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

Re: Rule Making Docket 029: Improving Transparency Through Disclosure of Engagement Partner and Certain Other Participants in Audits

Dear Mr. Seymour:

I am an attorney practicing in Washington, D.C., in the fields of securities regulation and professional liability. Over the years, I have represented a number of auditors. I respectfully submit these comments on my own behalf and not on behalf of any current or former client.

Question: Would disclosure of the engagement partner's name in the audit report enhance investor protection? If so, how? If not, why not?

The disclosure of the identity of the engagement partner or other participants in the audit process will not serve to protect the interests of investors or further the public interest in the preparation of informative, accurate, and independent audit reports.

The value of an audit report to the investing public resides in confidence that a defined process has been applied by a professional organization with the staff, know-how, and resources to discharge that process in a professional manner. No individual should be singled out either to add or detract from the imprimatur of the audit firm. Naming the engagement partner and other participants in the audit would be like having Rosencrantz and Guildenstern push Hamlet off the stage.

An audit firm is not marketing a pair of blue jeans where a star's signature adds to the perceived value of such a product. Having George Washington or a former high

government official identified as the engagement partner will not promote the protection of investors. What happens when a registrant's investor relations department touts the fact that a former high government official serves as the audit engagement partner? I would think that fact irrelevant to audit quality. No one, however, will be able to convince the public that a George Washington audit report doesn't have a special added luster.

Another fundamental problem arising from the identification of audit engagement personnel is the addition of more information to an investment process already groaning under an excess of information. As part of its "plain English" initiative[1], data gathered for the SEC indicated: "Most participants said they do not utilize annual reports as a tool in their investment decision-making." Abt SRBI Final Report for the SEC, Focus Groups about Plain English Documents at p. 7 (May 2008) http://www.sec.gov/pdf/finalrptplainenglish052008.pdf Adding the names of audit engagement partners to the information mix will not likely improve the ability of the investing public to use and digest existing disclosures.

Most recently, in another context, the Federal Reserve Board has been examining the desirability of reducing and simplifying disclosure in the face of information overload. "While additional content helps comprehension in some cases, sometimes less is more. Too much information can overwhelm consumers or distract their attention from key content. It may be better to focus on a handful of elements rather than 'full disclosure.' " Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned from Consumer Testing, 97 Federal Reserve Bulletin No. 3 at p. 21 (August 2011) http://www.federalreserve.gov/pubs/bulletin/2011/pdf/designingdisclosures2011.pdf I submit that identifying audit engagement personnel would be a further distraction from the key content of existing disclosures.

Question: 7. Would the proposed amendments to the auditing standards lead to an increase in private liability of the engagement partner?

In describing the potential liability issues, PCAOB Release No. 2011-007 noted that the Supreme Court in Janus Capital Group, Inc. v. First Derivative Traders, 131 S.Ct. 2296, 2302 (2011), held that "[f]or purposes of Rule 10b-5, the maker of a statement is the person or entity with ultimate authority over the statement, including its content and

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[1] "Overall, SEC initiatives (e.g., the plain English initiative) to reduce disclosure complexity have not had much impact." KPMG White Paper Disclosure Overload and Complexity: Hidden in Plain Sight p. 18 [11/14/2011] http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/Documents/disclosure-overload-complexity.pdf

whether and how to communicate it." Whether or not the Janus decision would eventually limit liability of disclosed audit engagement personnel, the essential point identified in Release No. 2011-007 is: "Few lower courts have yet had occasion to apply the Court's ruling in Janus and its ultimate implications will not be known for some time." Assuredly, the rule as proposed would generate litigation to test the Janus issue with its attendant costs and uncertainties. Where the ultimate benefit for investors, if any, is uncertain, and the litigation costs are sure, the brief against the rule proposal is strong.

Moreover, refraining from regulation that would encourage additional litigation would be consistent with the dominant legislative and judicial trends in securities law. The Supreme Court in Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit, 547 U.S. 71, 80 (2006) reiterated the lesson of the risks it identified in Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 739 (1975), that "[e]ven weak cases brought under the Rule [10b-5] may have substantial settlement value . . ." The same policy considerations generated the Private Securities Litigation Reform Act of 1995. "[N]uisance filings, targeting of deep-pocket defendants, vexatious discovery requests, and 'manipulation by class action lawyers of the clients whom they purportedly represent' had become rampant in recent years. [H. R. Conf. Rep. No. 104-369, p. 31 (1995)]. Proponents of the Reform Act argued that these abuses resulted in extortionate settlements, chilled any discussion of issuers' future prospects, and deterred qualified individuals from serving on boards of directors. [H. R. Conf. Rep. No. 104-369, pp. 31-32 (1995)]." Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit, 547 U.S. at 81. Consistent with these policy considerations, the Board should reject the proposed rule.

I thank you for the opportunity to submit the foregoing comments, reflecting my personal views on Rule Making Docket 029.

Respectfully submitted,

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