signature and/or disclosure.

12. **Should the Board only require the engagement partner's signature as it relates to the current year's audit? If so, how should the Board do so? For example, should firms be permitted to add an explanatory paragraph in the report that states the engagement partner's signature relates only to current year?**

See the discussion on under "Major Concern" beginning on page 2.

13. **If a signature requirement is adopted, should a principal auditor that makes reference to another auditor also be required to make reference to the other engagement partner? Would an engagement partner at the principal auditor be less willing to assume responsibility for work performed by another firm under AU sec. 543?**

This is but another area of complexity that the PCAOB will have to address in detail, and with increasing detailed requirements come additional audit costs and reasons for report delays. We would suggest that there are literally dozens of such questions that have no correct answer and will simply require a rules-based approach. Once you separate the firm responsibility from that of the engagement partner, no end of questions arise and as with any arbitrary rules they only have arbitrary answers.

14. Auditors are not required to issue a report on a review of interim financial information, though AU sec. 722, Interim Financial Information, imposes requirements on the form of such a report in the event one is issued. Should the engagement partner be required to sign a report on interim financial information if the firm issues one?

We believe the proposed requirement to be unnecessary for the reasons stated. Should the board require engagement partner signature, in those rare situations where reports are issued on interim reviews, we would see no reason for different signing requirements at interim from those at year end.

15. Would requiring the engagement partner to sign the audit report make other changes to the standard audit report necessary?

We believe the proposed requirement to be unnecessary for the reasons stated. That said, we believe the Board can make this as simple or as complex as it chooses. We do not believe that the existing audit report variations that currently exist should be altered in any way. However, complexities that make obtaining prior year engagement partner signatures impossible will inevitably lead to report modifications for those conditions. This will neither enhance user understanding nor the usefulness of the audit report. Rather, it will add unnecessary complexity and decrease user understanding.

16. If the Board adopts a signature requirement, should it specify a form of the engagement partner's signature? For example, should the engagement partner sign on behalf of the firm and then "by" the engagement partner?

Should there be an engagement partner signature requirement, it should be as simple as possible—for example:

UHY LLP
by /s/ Paul Rohan

If there is a need for the partner to sign as well as the firm, would it not also be useful for the many users who crave this information to identify that the engagement partner is a CPA (or other appropriate designation such as CA or FCA with foreign firms) and identify the individual's license jurisdiction and number. This would enable a user to check current status with state board online services and, in some jurisdictions, be able to identify whether there has been any past disciplinary actions taken by the state board or others. Thus, it might appear as follows:

UHY LLP
by /s/ Paul Rohan, CPA (Connecticut License Number 2870)

Historical Note

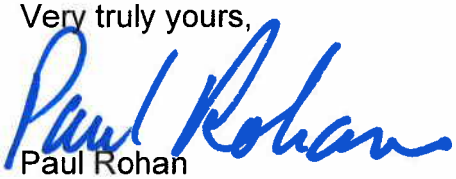
Such signature practices were commonplace through the 1940's before all accounting firms were required to be made up of CPA's. This was a subtle but allowed bit of advertising that the report was being signed by a CPA when that was not yet a universal requirement. The State of Connecticut required such a signature on audit reports on municipalities into the mid 1970's. Then it abandoned the requirement as an archaic practice. A similar requirement existed in New York State for professional corporations until the State legislature changed the law in the 1970's having concluded that it was an unnecessary ministerial practice. (One of our partners in our Albany office still have the pen Governor Cuomo used to sign that bill.)

Final Comment

If the PCAOB truly believes that the engagement partner signature will "foster greater accountability,...increase transparency, and ... improve audit quality" of the reports issued by registered accounting firms on public company audit clients, we suggest that the PCAOB apply similar logic to its inspection reports and have the individual inspection leaders personally sign the PCAOB inspection reports on the firms that they inspect. We would suggest all arguments for and against signature apply equally to both situations.

Should you have any questions, please feel free to contact me at (203) 401-2101.

Very truly yours,



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