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

Re: PCAOB Proposed Rulemaking on *Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards and Form 2* (PCAOB Release No. 2011-007, October 11, 2011 and PCAOB Rulemaking Docket Matter No. 29)

Dear Mr. Seymour:

The U.S. Chamber of Commerce (the "Chamber") is the world's largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector. These members are both users and preparers of financial information. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy.

The CCMC believes that businesses must have a strong system of internal controls and recognizes the vital role external audits play in capital formation. The CCMC appreciates the opportunity to comment on the Public Company Accounting Oversight Board's ("PCAOB") Proposed Rulemaking on ***Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards and Form 2*** ("the Proposal").

The CCMC is concerned that the Proposal will undermine the foundation of the audit process impairing transparency and accountability. The CCMC believes that the Proposal in its current form will obfuscate essential responsibilities thereby harming accountability. Because of these concerns and the lack of any tangible

demonstrated benefit, the CCMC believes that the Proposal should be reassessed through a public roundtable of all interested stakeholders and additional outreach such as field testing.

Rather than moving forward on this Proposal, the CCMC believes that the PCAOB should concentrate its efforts on updating its quality control standards that are long overdue for updating.

Discussion

The Proposal would amend the PCAOB standards and rules to require registered public accounting firms to make two new disclosures in the audit report:

1. The name of the engagement partner for the most recent period's audit; and

2. Information on other independent public accounting firms and other persons that took part in the audit. In addition, the name of the engagement partner would also be required to be disclosed in Form 2 filed with the PCAOB for each audit report already required to be reported on the Form.

A foundational precept of independent audits is that the audit firm has ultimate responsibility for the audit report, while the opinion rendered represents the combined efforts of a team of individuals. Proposing disclosure requirements that could undermine and confuse this essential responsibility would impair transparency and accountability. It is also unclear what the objectives of the Proposal are, how the Proposal furthers the mission of the PCAOB, and what the consequences of the Proposal are in terms of its costs and benefits.

1. Disclosing the Name of the Engagement Partner

The proposal to disclose the name of the engagement partner for the most recent period's audit evolved from the PCAOB's ***Concept Release on Requiring the Engagement Partner to Sign the Audit Report*** issued on July 28, 2009. Among the concerns expressed by commenter's on that Concept Release was that

partner signatures would suggest the engagement partner is responsible for the audit engagement and increase engagement partner legal liability.

The CCMC commends the PCAOB for responding to these concerns by not pursuing the original Concept Release. However, the CCMC believes that these fundamental concerns regarding the Concept Release hold equal weight with the current Proposal.

It is also problematic that the PCAOB continues to move in the direction of expecting engagement partners to somehow build their own individual reputations for audit quality, independent of their firm's reputation, undermining accountability in the audit process and harming investor protection.

In reality, the firm's quality control system, in accordance with the PCAOB's "interim" quality control standards, provides the foundation for the efficacy of the work performed on the engagement by the team of individuals in rendering the audit opinion. The CCMC believes that the PCAOB's quality control standards are long overdue for updating. Investors would likely be better served by the PCAOB focusing its efforts on updating these standards rather than diverting its time and resources on the Proposal.

a. Legal Liability

The potential for the disclosure of the name of the audit partner to increase engagement partner legal liability was recognized by Board Member Dan Goelzer in his Statement on the Proposal and his comments at the PCAOB's open Board meeting on October 22, 2011. The duties and relationships established by federal securities laws, Securities Exchange Act Rule 10b-5 and Securities Act Section 11 are the basis of those concerns. The June 2011 decision of the U.S. Supreme Court in *Janus Capital Group, Inc.*[1] has added to the uncertainty over legal liability under Rule 10b-5 in the context of this Proposal. In addition, it remains to be seen whether the Securities and Exchange Commission ("SEC") would require issuers to file not only the consent of the accounting firm that prepared the audit report but also a separate

[1] See *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S.Ct. 2296 (2011).

consent of the engagement partner whose name is disclosed in the audit report.[2] If this requirement unfolds, this would subject the partner, along with the accounting firm, to potential Section 11 liability. Further, the CCMC understands liability issues could potentially extend to disclosure of the name of the engagement partner in PCAOB Form 2.

Given these legal uncertainties, the CCMC believes it would be premature of the PCAOB to proceed with this Proposal. The Board needs to fully understand the liability implications and have persuasive evidence that disclosure of the name of the engagement partner would be liability neutral. Neutrality is consistent with the recommendation of the Advisory Committee on the Auditing Profession ("ACAP") that was the genesis for the Proposal.[3] The ACAP recommendation was premised on the condition that the requirement not impose on the engagement 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."[4]

b. Objectives

The Proposal reiterates that the objectives from the Concept Release on partner signature—namely transparency and accountability—continue to be the objectives for disclosing the name of the engagement partner in the audit report and on PCAOB Form 2. Unfortunately, these objectives lack clarity in the context of this Proposal.

While the Proposal articulates the "means" of disclosing more information, it fails to state the "ends" it seeks to achieve. The Proposal fails to articulate the problem that needs to be addressed and how disclosing the name of the engagement partner will enhance financial reporting for investors.

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[2] If this scenario was to unfold, it is unclear if an issue of consent would be created for others participating in the audit.
[3] ACAP recommended that the PCAOB "undertake a standard-setting initiative to consider mandating the engagement partners' signature on the auditor's report (*Final Report of the Advisory Committee on the Auditing Profession to the* U.S. *Department of the Treasury*, (2008), VII: 19, VII: 20).

[4] *Ibid* at VII: 20. The ACAP Report also noted that this language is similar to safe harbor language the SEC promulgated in its rulemaking pursuant to The Sarbanes-Oxley Act of 2002 ("SOX") for audit committee financial experts.

Such an articulation is important as the Proposal simply provides conjectures for some of which the Board seeks comments on. For example, the Board asks whether the additional transparency could promote auditor independence by discouraging audit clients from inappropriately pressuring the firm to remove an engagement partner sooner than is required under the partner rotation requirements in SOX and SEC rules[5]. Yet, there are many substantive reasons for changes in engagement partners. And, without additional information disclosed about the reason for a change in the engagement partner an "inappropriate" partner change could not be discerned from a change in the name alone.

At the November 2011 meeting of the PCAOB's Standing Advisory Group ("SAG"), PCAOB staff emphasized that no such additional disclosure regarding a change in engagement partners is proposed or planned. Indeed, current disclosure requirements on auditor change reside within the SEC's jurisdiction and strongly suggest that any rulemaking along these lines would be better left to the SEC.

In the Proposal, accountability is described in terms of the original Concept Release with the added proviso that disclosure may make partners feel more accountable for the quality of the work and, therefore: "Disclosing the name of the engagement partner may be one means of promoting better performance"[6]. Not all agree with that statement and at the November 2011 SAG meeting; one SAG member took strong issue with this notion.

Reinforcing the speculative and likely illusory nature of any such improvements, the PCAOB has provided no evidence related to how this Proposal might improve audit quality. This is important because audit quality is the PCAOB's mission. As Dan Goelzer stated at the PCAOB's open Board meeting on October 11, 2011: "Unless engagement partner disclosure can be directly linked to improving audit quality, or to promoting understanding of the financial statement audit or of the Board's inspection program, the issue would seem to fall in the SEC's bailiwick."[7]

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[5] PCAOB Proposed Rulemaking on *Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards and Form 2* (PCAOB Release No. 2011-007, October 11, 2011 and PCAOB Rulemaking Docket Matter No. 29), Page 9.
[6] Ibid.
[7] See "Statement on Proposed Amendments to Improve Transparency Through Disclosure of Engagement Partner and Certain Other Participants in Audits" at the October 11, 2011 PCAOB Open Board Meeting by Daniel L. Goelzer, Board Member.

c. Improving Audit Quality

Evidence linking the Proposal with improvements to audit quality is a necessary condition for PCAOB rulemaking and for SEC approval of such rulemaking. The absence of any such evidence is likewise troublesome because the PCAOB considers collecting such evidence through its inspection process as one of its unique strengths. For example, the PCAOB's Strategic Plan for 2011-2015 (the "Strategic Plan") states: "We possess unique data and analysis related to audits based on eight years of inspections and enforcement experience, as well as a sophisticated research and analysis function".[8] Yet, there is no PCAOB data or analysis in evidence to support this Proposal and the Proposal makes no reference to the PCAOB having either collected or analyzed any relevant data.

Paradoxically, the objective for the disclosure of the name of the engagement partner, particularly the Form 2 disclosures, appears to be to facilitate analysis *by others,* not for the benefit of the PCAOB. For example, the Proposal states the purpose of the Form 2 disclosures is to compile this information in one place that could be easily accessed[9]. This implies that meaningful analysis of this data is possible and useful, which in reality is problematic given the complex nature of audit quality. This also ignores the facts that a thorough analysis of any such data requires such data to be considered in conjunction with information that may not be available or relevant to investors.[10]

Finally, it is worth noting that the PCAOB has not yet developed audit quality indicators—another ACAP recommendation. It would seem that the development of such indicators should occur in advance of any rulemaking on disclosing the name of the engagement partner as, at least implicitly, the Proposal is suggesting that the name of the engagement partner is somehow a quality indicator.

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[8] See Public Company Accounting Oversight Board Strategic Plan: *Improving the Relevance and Quality of the Audit for the Protection and Benefit of Investors 2011-2015* (November 30, 2011), Page 8.

[9] PCAOB Proposed Rulemaking on *Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards and Form 2* (PCAOB Release No. 2011-007, October 11, 2011 and PCAOB Rulemaking Docket Matter No. 29), Page 17.

[10] Additionally, the Proposal fails to take into account that various actors aggregate a variety of data from SEC filings that they find relevant.

d. Other Costs and Benefits

An additional motivation for disclosing the name of the engagement partner appears to be to provide useful information for audit committees. For example, the Proposal reiterates a point made in the Concept Release that "providing financial statement users, audit committees, and others with the name of the engagement partner might provide them the opportunity to evaluate, to a degree, an engagement partner's experience and track record. If so, audit committees might increasingly seek out engagement partners who are viewed as performing consistently high quality audits, and the resulting competition could lead to an improvement in audit quality"[11]. However, this rationale cannot serve as a basis for rulemaking as audit committees already have access to this information and would need to use it in conjunction with a variety of other information, both public and private, for assessing quality on their audits.

As expressed in previous letters to the PCAOB,[12] the CCMC continues to be concerned that this Proposal provides yet another illustration of the PCAOB's skepticism regarding the role of audit committees and that this and other PCAOB proposals may actually interfere with the prerogatives, discretion and duties of audit committees. For example, with this Proposal, the PCAOB seems to be expecting investors to second guess the work of audit committees based on "one" data point – the name of the engagement partner.

2. Disclosing Information on Others Participating in the Audit

Somewhat ironically the Proposal combines a disclosure focused on one individual with a requirement to disclose more information about others participating in the engagement not employed by the auditor. The Proposal calls for disclosure, with limited exceptions, of other participants in the audit for whose audit the auditor takes responsibility or whose audit procedures the auditor supervises. The Proposal

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[11] Ibid, Page 6.

[12] For example, see the September 14, 2011 letter from the U.S. Chamber of Commerce CCMC to the PCAOB on the *Concept Release on Possible Revisions to PCAOB Standards Related to Reports on Audited Financial Statements* (PCAOB Release No. 2011-003, June 21, 2011, Rulemaking Docket Matter No. 34) and the October 20, 2011 letter from the U.S. Chamber of Commerce CCMC to the PCAOB on the *Concept Release on Auditor Independence and Audit Firm Rotation* (PCAOB Release No. 2011-006, August 15, 2011, PCAOB Rulemaking Docket Matter No. 37).

would require the auditor to disclose in the audit report, the names, location, and percentage of hours attributable to the other participants for those whose participation is 3% or greater of total hours. Disclosures would also be required when the auditor divides responsibility with another independent public accounting firm.

The Proposal suggests that these disclosures would "enable investors and other users of the audit report to determine whether a disclosed independent public accounting firm is registered with the Board and has been subject to PCAOB inspection, and whether a disclosed independent public accounting firm or another person has had any publicly available disciplinary history with the Board or other regulators"[13]. However, this is information that the audit committee has access to and can consider in exercising its oversight responsibilities. Further, the auditor either takes responsibility for the work of others or divides responsibility. In the case of the later, current disclosures to investors do not appear wanting for assessing audit quality and the applicability of PCAOB inspection information.

Essentially the "new" information proposed to be disclosed involves work for which the auditor assumes responsibility. As such, the proposed disclosures are likely to only cause confusion over who has responsibility for the audit. The CCMC notes that avoiding such confusion is an important objective of current auditing standards. This suggests that investors would be better served with more targeted disclosures founded on some meaningful objective.

The potential for confusion is exacerbated by the low threshold for disclosure of 3% being proposed. The basis for this threshold is unclear as the Proposal provides no meaningful rationale for it. Further, a 3% threshold is much lower and in marked contrast to the 20% threshold already incorporated in PCAOB rules to determine others performing a substantial role in audits and thus subject to PCAOB registration and inspection. So, why should investors be interested in what the PCAOB is not?

Further, there is no indication that the PCAOB has field-tested the 3% threshold to determine the relevance of the information to be disclosed. For example,

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[13] PCAOB Proposed Rulemaking on *Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards and Form 2* (PCAOB Release No. 2011-007, October 11, 2011 and PCAOB Rulemaking Docket Matter No. 29), Page 20.

the Proposal contains no useful illustrations based on real-world data. The absence of these data to inform stakeholders about the implications of the Proposal is surprising, given the PCAOB has access to the necessary data through its inspection process and, as previously noted, the PCAOB emphasizes this in its Strategic Plan as strength of the organization.[14]

Conclusion

The CCMC appreciates the opportunity to comment on the Proposal. However, the CCMC believes that the Proposal will disseminate information that is non-material, lacks relevance that could undermine the fundamental foundations of the audit function hampering the ability of investors to make informed decisions. Without a clear articulation of the problems to be solved and the benefits of the proposal, the CCMC does not believe that the proposal should move forward.

Furthermore, based on the statements and comments by Board members at the October 11, 2011 open Board meeting, it appears that the majority of Board members strongly support enacting the Proposal raising potential due process questions. The CCMC hopes that the PCAOB will take the concerns expressed in this letter under consideration when deliberating on the Proposal.

Thank you for your consideration and the CCMC stands ready to discuss these concerns in further detail.

Sincerely,

Tom Quaadman

[14] While the CCMC does not believe that it is in the best interests of financial reporting to move forward on this proposal, one alternative the PCAOB may wish to consider is that the Form 2 would be a more useful location for such disclosures, as the determination of information in SEC filings is more appropriately maintained within the SEC's jurisdiction, Form 2 disclosures would not lengthen issuer and broker-dealer filings with tangential information, and Form 2 disclosures would not be subject to the estimation of hours necessitated by the short time constraints for SEC filings. In addition, disclosure in Form 2, instead of the audit report, might help mitigate potential liability issues and confusion over auditor responsibility, as previously discussed.