



September 11, 2009

EXECUTIVE DIRECTOR

Cynthia M. Fornelli

GOVERNING BOARD

Chairman

James S. Turley, Chairman and CEO
Ernst & Young LLP

Vice Chair

Michele J. Hooper, President and CEO
The Directors' Council

Vice Chair

Barry C. Melancon, President and CEO
AICPA

Charles M. Allen, CEO
Crowe Horwath LLP

Harvey J. Goldschmid, Dwight Professor of Law
Columbia University

Robert E. Moritz, Chairman and Senior Partner
PricewaterhouseCoopers LLP

Edward E. Nusbaum, CEO and Executive Partner
Grant Thornton LLP

Lynn S. Paine, John G. McLean Professor
Harvard Business School

Barry Salzberg, CEO
Deloitte LLP

Dave Scudder, Managing Partner
McGladrey & Pullen, LLP

John B. Veihmeyer, CEO
KPMG LLP

Jack Weisbaum, CEO
BDO Seidman, LLP

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

Re: Request for Public Comment: *Concept Release on Requiring the Engagement Partner to Sign the Audit Report* - PCAOB Rulemaking Docket Matter No. 029

Dear Office of the Secretary:

The Center for Audit Quality (CAQ) is an autonomous public policy organization dedicated to enhancing investor confidence and public trust in the global capital markets. The CAQ fosters high quality performance by public company auditors, convenes and collaborates with other stakeholders to advance the discussion of critical issues requiring action and intervention, and advocates policies and standards that promote public company auditors' objectivity, effectiveness and responsiveness to dynamic market conditions. Based in Washington, D.C., the CAQ is affiliated with the American Institute of Certified Public Accountants. The CAQ appreciates the opportunity to respond to the Public Company Accounting Oversight Board (PCAOB or the Board) *Concept Release on Requiring the Engagement Partner to Sign the Audit Report* (the Concept Release). This letter represents the observations of the CAQ, but not necessarily the views of any specific firm, individual or CAQ Governing Board member.

We have organized our observations and concerns regarding the topics raised in the Concept Release into the following sections:

- Overview
- Perspectives on Accountability
- Perspectives on Transparency
- Potential Unintended Consequences

OVERVIEW

We commend the PCAOB for soliciting input at an early stage in its standards-setting process. This Concept Release will enable the

PCAOB to consider valuable input while it deliberates whether proposed changes to the existing standards are appropriate. We encourage the PCAOB to continue to use Concept Releases or other means to obtain early input on relevant issues for use in considering the relative importance of and need for drafting new proposed standards or revisions to existing standards.

The Concept Release suggests that a signature requirement might enhance the engagement partner's sense of accountability to financial statement users for the work performed and the opinion expressed, which could, in turn, result in greater exercise of care in performing the audit. The Concept Release also suggests that a signature requirement might increase transparency regarding who is responsible for performing the audit and could provide useful information to investors and audit committees.

We believe that existing PCAOB standards and regulatory oversight sufficiently provide for accountability at all levels of a firm.¹ Within this letter we highlight how a firm's system of quality control and the engagement partner's interaction with, and role within, that system fosters accountability. We also provide perspective on other parties to which engagement partners are held accountable, such as other partners within a firm, audit committees, regulators and investors.

We also believe existing standards sufficiently provide for transparency regarding an engagement partner's identity. For example, the names of engagement partners are known or readily available to audit committees and regulators. Audit committees, in particular, are in a position to act upon this information in representation of investors given their governance authority and knowledge of the particular circumstances of the engagement.

We also describe potential unintended consequences of an engagement partner signature requirement. Such consequences may include inappropriate inferences about the partner based on his or her association with certain public companies, insufficient recognition given to the corporate governance process, potentially misleading information for investors, possible negative impacts on an engagement partner's liability, and foster reluctance by engagement partners to exercise professional judgment.

As more fully described below, we question whether an engagement partner signature requirement will enhance audit quality in a meaningful way.

PERSPECTIVES ON ACCOUNTABILITY

As mentioned above, a firm is required, in accordance with the PCAOB's standards, to establish and maintain a system of quality control. As part of that system, PCAOB standards place primary responsibility for the planning and supervision of the audit on the engagement partner.² However, as highlighted more fully below, the firm's system of

¹ Throughout this letter, we utilize "firm" to describe a registered public accounting firm, recognizing that generally all firms are either organized as partnerships or utilize organizational structures with similar characteristics.

² See PCAOB Interim Standards, AU Section 311, "Planning and Supervision"

quality control and the establishment and supervision of an engagement team are critical to the effectiveness of an engagement partner's ability to properly conduct the audit. In addition, partners, as owners in the firm, recognize the significance of their responsibility to the other partners in their firm, who will hold engagement partners accountable for their conduct, as will audit committees, regulators and investors. As such, we believe that the firm's signature on the audit opinion, which represents the firm's overall responsibility for the audit, and to which all members of the engagement team and the firm's system of quality control are accountable, provides the most meaningful indication of responsibility to investors. We provide additional perspective on these matters in the following paragraphs.

Firm's System of Quality Control and the Engagement Partner's Role

PCAOB standards set forth quality control standards with which registered public accounting firms must comply in order to provide reasonable assurance that the firms, and their personnel, comply with applicable professional standards.³ Pursuant to these standards, a system of quality control should provide the firm with reasonable assurance that its personnel comply with the applicable professional standards and the firm's standards of quality. Such policies and procedures, which are a key element of the PCAOB's inspections of registered firms, should encompass the following interrelated elements:⁴

- Independence, Integrity and Objectivity
- Personnel Management
- Acceptance and Continuance of Clients and Engagements
- Engagement Performance
- Monitoring

These standards place accountability for the conduct of the audit on the firm. While the engagement partner clearly plays an important role within a firm's system of quality control, we highlight below how these elements illustrate the significance of the firm's system of quality control, and the engagement partner's role within, interaction with, and reliance upon such a system. This emphasizes the importance of holding the firm accountable for the audit and the fact that while the engagement partner plays a critical role in the conduct of the audit, a firm's system of quality control is integral to the performance of an audit in accordance with professional standards, and as such, the firm signature provides the most meaningful representation of the audit.

³ Pursuant to PCAOB Rule 3400T, the PCAOB provisionally designated the AICPA's Auditing Standards Board's Statements on Quality Control Standards (QC Sections 20-40), as in existence on April 16, 2003, as the PCAOB's Interim Quality Control Standards.

⁴ PCAOB Interim Quality Control Standards – QC Section 20, paragraphs 3-7

Independence, Integrity and Objectivity

PCAOB standards require that a firm establish policies and procedures to provide it with reasonable assurance that personnel maintain independence (in fact and in appearance) in all required circumstances, perform all professional responsibilities with integrity and maintain objectivity in discharging professional responsibilities.⁵ Policies and procedures that firms establish in response to these requirements vary based on a firm's individual facts and circumstances, but often include codes of conduct, independence policies and training to emphasize the importance of all of these components within the firm. Of significant importance is the manner in which the firm fosters an environment of integrity and objectivity, as evidenced through the actions of individuals at all levels of the firm. In addition, firms generally have procedures to monitor the independence of both partners and employees of the firm, as well as the firm itself.

Engagement partners clearly play a significant role in fostering an environment of integrity and objectivity within the engagement team in the conduct of the audit. However, in many cases, the engagement partner, by necessity, is reliant on the firm's system of quality control for monitoring compliance with aspects of the firm's policies and procedures related to his or her particular audit client. For example, employees of the firm are responsible for certifying their independence with respect to audit clients of the firm, including financial interests. Typically, especially in larger audit firms, engagement partners rely upon these certifications, as well as the firm's process for evaluating compliance, when concluding whether or not issuance of an audit report is appropriate.

Personnel Management

PCAOB standards require a firm to establish policies and procedures related to hiring, assigning personnel to engagements, professional development, and advancement activities to provide the firm with reasonable assurance that personnel are competent, have appropriate technical training and proficiency, satisfy continuing professional education requirements, and are qualified when selected for advancement.⁶ PCAOB standards also require an engagement quality review of each audit report prior to issuance.⁷ Firms typically establish policies related to these matters. For example, firms generally have policies for the assignment of personnel to engagements, including partners with final responsibility for the audit and partners responsible for performing the engagement quality review, which consider the requisite skills and risk associated

⁵ PCAOB Interim Quality Control Standards – QC Section 20, paragraphs 9-10

⁶ PCAOB Interim Quality Control Standards – QC Section 20, paragraphs 11-13; QC Section 40

⁷ PCAOB Interim Standards - SECPS Section 1000.08(f); Appendix E, Section 1000.39. In addition, on July 28, 2009, the PCAOB adopted Auditing Standard No. 7, "Engagement Quality Review," which, if approved by the SEC, replaces the PCAOB Interim Standards related to an engagement quality review.

with the engagement. In addition, firms generally establish mechanisms to train personnel and to track compliance with continuing education requirements.

In the context of an audit, engagement partners have a responsibility to consider the specific skills of engagement team members and to supervise them accordingly. Engagement partners also play an important role in the professional development and evaluation of personnel, which in turn provides a significant input into the firm's advancement activities. However, as mentioned above, engagement partners are assigned to engagements based on the firm's evaluation of his or her skills and those required to perform the audit based on the firm's assessment of the company as described above. Engagement partners also do not select the engagement quality reviewer, whose role is to perform an objective review of the significant auditing, accounting and financial reporting matters prior to the issuance of the firm's audit report. Finally, engagement partners, especially in larger firms, must rely on a firm's system of quality control in assessing that personnel are compliant with firm policies regarding training and compliance with continuing professional education requirements.

Acceptance and Continuance of Clients and Engagements

PCAOB standards require firms to establish policies and procedures for client acceptance and continuance to provide reasonable assurance that the firm can complete engagements with professional competence and that risks associated with providing professional services in particular circumstances are appropriately considered.⁸ Generally, these policies and procedures are developed and applied in a manner such that certain criteria are used to evaluate whether the firm should be associated with a particular client, as well as whether the firm has resources to enable it to perform the service both timely and competently.

Acceptance and continuance decisions are generally not made solely by the engagement partner, but are a collaborative effort that considers the input of other members of the firm. As such, audit clients represent clients of the firm, not just of an individual engagement partner.

Engagement Performance

PCAOB standards require firms to establish policies and procedures to provide the firm with reasonable assurance that the work performed by engagement personnel meets applicable professional standards, regulatory requirements and the firm's standards of quality.⁹ These policies and procedures should cover planning, performing, supervising, reviewing, documenting and communicating the results of each engagement including, where applicable, the engagement quality review and, where applicable, consultation requirements. These policies and procedures should also provide reasonable assurance that personnel refer to

⁸ PCAOB Interim Quality Control Standards – QC Section 20, paragraphs 14-16

⁹ PCAOB Interim Quality Control Standards – QC Section 20, paragraphs 17-19

authoritative literature and consult with individuals (e.g., specialists in technical areas of accounting, valuation, etc.) either inside or outside the firm under the appropriate circumstances. Firms generally develop policies and procedures in the areas noted above in order to establish uniform requirements for the conduct of audits. These policies and procedures often cover a number of areas, including when consultations are required (e.g., in situations where there are complex or unusual issues), the use of internal specialists (e.g., when dealing with areas involving significant valuation issues) and the manner in which engagement teams are required to coordinate and supervise work performed by other offices and/or firms.

While the engagement partner is responsible for supervising the overall conduct of the audit in order to provide reasonable assurance that the audit is conducted in accordance with professional standards, the firm's policies and procedures typically significantly influence the manner in which the partner exercises these responsibilities. In addition, the engagement partner is reliant on the firm's system of quality control in order to effectively perform his or her responsibilities. For example, in situations where consultation is required, policies at larger firms generally require the engagement partner to follow the advice of the party consulted and in those situations, the engagement partner is relying on the expertise of the individual and the firm's system of quality control to provide personnel with the appropriate competency and experience.

Another example includes situations where the audit team relies on work performed by other offices of the firm. In these situations, the engagement partner is typically responsible for establishing the scope and extent of work required to be performed by the other office as part of the overall audit plan. He or she is also responsible for evaluating the results of the work performed for the purpose of supporting the audit opinion. However, the engagement partner generally relies on the firm's system of quality control to provide reasonable assurance that the personnel assigned to the engagement comply with applicable professional standards and the firm's standards of quality.

Monitoring

PCAOB standards also require firms to establish policies and procedures that provide reasonable assurance that the other elements of quality control described above are suitably designed and are being effectively applied.¹⁰ Such policies and procedures govern the ongoing evaluation of compliance with policies and procedures through internal inspections of audit engagements (and evaluation of engagement partners), the appropriateness of firm guidance and effectiveness of professional development activities. These procedures provide the firm with a means of identifying and communicating circumstances that may necessitate changes to or the need to improve compliance with the firm's policies and procedures.

¹⁰ PCAOB Interim Quality Control Standards – QC Section 20, paragraph 20; QC Section 30

For example, internal inspections provide the firm with information regarding an audit team's compliance with the firm's policies and procedures. These reviews are an important input into the firm's evaluation of whether its policies and procedures are effectively applied. This evaluation is of significant importance to an engagement partner, as he or she typically must place reliance on the work performed by other audit teams – a common situation for audits of large public companies.

The above is intended to illustrate the significance of the firm's system of quality control in the performance of audits and to emphasize the importance of holding the firm accountable for the audit rather than one individual.

Accountability to Partners, Audit Committees, Regulators and Investors

Engagement partners are accountable to multiple parties with respect to the planning, supervision and execution of individual audits, including other partners within the firm, audit committees, regulators and investors. As further detailed below, the accountability that currently exists provides a significant incentive for engagement partners to conduct audits in accordance with professional standards.

Accountability to the Firm and Partners within the Firm

Engagement partners recognize that as owners, their actions affect the entire firm. The responsibility to one's partners is an important element of firm culture. With regards to individual audits, engagement partners are typically required to certify to the firm through various means that he or she has performed the audit in accordance with firm policies and professional standards. Pursuant to PCAOB standards, audits are also subject to an objective review of the significant auditing, accounting and financial reporting matters prior to the issuance of the firm's audit report. Finally, engagement partners are subject to evaluation by the firm through various other quality control processes, including internal practice reviews and performance evaluation processes. All of these create significant accountability for engagement partners to the firm.

Accountability to Audit Committees

The Sarbanes-Oxley Act of 2002 (the Act) places primary responsibility for the appointment, compensation and oversight of an issuer's auditing firm with the audit committee. This responsibility, combined with existing requirements for the audit firm to communicate significant audit matters to the audit committee, results in significant interaction throughout the year between the audit committee and the engagement partner. Such interaction provides the audit committee with the ability to hold the engagement partner directly accountable for the performance and conduct of the audit.

Accountability to Regulators

Partners are accountable to a number of regulators for their performance, including the PCAOB, the Securities and Exchange Commission (SEC or the

Commission), State Boards of Accountancy and other state and federal regulators. The PCAOB, as mandated by the Act, performs inspections to evaluate the sufficiency of the quality control system of a firm, which includes inspections of individual engagements to assist in that evaluation. Adverse PCAOB inspection findings provide an important source of information for consideration in the partner evaluation process.

Engagement partners are also subject to enforcement actions by the PCAOB and SEC for issuer audits. Determinations of improper professional conduct can lead to the censure, suspension or bar of an engagement partner's ability to appear or practice before the Commission or be associated with a registered public accounting firm, as well as monetary penalties. In addition, such determinations or additional findings of misconduct by State Boards of Accountancy can result in the suspension or revocation of an engagement partner's license, which would prevent him or her from practicing as a certified public accountant.

Accountability to Investors

Investors also have a number of ways to hold audit firms and the associated engagement partners accountable. For example, investors often have the ability to ratify the appointment of a registered public accounting firm as a company's auditor. In addition, investors can influence the composition of an issuer's board of directors, which in turn affects the composition of the audit committee (as noted above, the audit committee has primary responsibility for the appointment, compensation and oversight of the issuer's external auditor). Finally, investors have a number of avenues under federal and state securities laws to initiate civil litigation against audit firms and thereby hold them and their personnel accountable for the conduct in the audit of an issuer's financial statements.

The above highlight the significant means by which engagement partners are held accountable to all relevant stakeholders associated with audits of public companies.

Analogy to CEO/CFO Certifications

The PCAOB's Concept Release notes that some have suggested requiring engagement partners to sign the audit report would be similar to the requirement imposed on management by Section 302 of the Act because it might focus engagement partners on their existing responsibilities (the intent of Section 302 was to hold management responsible for the representations of their company). In response to the corporate scandals earlier in this decade, the Act intended the certification requirements to clarify management's responsibility for the information included in periodic reports filed with the SEC.

In contrast, professional standards have always held the engagement partner responsible for the planning and conduct of the audit. Professional standards outline such responsibilities, which include requirements for firms to monitor engagement partner compliance through the firm's system of quality control. Therefore, given the clarity of the engagement partner's role under professional standards, as well as the multiple means by which he or she is held accountable, it is unclear how a requirement for engagement

partners to sign the audit report will provide any additional clarity or emphasis on a partner's existing responsibilities.

Summary

The CAQ believes the above illustrates the importance of the accountability that already exists for the engagement partner to various parties under current professional standards and highlights the significance of the firm's system of quality control to the audit and the engagement partner's interaction with, and role within, that system.

PERSPECTIVES ON TRANSPARENCY

The Concept Release indicates that enhanced engagement partner transparency may provide information that is useful to investors when making investment decisions, and to audit committees in retention decisions. However, it is important to highlight that the identity of the lead engagement partner is readily available to those parties that have authority over the auditor – the audit committee as well as applicable regulators.

Audit Committee

Audit committees are keenly aware of the identity of the lead engagement partner through the audit appointment process, periodic required communications, meetings and other communications throughout the audit process. As mentioned above, Section 301 of the Act places responsibility for the appointment, compensation and oversight of the work of the audit firm with the audit committee in its capacity as a committee of the board of directors. As such, the audit committee is responsible for representing investors with regards to the company's relationship with the external auditor. The audit firm reports directly to the audit committee for the purpose of preparing or issuing an audit report or related work and regularly communicates with the audit committee. Such communications generally include the following:

- Information regarding the scope and results of the audit,
- Information regarding the company's initial selection of and changes in significant accounting policies or their application,
- The methods used to account for significant unusual transactions,
- Management's process in formulating particularly sensitive accounting estimates,
- Adjustments identified during the audit,
- The auditor's judgments about the quality of the entity's accounting principles,
- The nature and resolution of any disagreements with management, and
- The nature of any difficulties encountered in performing the audit.¹¹

These communications, combined with additional communications regarding independence, the audit committee pre-approval process, the audit committee's experience with the company and its interaction with management, provide the audit committee with the context necessary to perform its oversight of the external auditor, including evaluating the performance of the audit engagement partner.

¹¹ As outlined in PCAOB Interim Standards AU Section 380.

Regulators

As discussed above, public company auditors are subject to multiple layers of oversight by various entities including the SEC, the PCAOB, State Boards of Accountancy and other federal and state regulators. Regulators have the ability to readily identify the lead engagement partner on any public company audit.

Shareholders

As mentioned above, shareholders often have the ability to ratify the appointment of a company's external auditor. In a number of situations, such as at large, widely held companies, engagement partners typically attend the annual general meeting and are available to answer appropriate questions. Thus, while we recognize that it is not practicable for all shareholders to attend a company's annual shareholder meeting, it does illustrate that there is visibility and access to the engagement partner on at least an annual basis.

Summary

Based on the above, the CAQ believes that significant transparency exists with respect to the audit engagement partner for those parties with both the context and governance authority to act upon it. Other users may not necessarily have the appropriate context by which to evaluate the engagement partner and as such, the PCAOB should consider the potential consequences that could result from providing the identity of the partner, some of which are outlined below.

POTENTIAL UNINTENDED CONSEQUENCES

We believe that such a requirement could result in a number of unintended consequences, such as drawing inappropriate inferences, insufficient recognition given to the corporate governance process, providing potentially misleading information for investors (as to the role of the engagement partner in general and by implying to investors and other users that there has been a substantive change in the role of the engagement partner when, in fact, no such change was intended by the PCAOB), litigation considerations and an impact on the engagement partner's use of his or her professional judgment, as more fully detailed below.

Inappropriate Inferences

Investors and other users of audit reports may believe that knowing the identity of the lead engagement partner will help them better evaluate or predict the quality of a particular audit. However, as detailed above, while the engagement partner plays an important role in the conduct of an audit, an audit's success is dependent upon a firm's system of quality control. Users could draw inappropriate or inaccurate inferences about the audit based solely on the identity of the engagement partner. These inferences may result from circumstances about a company that do not have a direct linkage to the audit, and users may not properly consider the support of the firm's system of quality control and the role of the engagement partner. Such inferences may result, after several years, in the collection of very limited data that is incomplete and potentially inappropriate. A

few examples where inappropriate and incomplete inferences may be drawn are as follows:

- There may be situations at companies (e.g., bankruptcy, going concern uncertainty, adverse analyst coverage, activist concerns, etc.) that may not relate to the audit or to audit quality. In these situations, users may attempt to draw conclusions as it relates to the engagement partner where there is no direct link to audit quality.
- Judgments may be made about the engagement partner's expertise that do not consider the important contributions of others involved in the audit (e.g., other partners, specialists, etc.). These other partners and specialists can play a significant role in a given audit engagement, as described earlier in this letter.
- Investors and other interested parties may devise a "scorecard" for engagement partners that would allegedly measure their expertise, experience and other factors based on characteristics of companies for which he or she has signed audit opinions. It is likely that these "scorecards" would not appropriately consider the partner's experience outside the public company audit context or the role of the firm's system of quality control, including the involvement of other partners and specialists. A potential impact of these inferences may be that engagement partners become overly concerned with such a "scorecard" and, therefore, become reluctant to be associated with certain issuers, which may adversely impact the firm's system of quality control.

Lastly, conclusions drawn from inferences such as those detailed above may result in unintended consequences for smaller firms, who may not be perceived to have as robust a "scorecard" as compared to partners at larger firms, which may impact their ability to compete for audits of public companies.

Insufficient Recognition Given to the Corporate Governance Process

Investors are represented through a company's board of directors and its audit committee. The Act places responsibility for engaging the audit firm, including the engagement partner with the audit committee. Under current governance structures, shareholders and other investors will never have the same level of information by which to evaluate the auditor as the company's board of directors and/or audit committee. As such, providing the name of the engagement partner may lead investors to place insufficient recognition on the existing governance structure where they may work through their board and audit committee for representation. Instead, they may believe that it is appropriate to contact the engagement partner directly to ask questions about the audit, the company's financial statements, or other matters. However, partners may be unable to answer questions from shareholders about the company or the audit, due to professional responsibilities with respect to confidentiality of client information and legal issues with respect to disseminating non-public information.

A signature requirement could also result in shareholders placing undue influence on audit committees regarding firm decisions on partner selection, rotation and assignment. Such shareholder actions may be motivated by inferences drawn without the benefit of the same level of information as the company's audit committee. We believe that such an outcome would be contrary to the manner in which state and federal laws provide for a company's board of directors (and related committees) to be accountable to a company's shareholders.

Potentially Misleading Information for Investors

A signature requirement could place too much emphasis on one partner and be misleading to investors in terms of how an audit is accomplished. An audit is performed by a team of people, and companies with multiple locations may have multiple groups of auditors as part of the team. In these instances, the lead engagement partner relies on numerous specialists, audit partners, managers and others to complete the audit. It is for this reason that audit firms have established policies and procedures – they provide the firm with reasonable assurance that the work performed by engagement personnel meets applicable professional standards and regulatory requirements, as well as the firm's standards of quality. Rather than focusing on an individual partner, investors should be focused on assessing the quality of the firm.

When considering the analogy to the Section 302 certifications noted in the PCAOB's Concept Release, the 302 certifications, among other items, provides that certifying officers are responsible for establishing and maintaining an issuer's disclosure controls and procedures and internal control over financial reporting. This is not analogous to a partner's role in the context of an audit. As detailed above, professional standards require the audit firm to maintain a system of internal control that provides reasonable assurance that its personnel comply with the applicable professional standards and the firm's policies and procedures. While the engagement partner clearly plays a significant role in the implementation of a firm's system of quality control, we are concerned that investors' and others' understanding of these processes may over-emphasize the engagement partner's role within that system or even confuse the role of the auditor with that of management.

Litigation Considerations

The Board noted in the Concept Release that it did not intend for a signature requirement to increase the liability of engagement partners. As also noted in the Concept Release, a signature requirement may cast doubt on an engagement partner's ability to raise important defenses to private claims under Section 10(b) of the Securities Exchange Act of 1934 in some courts.¹² We believe that the requirement for an engagement partner to sign an audit report in his or her individual name would likely make it more difficult to

¹² The Concept Release notes that courts are divided regarding when an individual may be subject to primary liability under Section 10(b) for conduct relating to the misstatement of others. Some courts, including the Second Circuit, require a misstatement to be attributable "to the *specific actor*" that is alleged to have made it "at the time of public dissemination." *Wright v. Ernst & Young LLP*, 152 F.3d 169, 175 (2d Cir. 1998).

claim successfully that the alleged misstatement cannot be attributed to him or her in some courts. In this respect, we believe a signature requirement would likely increase the risk of liability to a partner. Moreover, there are other areas of the federal and state securities laws where it is unclear whether a signature requirement would increase an engagement partner's liability.¹³ We therefore strongly encourage the PCAOB, to the extent it determines to proceed with further consideration of such a requirement, to perform a thorough analysis on the potential impact an engagement partner's signature may have on litigation.

In addition to the potential increased liability risks, we believe that a signature requirement would result in more engagement partners being named in lawsuits and becoming involved in regulatory actions, which would increase a firm's costs associated with these proceedings. Signatures would heighten the visibility of engagement partners and, as a result, increase the likelihood that engagement partners could become the subject of litigation or regulatory scrutiny when there is any question regarding an issuer's financial statements. In addition, and perhaps more importantly, such additional exposure (whether real or perceived) could impact an engagement partner's behavior in ways that may not foster enhancements in audit quality. For example, a real or perceived risk of additional exposure may reduce an engagement partner's willingness to utilize his or her professional judgment or may reduce the number of partners willing to participate in audits of higher risk companies.

However, if the PCAOB decides to propose a requirement for an engagement partner to sign the audit report, we believe that it is imperative that an effective safe harbor be put in place. Such a safe harbor would be consistent with the Board's intention and the final report of the Treasury Advisory Committee on the Auditing Profession, which noted that a signature requirement should not impose on any signing 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. Due to the importance of such a provision, in the event a proposal moves forward, we recommend that the PCAOB coordinate with the SEC to ensure that the appropriate rulemaking occurs to provide protection for engagement partners consistent with the Board's intention.

Use of Judgment

We believe that an engagement partner signature requirement may create perceptions of additional personal risk and responsibility by engagement partners, motivating negative behaviors that do not presently exist. For example, an increased perception of personal risk and responsibility may reduce an engagement partner's willingness to utilize his or her own professional judgment and, therefore, result in an increase in the demand for more guidance with "bright lines." The application of professional judgment is an important element of the audit process – it allows for the application of a risk-based audit approach as well as the application of professional skepticism in assessing the procedures

¹³ For example, Section 11 authorizes claims against "every accountant" who "has with his consent been named" as "having prepared or certified" any part of the registration statement or any report or valuation used in connection with it. 15 U.S.C. § 77k(a)(4). A signature requirement could make it easier to sue an engagement partner under Section 11 based on the individual's signature on audit reports.

that may be necessary and appropriate under the circumstances. While we believe, as stated previously, that there are significant means by which partners are held accountable to all relevant stakeholders, we are concerned that an outcome that discourages their use of professional judgment in the conduct of audits will not enhance audit quality.

CONCLUSION

The Board requested whether there was any empirical data or other research that would indicate that a requirement for the engagement partner to sign the audit report would improve the focus on his or her existing responsibilities. We are not aware of any empirical evidence that would suggest there is a direct link between a signature requirement (or disclosure of the engagement partner) and audit quality.¹⁴ However, as we have noted above, we believe that existing professional requirements, organizational structure of audit firms, and the current regulatory environment provide for significant accountability of both the engagement partner and the audit firm. In addition, we believe there is significant transparency regarding the engagement partner to those charged with oversight of the audit. Therefore, such parties are in the best position to hold the audit firm (including the engagement partner) accountable. We encourage the PCAOB to consider the potential unintended consequences of such a requirement on audit quality, as well as to investors and other users of such information, in conjunction with its evaluation of any potential benefits of such a requirement.

* * * * *

¹⁴ We are aware of a body of behavioral research on manipulated accountability pressures. These studies tend to be conducted on students, or auditors with somewhat limited experience (e.g., an average of 2 – 4 years). See DeZoort et al., “Accountability and auditors’ materiality judgments: The effects of differential pressure strength,” *Accounting, Organizations and Society* 31 (2006) 373–390, Table 1 for a summary of accounting studies that manipulated accountability pressure). While the authors suggest that increased accountability levels induced more complex and careful analysis of available information, they also admit that they did not test possible intervening controls, such as reviews by superiors and peer review. These are activities that are built into the audit process by the firms, and thus the experiments do not accurately reflect how decisions are made during an actual audit. Further, the authors acknowledge that in a real audit, the auditors have multiple sources of accountability – superiors, audit committees, client management and regulators.

We appreciate the opportunity to comment on the Concept Release and would welcome the opportunity to respond to any questions you may have regarding any of our comments and recommendations.

Sincerely,

A handwritten signature in black ink that reads "Cynthia M. Fornelli". The signature is written in a cursive, flowing style.

Cynthia M. Fornelli
Executive Director
Center for Audit Quality

cc:

PCAOB

Daniel L. Goelzer, Acting Chairman
Willis D. Gradison, Member
Steven B. Harris, Member
Charles D. Niemeier, Member
Martin F. Baumann, Chief Auditor and Director of Professional Standards

SEC

Chairman Mary L. Schapiro
Commissioner Luis A. Aguilar
Commissioner Kathleen L. Casey
Commissioner Troy A. Paredes
Commissioner Elisse B. Walter
James L. Kroeker, Chief Accountant
Meredith B. Cross, Director of the Division of Corporation Finance