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March 10, 2014

Ms. Phoebe W. Brown
Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, D.C. 20006

Re: PCAOB Exposure Draft on *Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards to Provide Disclosure in the Auditor's Report of Certain Participants in the Audit* (PCAOB Release No. 2013-009, December 4, 2013; PCAOB Rulemaking Docket Matter No. 029)

Dear Ms. Brown:

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 supports efforts to improve audit effectiveness and appreciates the opportunity to comment on the Public Company Accounting Oversight Board ("PCAOB") Exposure Draft on *Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards to Provide Disclosure in the Auditor's Report of Certain Participants in the Audit* ("the Proposal").

The CCMC has serious concerns that the PCAOB has not met the minimum thresholds needed to move forward on the Proposal, namely the failure to

demonstrate how the Proposal will provide investors with decision useful information and what investor interests are being addressed. While the CCMC applauds the PCAOB for establishing the Center for Economic Analysis, the Proposal's cost-benefit analysis is insufficient as it fails to provide stakeholders with an analysis to comment on, nor is any analysis provided to meet the statutory requirements as to why Emerging Growth Companies ("EGCs") should be subject to the Proposal if adopted. Finally, the issues raised in our January 9, 2012 comment letter to the Proposal's predecessor ("2012 letter") remain unaddressed. Accordingly, we have attached the 2012 letter as an appendix to this letter and ask that it also be considered a part of the record.

Our concerns are discussed in more detail below.

I. Background

The Proposal would require disclosure in the auditor's report of the following:

- The name of the engagement partner;
- The names, locations, and extent of participation of other independent public accounting firms that took part in the audit; and
- The locations and extent of participation of other persons not employed by the auditor, whether an individual or a company, ("other participants") that took part in the audit.

The Proposal represents the latest PCAOB release on these matters. In July 2009, the PCAOB issued a Concept Release on *Requiring the Engagement Partner to Sign the Audit Report.* In October 2011, the PCAOB proposed a rulemaking on *Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards and Form 2*. The CCMC provided comments on the proposed rulemaking.[1]

[1] *See* the January 9, 2012 letter from the U.S. Chamber of Commerce CCMC to the PCAOB on 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).

II. Naming the Engagement Partner

While the Proposal calls for audit firms to disclose the name of the engagement partner in the auditor's report, it does not provide a meaningful rationale for why this should be done. The Proposal states that this information "***could*** be valuable to investors in making investment decisions as well as if they are asked to vote to ratify the company's choice of registered firm as its auditor" (emphasis added).[2] However, there is a marked failure to show how this change in disclosure will benefit investors and the arguments in support of the Proposal, including those related to audit quality, are superficial.[3]

The Proposal states the "means" of more disclosure but fails to demonstrate the "ends" it seeks to achieve. The Proposal does not articulate the problem that will be resolved through the adoption of the Proposal, or how the Proposal is the best option to solve the undefined problem. Moreover, the Proposal fails to show how investor needs will be enhanced through the naming of the engagement partner.

a. Audit Quality

As we expressed in the 2012 letter, regardless of their nature and size, audits are performed by a team of individuals. In reality, the audit 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 audits. The CCMC continues to believe that investors would be better served by the PCAOB focusing its efforts on updating its quality control standards rather than naming the engagement partner.

The Proposal states that the PCAOB has noticed through its inspection process variation in the quality of audits performed. While the inspections process can and should be a useful tool in setting priorities for the PCAOB, the justification for the Proposal falls short. The Proposal states that, while many factors contribute to this variation, the role of the engagement partner is an important factor to

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[2] *See* page 3 of the Proposal.

[3] Setting aside the conceptual flaws with the Proposal, from a practical standpoint, the CCMC notes that naming the engagement partner in the auditor's report is retrospective and does not necessarily disclose to investors the identity of the engagement partner for the *upcoming* period that applies to the shareholder vote on ratification of the audit firm.

consider.[4] Unfortunately, this is not a compelling argument for this Proposal. If a variation of audit quality is found because of a variety of factors, either that combination of factors must be addressed in a policy response, or a clear and demonstrable showing must be made of how naming the engagement partner is the over-riding cause of such a variation.

The Proposal does not make either case.

Naming the engagement partner does not enable investors or other third-parties to even begin to approach "stepping into the shoes" of the PCAOB or audit committee. Indeed, third-parties may instead get an incorrect view of the role of the engagement partner related to audit quality based on the information available from the name of the engagement partner. Investors are better served by relying on the regulatory and governance processes rather than trying to second guess these processes based on a disclosure of the name of the engagement partner.

Reinforcing this point, the CCMC notes that another current PCAOB initiative focuses on developing audit quality indicators ("AQIs"). The PCAOB staff Discussion Paper for the May 15-16, 2013 meeting of the Standing Advisory Group ("SAG") describes this initiative. The definition of audit quality in the Discussion Paper includes "meeting investors' needs for independent and reliable audits."[5] In this regard, the SAG Discussion Paper provides 40 different AQIs involving operational inputs (13), the audit process (15), and audit results (12). The name of the engagement partner is not among these 40 AQIs. Thus, the PCAOB's own initiative on audit quality does not recognize the relevance of disclosing the name of the engagement partner to investors.

b. Legal Liability

The Proposal calls for placing the disclosure of the name of the engagement partner in the auditor's report. In the 2012 letter, the CCMC expressed concern that disclosing the name of the partner could increase engagement partner legal liability. Disclosure in the auditor's report is a major contributor to the liability increase.

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[4] *See* page 6 of the Proposal.
[5] *See* pages 3 and 4 of the Discussion Paper on AQIs for the May 15-16, 2013 SAG meeting.

The CCMC appreciates that the Proposal contains a section on liability considerations, including under Section 11 of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act.[6] As explained in the Proposal, Section 11 of the Securities Act imposes liability for material misstatements or omissions in a registration statement, subject to a due diligence defense, on "every accountant … who has with his consent been named as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement … which purports to have been prepared or certified by him."[7]

In turn, Section 7 of the Securities Act requires issuers to file with the Securities and Exchange Commission ("SEC") the consent of any accountant who is named as having prepared or certified any part of the registration statement or any valuation or report included in the registration statement. The Proposal recognizes that engagement partners (and participating accounting firms) named in the auditor's report would have to consent to the inclusion of their names in such reports filed with the SEC, or included by reference in another document filed under the Securities Act with the SEC.[8]

As to Section 11 liability, the Proposal acknowledges litigation-related costs would increase, but conjectures that these costs should "not be substantial."[9] As to liability under Section 10(b) of the Exchange Act, the Proposal acknowledges concerns similar to those we expressed in our letter of January 9, 2012 and states that the Board "cannot conclude with certainty whether its approach might increase liability."[10]

The CCMC continues to strongly believe that "liability neutral" represents a minimum threshold for proceeding with any initiative that would involve disclosing the name of the engagement partner. The CCMC urges the PCAOB to recognize this important pre-condition as anything other than liability neutral standards will ultimately harm investors. Such a precondition should also be a part of an economic

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[6] *See* pages 20-26 of the Proposal.
[7] *See* page 21 of the Proposal.
[8] *See* pages 21-22 of the Proposal.
[9] *See* page 23 of the Proposal.
[10] *See* page 25 of the Proposal.

analysis.[11] Economic analysis should be used to determine if a proposed standard or revision to a standard is liability neutral and if not what the costs to investors and businesses will be.

c. Placement of Disclosures

While the CCMC does not support a requirement to disclose the name of the engagement partner, we would also like to comment on the Proposal in regards to the placement of any such disclosure. If any such requirement ensues from this initiative, disclosures should not be in the audit report. Rather than being part of the auditor's report, any such disclosure seems better suited for inclusion in a report by the audit committee in the proxy statement.

Importantly, the PCAOB could have circumvented some of the Section 11 liability concerns previously discussed by not proposing the name of the engagement partner (and other participants involved in the audit) be disclosed in the auditor's report. An alternative mode of naming the engagement partner would be a disclosure on the PCAOB's website through the use of Form 2.

In this regard, it is worth recalling that the PCAOB's October 2011 Proposed Rulemaking would have required disclosure of the name of the engagement partner in both the audit report and PCAOB Form 2. Instead of focusing the initiative on disclosures in Form 2, the current Proposal would require the disclosure only in the audit report. Apparently this focus was premised on arguments that disclosures in the audit report on the SEC's website would be more timely and accessible for investors. However, these arguments are not at all compelling.

It is unclear as to why a posting on both the SEC's and PCAOB's websites would not be the preferable route of disclosure. If the decision to make this disclosure on the SEC website alone is because the PCAOB's website is not "user friendly", that is a problem that can be fixed by the PCAOB. It cannot be used as a rationale to impose costs on all stakeholders. Moreover, according to the PCAOB's Strategic Plan and statements by Board members at the PCAOB's November 25,

[11] Liability neutrality is not a new concept; it was also included in the *Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury* (2008), VII: 19-20.

2013 open meeting on the PCAOB budget,[12] the PCAOB already has an initiative underway to leverage its technology, improve the "usability" of its website, and enhance communication to public constituencies. Thus, this technology "impediment" seems fixable in the near term; and, it is under the purview of the PCAOB to do so.

Further, the notion that investors would have all necessary information in-hand with disclosure of the name of the engagement partner in the audit report is flawed. Setting aside that the name of the engagement partner is unlikely to provide any actionable information for investors, there is no information content in the name of the engagement partner per se. Indeed, it is unclear how the disclosure of a name, which on its face will be of no utility to an investor, will help the reasonable investor make an investment decision. Indeed, the PCAOB acknowledges in the Proposal that this disclosure would have to be considered in combination with other information.[13]

It appears that the PCAOB envisions some of this other information would come from the SEC's website, but it would also involve information on the PCAOB's existing website as well. In addition, according to the Proposal, much of this other information would have to be obtained (and only available over time) from academic research and databases developed by third-parties.[14] Thus, the argument that the name of the engagement partner needs to be included in the audit report in order for investors to have all necessary information readily available in one place falls apart in practice.

Not disclosing the name of the engagement partner (and other participants in the audit) in the auditor's report would likewise avoid the complex and costly administrative nightmare that would be imposed on audit firms and issuers from needing to obtain Section 7 consents from engagement partners (and other participating accounting firms) so that issuers could file required consents with the SEC. The Proposal fails to recognize the multiple difficulties that would arise in trying to obtain such consents. These difficulties would likely hinder the ability of issuers to make timely filings with the SEC, thereby harming investors.

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[12] For example, see *PCAOB Strategic Plan: Improving the Quality of the Audit for the Protection and Benefit of Investors 2013-2017* (November 26, 2013), pages 16-17.
[13] *See* page 11 of the Proposal.
[14] *See*, for example, pages 12-13 of the Proposal.

As just one example of the difficulties that could arise from needing Section 7 consents, assume that an engagement partner is rotated off an audit because of the Sarbanes-Oxley Act of 2002 ("SOX") mandatory partner rotation requirement and the SEC's rules implementing this requirement. Also assume that the partner's initial consent needs to be reissued. On one hand, the partner would need to do additional work in order to allow the reissuance of the consent.[15] On the other hand, the partner would be precluded from doing any additional work because it would cause the audit firm to be in violation of the SEC's independence rules. Moreover, this example assumes the partner would be willing and able to reissue the consent and does not consider the need to address the myriad of circumstances when this would not be the case.

The Proposal appears to set up a dynamic whereby PCAOB requirements would force the SEC to waive its requirements (as a matter of policy) for audit partners (and other participants in audits) to reissue their consents in a broad array of circumstances in order to make our markets function efficiently.

All things considered, the arguments in the Proposal for disclosing the name of the engagement partner (and other participants in the audit) in the audit report are simply not convincing. The proposed placement of the disclosures significantly increases the costs of the Proposal, including legal and administrative costs, for no substantive benefit. The CCMC strongly urges that the PCAOB reconsider the Proposal in this regard.

III. Other Participants in the Audit

In addition to disclosing the name of the engagement partner, the Proposal would also require that the audit report disclose the names, locations, and extent of participation of other independent public accounting firms that took part in the audit and the locations and extent of participation of other persons not employed by the auditor. The proposed threshold for these disclosures is any public accounting firm or other participant performing 5% or more of the total hours in the most recent period's audit. This threshold is designed to demonstrate if an accounting firm plays a substantial role in the audit. The current threshold is 20%.

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[15] Our discussion sets aside any considerations related to determining the nature of and standards for this work.

While the CCMC appreciates that the Proposal does raise the threshold from the 2011 proposal of 3% to 5%, we believe that the Proposal does not provide a compelling case for why the current 20% threshold should not be used instead.

As expressed in our 2012 letter, we do not believe that it is in the best interests of financial reporting to move forward on these matters. And, as previously discussed in this letter, we continue to be concerned that any such disclosures do not belong in the auditor's report.

IV. Cost Benefit Analysis

The Proposal recognizes that the Jumpstart Our Business Startups Act ("JOBS Act") now makes economic analysis a necessary pre-condition for applying new PCAOB auditing standards and rules to an audit of any emerging growth company ("EGC"). Specifically, Section 103(a) (3) of SOX as amended by Section 104 of JOBS Act requires that rules adopted by the Board after the date of enactment of JOBS Act shall not apply to an audit of any EGC, unless the SEC determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation. The Proposal recommends that EGCs follow the requirements if adopted.

At the outset, we commend the PCAOB for establishing the Center for Economic Analysis to help fulfill the statutory requirements of the JOBS Act. The CCMC has been a strong advocate of economic analysis as a means of using empirical evidence to guide smart regulation and standard setting.[16]

However, in our view, the economic analysis provided with the Proposal fails to provide commenters with any information to comment on and fails to delineate the costs or benefits to EGCs if they are to follow the requirements of the Proposal. Indeed there is no analysis to provide an articulation of the benefits or of the costs to

[16] For example, see the December 9, 2013 letter from the U.S. Chamber of Commerce CCMC to the PCAOB on Proposed Auditing Standards on *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion; the Auditor's Responsibilities Regarding Other Information in Certain Documents Containing Audited Financial Statements and the Related Auditor's Report; and Related Amendments to PCAOB Standards* (PCAOB Release No. 2013-005, August 13, 2013 and PCAOB Rulemaking Docket Matter No. 34).

EGCs. This not only calls into question the ability of the Proposal to meet the economic analysis requirements needed for the Proposal to be approved through the SEC's rulemaking process, it also raises questions regarding the level of the PCAOB's commitment to economic analysis.

A review of some academic studies of companies in jurisdictions that do not have similar legal, regulatory, governance, market, and cultural environments and structures with the United States does not pass muster as an economic analysis. The Proposal contains no analysis or articulation of the direct costs to issuers, the direct costs to auditors, possible liability costs to issuers, possible impacts on stock price, possible impacts on returns to investors, potential discussion of benefits, if any public companies in the United States voluntarily disclose the name of the engagement partners and the costs and benefits comparing those companies to similarly situated companies. This is by no means an exhaustive list, but it is the type of analysis that accompanies proposed regulations when required by law. As such an analysis is required by the JOBS Act and as this Proposal must go through the SEC rulemaking process which will require an analysis of the impacts on competition and capital formation a more thorough study subject to public comment is necessary to move forward in applying the Proposal to EGCs.

The CCMC notes that the PCAOB's Strategic Plan for 2013-2017 states the PCAOB has developed "internal" guidance on economic analysis.[17]. The CCMC strongly urges the PCAOB to release its internal guidance on economic analysis for public comment so that stakeholders can be informed of the PCAOB's understanding of the role of economic analysis and how it can be used. Such public commentary can create a useful dialogue on the issue that all sides can benefit from. The merits of the PCAOB's analysis of costs and benefits in any particular proposal cannot be evaluated without understanding the essentials of the guidance being applied by the PCAOB for economic analysis.

The CCMC is very disappointed with the level of economic analysis provided in the Proposal and believes that it cannot pass the requirements of the JOBS Act and other statutory provisions that must be met for the Proposal to be approved and

[17] For example, see page 13 of the PCAOB *Strategic Plan: Improving the Quality of the Audit for the Protection and Benefit of Investors 2013-2017* (November 26, 2013).

become operational. Economic analysis, with a thorough weighing of the costs and benefits, can and should be used as a means of using empirical evidence to develop smart regulations. That goal has not been met.

V. Conclusion

Once again, the CCMC appreciates the opportunity to comment on the Proposal. However, the CCMC has serious concerns that the Proposal in its current form is flawed.

The Proposal fails to demonstrate how naming an engagement partner will improve audit quality, will provide investors with decision-useful information, and what investor interests are being addressed. Additionally, the cost-benefit analysis is insufficient as it fails to provide stakeholders with an analysis to comment on, nor is any analysis provided to meet the statutory requirement that must be fulfilled for the Proposal to be applied to EGCs. Indeed, we are concerned about the commitment of the PCAOB to a robust economic analysis as envisioned by the bipartisan JOBS Act.

Thank you for your consideration and the CCMC stands ready to assist in these efforts.

Sincerely,

Tom Quaadman