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September 30, 2011

Via E-mail: comments@pcaobus.org

Office of the Secretary,
Public Company Accounting Oversight Board,
1666 K Street, N.W.,
Washington, D.C. 20006-2803.

Re: PCAOB Rulemaking Docket Matter No. 34 –
Concept Release on Possible Revisions to
PCAOB Standards Related to Reports on
Audited Financial Statements

Ladies and Gentlemen:

This letter is in response to the Concept Release issued by the Public Company Accounting Oversight Board (the “Board”) relating to possible revisions to the Board’s standards relating to auditors’ reports on financial statements (the “Release”).

We appreciate the opportunity to submit these comments for the Board’s consideration. The Release discusses a wide range of possible revisions. One group of revisions would seek to address investors’ understanding of the audit process in general, through clarification of language in the standard auditor’s report; these changes seem to us unobjectionable in principle and worth pursuing. A second group of possible revisions would require the auditors to perform and report on additional procedures, leading to auditor assurance on additional information outside the financial statements. We believe that any revisions in this category would require rulemaking by the Securities and Exchange Commission, and should be subject to very rigorous cost/benefit analysis, but

we do not have other comments on these measures at this time. The balance of the possible revisions – which include a required “auditor’s discussion and analysis”, or AD&A, and mandatory use of emphasis paragraphs in the audit report – would require the auditors to identify and disclose information about the particular issuer being audited and its results of operations and financial position, or about the particular audit being reported on. Such revisions would necessarily change significantly the auditor’s traditional role of attesting to information prepared by management. From the perspective of lawyers regularly engaged in advising issuers on disclosure and reporting matters, we think that revisions of these sorts could raise serious governance and disclosure concerns for issuers and their auditors.

Our greatest concern relates to possible requirements that the auditor make disclosures about the issuer itself. The Release states that the purpose of these changes would be to provide investors with more transparency into the audit process and more insight into the issuer’s financial statements or other information outside the financial statements. For reasons that have been well articulated, we think it is essential that the issuer should be the original source of any disclosure about the issuer or its results of operations or financial position. Although the auditor will generally have a well-informed perspective on these matters, that perspective is necessarily different from, and narrower than, management’s perspective. Management is responsible for having the “complete picture” and making disclosure accordingly, while the auditor’s knowledge of the issuer derives from what the auditor observes through the course of the audit. But the audit is designed for the specific purpose of supporting the audit report, not for the purpose of informing the auditor generally about the issuer and its affairs, or supporting general disclosures about the issuer (whether those disclosures relate to the financial statements or information outside the financial statements). So it seems to us

fundamentally illogical to require the auditor to develop and publish substantive disclosures about the issuer itself. Such auditor comments will be subjective, raising potential comparability concerns, and therefore susceptible to a “boilerplate” approach, which will not further any transparency objectives. Part of the stated rationale for the proposed AD&A is that it would give the auditor greater leverage to convince the issuer to make changes. Given the differing roles and perspectives of the auditor, on the one hand, and management and the audit committee, on the other, we frankly think that this is an inappropriate objective for the Board to seek to advance. We are also concerned that new requirements for disclosure by auditors may expose the auditors to additional potential liability, unfairly in our view, since the auditor would be required to make comments on the basis of information acquired incidentally in the course of the audit, as opposed to as a result of procedures designed specifically to develop such disclosure. And we fear that auditor disclosures of the sort contemplated would likely enhance the issuer’s liability profile, as well. In this regard, we question the benefit to investors of the reporting of so-called “difficult or contentious issues, including ‘close calls’” that were resolved to the auditor’s satisfaction based on its professional judgment, and believe such reporting would carry with it a particularly high risk of enhanced liability.

At the same time, we believe it is quite important that issuers (and derivatively, their shareholders) get the full benefit of the auditor’s insights acquired through the course of the audit. But we feel strongly that requiring the auditor to make public substantive disclosures about the issuer will not promote that objective, and may well inhibit the governance processes now in place to oversee financial reporting. Governance changes over the past decade – such as the audit committee independence requirements of Rule 10A-3 under the Securities Exchange Act of 1934, the disclosure requirements with respect to “audit committee financial experts” and audit committee reports, and related practice developments – have enhanced the role of the public

company audit committee and, we believe, audit committee effectiveness. Auditors should be encouraged to have the fullest and frankest conversations possible with the audit committee. The best way to promote that objective is to allow those conversations to be conducted, whenever the audit committee desires or the auditor so requests, on a confidential basis. We are quite concerned that if the auditor's discussions with the audit committee are conducted with the anticipation of subsequent public disclosures being made by the auditor, these auditor/audit committee discussions may be seriously inhibited. Auditors may be more cautious in raising concerns, and audit committee members may be more circumspect in probing such concerns with the auditor.

The audit committee, and the board of directors, have oversight responsibility for the issuer's disclosure, including its financial statements. We believe that public company audit committees generally seek to understand and address substantive concerns raised by auditors in the course of their interaction, but to the extent there are concerns about audit committee performance in this regard, that should be addressed as a governance matter, including through additional Securities and Exchange Commission or stock exchange rule making, if thought necessary, not by requiring auditors to make their own public disclosures about the issuer.

As noted, our greatest concern with the possible revisions relates to possible new requirements for the auditor to make disclosure about the issuer. Disclosure requirements relating to audit procedures and the audit itself might, as a theoretical matter, be less problematic, but we are concerned that in practice, the two sorts of disclosures may well overlap. For example, a disclosure by the auditor that it had followed enhanced procedures with respect to a particular item or matter might well lead the issuer to consider enhanced responsive disclosure about that same item or matter. In principle, we think that this raises the same concerns as requiring substantive disclosure

by the auditor about the issuer itself. We also expect that such disclosure about the audit and audit procedures will be even more susceptible to “boilerplate” treatment, and less likely to be useful to investors.

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We appreciate this opportunity to comment on the Release. You may direct any questions with respect to this letter to Robert E. Buckholz at (212) 558-3876, Robert W. Downes at (212) 558-4312 or William G. Farrar at (212) 558-4940.

Very truly yours,


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