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Public Company Accounting Oversight Board
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Re: PCAOB Rulemaking Docket Matter No. 39, *Proposed Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications*

Dear Board Members and Staff:

We appreciate the opportunity to comment on the Public Company Accounting Oversight Board's (PCAOB or Board) *Proposed Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications*. Overall, we support the proposed amendments, which we believe provide added clarity regarding the applicability of the Board's rules and standards to brokers and dealers. This is particularly important in anticipation of the U.S. Securities and Exchange Commission's (SEC or Commission) finalization of its rules regarding brokers and dealers, including the oversight authority provided to the PCAOB under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). We respectfully submit our comments and recommendations on the Board's proposal.

General provisions

We generally support the proposed amendments to Rule 1001 *Definitions of Terms Employed in Rules* under Section 1 *General Provisions* and believe that they conform to the provisions in the Dodd-Frank Act. However, we request the Board to further consider, with respect to associated persons, the application of the phrase *persons seeking to become associated* within the Board's rules and standards. We recognize that the use of this phrase is consistent with the Dodd-Frank Act, but we have reservations as to its clarity and use within the Board's rules and standards without additional clarification and guidance.

We further request that the Board consider compliance examinations performed pursuant to the requirements of the SEC's Regulation AB. Neither the definition of *audit services* nor *other accounting services* seem to encompass these engagements and, in particular, the performance of these engagements for non-issuers that are unaffiliated servicers of the issuer. Now that the Board is making certain amendments based on its administrative experience, we believe that it is equally important for the Board to address other changes in regulations regarding the use of PCAOB standards that have occurred subsequent to the original issuance of the Board's rules. In this regard, the Board should make mention of these compliance examination engagements

within the Board's rules so as to memorialize the PCAOB requirements that apply, predominantly those pertaining to independence for an unaffiliated, non-issuer servicer.

From a broader perspective, we believe that the Board should also acknowledge and similarly address the applicability of requirements for other circumstances in which firms are required to register with, and be inspected by, the PCAOB but are not required to adhere to all PCAOB rules and standards (for example, surprise custody examinations for registered investment advisers). In the interests of protecting investors, it is essential for PCAOB rules and standards to be consistent with the requirements of the SEC and to be clear and concise as to the extent of their applicability.

Registration and reporting

Except as otherwise indicated herein, we believe that the proposed registration and reporting amendments, including those related to the Board's registration and reporting forms, are generally appropriate and need not be expanded to include additional or alternative items. Since we are registered with the Board, our comments on these amendments are specifically focused on Form 2 *Annual Report Form* and Form 3 *Special Report Form*. Of particular note, we advise the PCAOB to adopt an effective date that would permit sufficient time for firms to collect the necessary information related to brokers and dealers prior to the annual report filing deadline. A delayed issuance of the Board's final amendments could inhibit firms from properly meeting the March 31, 2013 deadline.

We do not agree with the proposed amendments to Form 3 *Special Report Form* related to withdrawn broker and dealer audit reports. Unlike the requirements related to issuers, the Board's proposed amendments require that certain disclosures regarding withdrawn audit reports and changes in auditors be made directly by the auditor, potentially causing the auditor to disclose the company's private information while jeopardizing the auditor's ethical responsibilities related to confidentiality. Accordingly, we believe that Form 3 is not the appropriate mechanism for reporting such information, and we urge the PCAOB to collaborate with the SEC to develop a form of reporting, similar to the Form 8-K reporting requirements, whereby the broker or dealer has the primary responsibility to disclose such matters. The PCAOB may also consider working with the Financial Industry Regulatory Authority (FINRA) on this particular matter.

The Board requested specific comment as to whether to require foreign firms to indicate on Form 2 whether or not Section 106(d)(2) of the Sarbanes-Oxley Act of 2002 applies to them and, if applicable, to provide the name and addresses of their designated U.S. agent. We believe that the proposed amendment to Form 2 would only be appropriate if the Board permitted foreign firms to otherwise assert conflicts with non-U.S. law, allowing such firms to decline to provide such information if such firms were unable to do so without violating non-U.S. law.

Professional standards

In consideration of the requirements of the Dodd-Frank Act and the SEC's proposed rulemaking to require the use of PCAOB standards for the issuance of audit reports of brokers and dealers registered with the SEC, we support the amendments to the general requirements

governing the applicability of the Board's auditing and related professional practice standards, including the Board's interim auditing, attestation, and quality control standards. We believe that the effective date of these proposed amendments will depend on the timing of the SEC's finalization of its proposed rulemaking. In some cases, engagement acceptance or reacceptance and certain planning and risk assessment activities related to calendar year end 2012 audits may occur prior to the SEC's final rulemaking. This could affect a firm's ability to comply fully with certain PCAOB standards, particularly those that are to be performed prior to or during the planning and risk assessment phase of the audit, including independence matters. In addition and in consideration of the short filing deadlines subsequent to year-end, firms may need sufficient time to update their tools and develop and deliver training to reflect the appropriate use of PCAOB standards for these engagements. Our specific comments related to the proposed amendments regarding the application of the Board's independence rules are included below.

In response to the Board's request for comment regarding the SEC Practice Section (SECPS) membership requirements, we are concerned with the Board's approach to apply the membership requirements to the auditors of brokers and dealers that were members of the SECPS in 2003. Although we recognize that the Board has future plans to consider the SECPS requirements more broadly, we believe that the proposed amendments could result in an unbalanced and disparate application of the requirements. Accordingly, we recommend that the Board defer the application of the SECPS membership requirements to auditors of brokers and dealers until such time the Board has more fully considered the application of those requirements to all registered firms. In addition, with respect to the SECPS notification requirements to the Commission of auditor resignations and dismissals, we would not be opposed to amending these requirements to eliminate any duplication between the "five-day" letter and the Form 8-K reporting requirements. We encourage the PCAOB to collaborate with the SEC on this particular matter.

We also note that the Board proposed certain amendments to Rule 3400T *Interim Quality Control Standards* pertaining to the applicability of specific SECPS membership requirements in existence on April 16, 2003. We believe that the Board does not intend, and it would be inappropriate at this time, to broaden the applicability of these requirements. Nonetheless, we suggest that the Board confirm this matter in its final rule release to ensure consistent understanding and application in practice.

Independence

Since PCAOB standards will soon be applicable to audit services and auditors of brokers and dealers, we believe that it is appropriate for the Board to require the application of the PCAOB's ethics and independence rules. The extent of the application of these rules and standards, however, may need to vary and allow for appropriate auditor judgment based on the specific circumstances and governance structure. We do agree with the Board's conclusions not to extend the audit committee pre-approval requirements to broker or dealer audit clients.

Incidentally, the Board appropriately recognizes that the independence implications of an auditor providing tax services to an officer of a broker or dealer may not be the same as those

associated with tax services provided to an officer of a public company. In our view, the threats to auditor independence related to these tax services may be less significant for introducing and other non-carrying brokers and dealers because, based on the organizational structure of these entities, there is ordinarily a symbiotic relationship between the tax and audit services being provided (for example, when the broker or dealer is a limited liability company). Accordingly, we suggest that the Board consider whether, in lieu of prohibiting these services, other safeguards (such as precluding individuals performing the tax services from serving as a member of the audit engagement team) could be implemented to reduce such threats to an acceptable level. In conjunction therewith, it would seem necessary for the Board to further consider organizational structure to more narrowly define persons in a financial reporting oversight role.

The application of the PCAOB's independence requirements related to tax services may be complicated, particularly within an investment company complex to which the broker-dealer relates, and may unnecessarily increase costs and disruption without a significant benefit. However, if the Board determines that it is necessary to prohibit these tax services, transitional relief will be necessary for firms to analyze the tax services currently being provided and to complete and terminate any tax services that may impair independence under the new requirements.

With regard to the application of Rule 3526 *Communication with Audit Committees Concerning Independence*, we believe that, when those charged with governance and management are the same individuals, the nature of the communications related to non-audit services would need to vary. This may be the case with certain non-issuer brokers and dealers, as well as certain issuers, such as Unit Investment Trusts (UITs). The purpose of Rule 3526 is to have an objective audit committee or, depending on the governance structure, another governance body consider the nature of the services to be provided by the auditor and conclude as to the auditor's independence. In a situation in which those charged with governance and management are the same individuals, this same objective analysis cannot occur. On the other hand, it would be important to communicate, as a safeguard, the limitations of the non-audit services within the bounds of independence as well as management's responsibilities related to those non-audit services. Accordingly, we suggest that the Board consider providing some flexibility by allowing auditor judgment in determining the nature of the communications that should occur in these circumstances.

Investigations and adjudications

We have the following observations regarding the proposed amendments to the rules governing PCAOB investigations and adjudications:

- Rule 5109 *Rights of Witnesses in Inquiries and Investigations* – We understand that the Board is amending Rule 5109(d) to essentially indicate that the Board will consider assertions made in statements of position that are supported by evidence, such as an affidavit or declaration by an individual with knowledge of the asserted facts. We do believe that the Board's inquiries and investigations could be enhanced if firms and associated persons were encouraged to provide evidence to support their statements of position. However, we believe that a formal affidavit, declaration, or similar statement signed by a particular

individual is overly prescriptive, potentially harming the Board's process in pursuit of obtaining such evidence.

- Rule 5422 *Availability of Documents for Inspection and Copying* – The Board has proposed certain amendments to Rule 5422(b) that expand the scope of an interested division's ability to withhold certain documents for inspection and copying. Although we acknowledge that an interested division is not authorized to withhold documents that contain material exculpatory evidence, we have some concerns related to the Board's amendments as they could be construed as shielding a broad range of information in the Board's favor. In this regard, it is unclear what types of documents *obtained from* a Board member, the Board's staff, or persons they have retained would be withheld. In the interest of due process, while also recognizing the need to streamline onerous processes related to legal and background research, we believe that the Board must ensure that evidence both for and against the investigation, disciplinary proceeding, or hearing needs to be properly made available.

We would be pleased to discuss our letter with you. If you have any questions, please contact Karin A. French, National Managing Partner of Professional Standards, at (312) 602-9160.
Sincerely,