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February 3, 2014

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. 029.

Deloitte & Touche LLP ("D&T") is pleased to respond to the request for comments from the Public Company Accounting Oversight Board (the "PCAOB" or the "Board") 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 reproposal"); PCAOB Release No. 2013-009; and PCAOB Rulemaking Docket Matter No. 029 (December 4, 2013).

OVERALL COMMENTS

We support transparency regarding the audit process, auditor responsibilities, and related quality controls in the interest of promoting the protection of investors and the effective functioning of the capital markets. The more information of value that auditors are able to provide to the users of financial statements, the greater the value and relevance audits will have to the capital markets. Additional transparency regarding the audit also stands to enhance investor confidence in the rigor of the independent audit process.

As a result, we are supportive of the objectives of the Board's reproposal (i.e., transparency and ease of obtaining information), and offer certain constructive suggestions in this letter geared toward ensuring that the final standards the Board adopts provide the related information in a manner that is:

- Timely;
- Useful and meaningful; and
- Readily accessible.[1]

Consistent with the above objectives and in the spirit of transparency, we are supportive of publicly disclosing the name of the engagement partner and specified information regarding the participation of certain other firms and persons involved in the audit. However, we are concerned with certain practical challenges and economic consequences of using the auditor's report[2] as the means of communication for this

[1] See PCAOB Release No. 2013-009, p. 2.
[2] This includes information that may be disclosed in an appendix immediately following the auditor's report that would be referenced in the auditor's report. See PCAOB Release No. 2013-009, p. 14.

information. In the section below entitled "Alternative Means of Disclosure," we discuss potential methods of disclosure that we believe meet the Board's transparency objectives in a form that is useful, meaningful, and readily accessible and mitigate the concerns discussed herein.

PRACTICAL CHALLENGES AND ECONOMIC CONSEQUENCES RELATED TO THE PROPOSED DISCLOSURES

The proposed requirements that engagement partner names and specified information about other participants in the audit be disclosed in the auditor's report present practical challenges and economic consequences, including, but not necessarily limited to, the following significant matters. We raise these issues not for the purpose of attempting to dissuade disclosure of the information outlined in the reproposal (we support such disclosure in the interest of transparency). Rather, we believe it is important to consider the implications of providing this disclosure through the auditor's report, when other viable means of disclosure are available.

- *Challenges associated with requirements for consents to be provided by the named engagement partner and each of the other named participants in the audit.*
  - We note the Board's assumption[3] that engagement partners and other participants in the audit named in the auditor's report would have to consent to the inclusion of their names in an auditor's report filed with, or included by reference in, another document filed under the Securities Act with the Securities and Exchange Commission ("SEC"), such as a registration statement. The filing of a registration statement (including amendments thereto) is often very time sensitive, with the optimal timing of the filing of the document being determined by the issuer and its underwriter based on many factors, including the market timing strategy. As a result, when auditors are requested to provide consents, there is typically a compressed time frame for the determination and performance of the necessary procedures to provide such consents. The process to obtain consents will become more complicated when consents are required from a greater number of parties (potentially including firms operating in multiple jurisdictions around the world), and it will become increasingly difficult to manage the process such that all necessary consents are provided concurrently and within the desired time frame.

    Underwriters of securities offerings may, in relation to the filing of the related registration statement, request separate "comfort letters"[4] from the engagement partner and one, more than one, or all of the other named participants in the audit. Requests for multiple comfort letters would add further complexity to an offering process, again placing additional pressure on the ability to meet an issuer's desired time frame for a filing.

    It is also possible that an issuer might not be able to obtain the necessary consents from all of the named parties. For example, there may be laws or regulations in other jurisdictions and other situations (e.g., the firm may no longer be in existence) that preclude named parties from providing the requested consent. As another example, a named engagement partner may no longer be available to provide the necessary consent or may be unable to do so in a timely manner. Such situations include instances in which the partner (1) is no longer with the firm

[3] See PCAOB Release No. 2013-009, p. 21.
[4] See PCAOB AU Section 634, *Letters for Underwriters and Certain Other Requesting Parties.*

(which may be due to resignation, retirement, or death), (2) has health or other issues that make him or her temporarily or permanently unavailable, or (3) has rotated off the audit engagement (i.e., a "predecessor partner"). The inevitable result of these circumstances would likely be a delay in the ability of an issuer to file annual reports, registration statements, and related amendments in the desired time frame, or potentially an inability to obtain the necessary consents. It is not clear from the Board's proposal how an issuer would resolve the situation when a named engagement partner or firm is not able to provide the necessary consent.

- Current PCAOB auditing standards and PCAOB and SEC independence rules do not address situations that would arise from the requirements in the reproposal. For example, PCAOB AU Section 711, *Filings Under Federal Securities Statutes*, does not contemplate the situation where a consent is requested of a firm named as an "other participant" in the auditor's report and the named firm did not perform a standalone audit and issue a separate report (e.g., the firm's procedures were limited to the performance of certain audit procedures as directed by the principal auditor). Therefore, it is not clear what procedures such a firm would need to perform prior to providing a consent. Similarly, PCAOB and SEC independence rules, as well as the PCAOB's auditing standards, do not address the provision of consents by predecessor partners. Accordingly, in the event the PCAOB proceeds to finalize the reproposal as written, such rules and standards would need to be clarified with respect to setting forth the procedures that would be appropriate and sufficient for a predecessor partner to perform in order to provide an individual consent, while at the same time remaining in compliance with independence rules regarding partner rotation.[5]

- *Challenges associated with the timing of providing the information in the auditor's report.*
  - Many of the practical challenges associated with obtaining consents discussed above would not be limited to registration statements filed at some point after the audit report has been issued. Many issuers have active shelf registration statements with annual reports being incorporated by reference when filed; accordingly, consents from the engagement partner and other named participants would have to be provided at the time the auditor's report is first issued. Addressing the need for such consents and estimating the extent of participation of other firms and persons would create additional time-consuming and potentially distracting activities that would need to be dealt with by the issuer and its auditor as the financial statements are being finalized and the audit engagement and related auditor's report are being completed.

- *Significant implications related to auditor liability.*
  - In addition to the practical challenges related to the requirement to obtain consents, the need for such consents gives rise to significant liability concerns (see further discussion of such concerns in the section below entitled "Increase in Auditor Liability").

Because of the challenges discussed above, we believe that the need to obtain consents from all parties named in an auditor's report could disrupt the timely issuance or reissuance of the auditor's report, thereby affecting the prompt dissemination of financial information to the capital markets and the ability

[5] In the event the PCAOB moves forward with the reproposal as written, prior to finalizing the rules we would encourage the Board to work with the SEC to effect the necessary changes to avoid issues regarding independence.

of issuers to raise capital in the most expeditious manner. While practical solutions could potentially address some of the difficulties related to the need to obtain consents, ultimately the need to obtain these consents would create additional processes and pressure during periods in which time is typically of the essence. Therefore, as stated above, if the proposal is to be finalized as drafted, we believe a regulatory solution would need to be identified that avoids the need to obtain consents. Given the other challenges of gathering the necessary information as the audit is being completed, we also believe there are alternative means that would provide for the disclosure of the desired information to investors and others in a timely manner and result in the information being gathered during a time frame that is not already compressed as a result of SEC filing deadlines.

INCREASE IN AUDITOR LIABILITY

We believe that the PCAOB's reproposal raises significant liability concerns with respect to the identification of both the engagement partner and other participants in the audit within the auditor's report. These stem in large measure from the assumption stated in the reproposal (which we have assumed to be the case for purposes of our analysis of the reproposal) that consents would be required from the named engagement partner and from the named other participants in the audit, thereby triggering potential liability for them under Section 11 of the Securities Act.

The reproposal states that the purpose is greater transparency for investors, and takes the position that the triggering of Section 11 liability is merely an incidental or manageable effect. There is a strong likelihood, however, that the presence of new names in the audit report will cause plaintiffs' attorneys to reflexively add those names to the list of defendants in a lawsuit, without regard to whether the underlying claims are actually meritorious. We believe that an increase of Section 11 liability (and of other types of liability that may result as well) is more than incidental — indeed, it is of significant consequence — and that there are alternatives to audit report disclosure that would provide the transparency sought while minimizing additional liability exposure. As discussed below, the substantial increase in litigation risk and resulting litigation cost that the reproposal would create, and the related consequences that may result, provide powerful reasons to select one of those alternatives.

Liability under Section 11 attaches to a defined class of defendants, including experts such as accountants who "prepare" or "certify" portions of the registration statement. Because any public offering of securities must be conducted by means of a registration statement, and because Form 10-Ks can also be incorporated by reference into a registration statement, Section 11 has a far-reaching impact. Moreover, unlike Section 10(b) of the 1934 Securities and Exchange Act, Section 11 does not require a plaintiff to prove causation or scienter. For these very reasons, notwithstanding the contention in the reproposal that Section 11 lawsuits against accounting firms are "relatively rare," Section 11 claims and litigation can carry great risk.

Additionally, while the reproposal suggests that participants' risk will also be limited under Section 10(b) and Rule 10b-5 because of the Supreme Court's decision in *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S.Ct. 2296, 2302 (2011), we do not believe that is clear at this point. While *Janus* held that Section 10(b) liability was limited to the "maker" of the fraudulent statement, there will likely be new litigation over whether persons named in the audit report are "makers" of the statements in the report.

The consent filing requirement may also subject named foreign participants to U.S. jurisdiction that would otherwise not exist. Such foreign participants are unlikely to have performed any (or any significant) audit activities within the United States, and courts have previously found that there is not sufficient grounds even to assert personal jurisdiction over these participants. The filing of a Section 11 consent form with the SEC might be thought to vitiate an otherwise meritorious jurisdictional defense on various claims asserted in federal or state courts, even where there is no increased activity in the United States by the non U.S. participant.

Risks also exist under state law. For example, state law negligence and fraud claims are often asserted against accounting firms, including by bankruptcy trustees or receivers. Individual partners (and other participants in the audit) are not typically named as defendants in such lawsuits, but the identification of them in the auditor's report could change that. For example, plaintiffs may try to assert claims against individual partners under state blue sky laws (which in some cases may be broader than federal securities laws), or for aiding and abetting a securities law violation (as to which there is no private right of action under federal law). There may also be incremental legal risks for non U.S. firms arising from laws in jurisdictions outside the U.S.

The reproposal states that the impact from a written consent would be quite small, even if it leads to the naming of numerous additional defendants, on the theory that the liability of the additional parties is "coextensive" with that of the firm. This theory does not account for the substantial increase in litigation costs the reproposal would create. Multiplying defendants also multiplies the issues in litigation and the number of counsel involved. The engagement partner may require his or her own counsel; this is all the more likely in the case of other participants in the audit, who will inevitably need their own counsel and whose presence will likely require the resolution of difficult conflict of law issues across jurisdictions, discovery obligations of foreign defendants, and similar issues present in multistate and multinational litigation. If liability is "coextensive," as the reproposal argues, the substantial increase in litigation costs comes with no benefit to investors in terms of recoveries in litigation.

Even if liability was "coextensive," there would still be a significant personal impact on the individual partner of naming him or her as a defendant in a public litigation. For example, even if that partner is ultimately found not to be liable, status as a defendant in a multimillion or multibillion-dollar litigation can have significant unintended consequences.

ALTERNATIVE MEANS OF DISCLOSURE

Bearing in mind the need to provide investors with useful and meaningful information, as well as the unresolved issues surrounding consents and related potential legal liability concerns, we urge the PCAOB to consider alternative methods for the proposed transparency disclosures. We believe that the most feasible alternative is for the PCAOB to develop its own database populated with all the required information in the reproposal, including the name of the engagement partner and 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 that

took part in the audit (in accordance with the determined threshold).[6] Under this approach, registered firms, for example, could be required to:

- Initially report engagement partner names and other participants in the audit to the PCAOB on a new PCAOB form (initial reporting to be based on the most recently completed audit).
- Update such information at either the engagement documentation completion date under PCAOB Auditing Standard No. 3, *Audit Documentation*. (i.e., no later than 45 days after the report release date) or at another date; for example, on a quarterly basis for those audits completed during the previous quarter.

Under this approach, investors would then have a single repository to reference when looking for information pertaining to an audit firm or an engagement partner. Additional information, such as inspections and enforcement actions, are also readily available on the PCAOB website and could provide supplementary contextual information to the investor if needed. In fact, if such a database is structured to contain a repository of historical information, it may be more effective in accomplishing the Board's policy objectives than disclosure in the auditor's report. For example, if an investor had an interest in understanding the historical involvement of other independent public accounting firms on a particular engagement, or wanted to determine other engagements for which an individual served as the engagement partner, this information could be searched in a single database (as opposed to having to search through SEC filings to obtain the information). While we acknowledge that establishing this database would require time, effort, and cost on behalf of the PCAOB, we believe that the additional benefits to the investor are such that having reliable information in one location would justify the additional expenditures.

We also believe that the PCAOB's Form 2 report continues to remain a viable and appropriate option as originally proposed in *Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards and Form 2*, PCAOB Release No. 2011-007; and PCAOB Rulemaking Docket Matter No. 029 (October 11, 2011). The Form 2 is already a mechanism for registered firms to disclose information to the public and adapting it to provide the transparency information required by the reproposal would be a logical next step. Amendments to the Form 2 could be filed on a regular basis, such as quarterly (or even more frequently as audits are completed), so as to provide the timely updates needed for the investor community. In addition, the Form 2 information on the PCAOB's website could be formatted so that it is more easily searchable.

Both these alternatives would provide the requested information in a timely, useful, and meaningful way, while alleviating the need for named parties to provide consents. Further, to ensure that the information provided through these alternatives is easily accessible, we recommend consideration be given to adding instructions in the auditor's report as to where the information about the engagement

[6] See D&T letter to the PCAOB dated December 11, 2013, regarding the discussion relating to the alternatives to the disclosure of audit tenure. We believe auditor tenure information could also be included in the potential PCAOB database. The D&T letter was in response to *Proposed Auditing Standards — 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; and PCAOB Rulemaking Docket Matter No. 034 (August 13, 2013).

partner and other participants in the audit (and potentially auditor tenure[7]) is located, as long as it is certain that such instructions do not trigger a requirement to obtain consents.

OTHER MATTERS

Considerations for Disclosing Firms with Relationships to Registered Firms.

The Board's reproposal would require disclosure in the auditor's report of "the name, location, and the extent of participation (as a percentage of the total audit hours) of certain other independent public accounting firms,"[8] and information regarding other participants, including certain entities that have a relationship with the accounting firm issuing the auditor's report.[9] Specifically, the Board states: "Disclosure of entities that are *distinct from* the firm that issues the report in the audit would be consistent with the overall objective of the amendments the Board is reproposing and is an application of the requirement to disclose other participants in the audit notwithstanding any network affiliation or other relationship."[10]

We understand the interest of the Board in disclosure regarding other participants in the audit that are "distinct from" the registered firm that issues the audit report, and we understand that separate accounting firms operating in different jurisdictions as part of the same global network would have to be disclosed as other participants given that they are distinct from the registered firm. We believe that consistent with the objective of providing information relevant to and understandable by investors, and to avoid causing confusion regarding who is responsible for the audit, the reproposal should be interpreted to not require disclosure regarding subsidiaries of or other entities controlled by the registered firm issuing the audit report, or entities that are subject to common control (e.g., sister entities under common control with the registered firm that provide tax, valuation, or other assistance to the registered firm as part of the audit). As a result of the relationship among these entities and the registered firm, the personnel from these entities function as members of the registered firm's audit engagement team, their work is reviewed by the registered firm's engagement team, and the working papers prepared by personnel from these other entities are maintained and archived by the registered firm as part of the engagement audit documentation. Indeed, the PCAOB's inspections already consider the work of these entities to the extent that they participate in the registered firm's audits. As such, those entities are not, for the purposes of audit report transparency, "distinct from" the registered firm issuing the audit report and disclosure regarding them would not provide meaningful incremental information to investors or further the goal of transparency. There is diversity in the organization of different accounting firms, reflecting, in part, historical structuring and risk planning. The manner in which an organization, of which the registered firm issuing the audit report is a part, has elected to structure itself is not a reason to disclose information regarding other components of the organization.

We believe the guidance the Board has provided in relation to off-shore entities is helpful.[11] Specifically, the Board states that where "offshored work is performed by another office of the same accounting firm," information regarding that office need not be disclosed.[12] Given the discussion

[7] See footnote 6.
[8] See PCAOB Release No. 2013-009, p. 10.
[9] See PCAOB Release No. 2013-009, p. 16–17, A3-12.
[10] See PCAOB Release No. 2013-009, p. 16–17 (emphasis added).
[11] See PCAOB Release No. 2013-009, p. A3-13.
[12] See PCAOB Release No. 2013-009, p. 16.

above, in our view, under this approach disclosure should not be required for an entity outside the U.S. that is controlled by the registered firm issuing the audit report. Such an entity functions, for purposes of audit report transparency, as an "office" of the registered firm even if technically it exists as a legal entity. We do not believe the existence as a legal entity impacts the work performed or results in any useful information being provided for investors.[13] Consistent with our interpretation of the scope of the re-proposed rules described in the previous paragraph, disclosure regarding such an entity would not provide the useful information that the Board seeks to make available.

Applicability to Audits of Emerging Growth Companies and Brokers and Dealers.

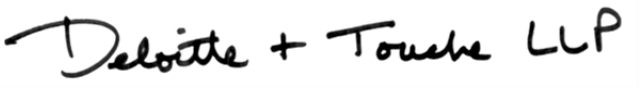
In the reproposal, the Board is soliciting feedback on the applicability of the final rules to audits of emerging growth companies (EGCs). We do not believe there is a basis for exempting audits of EGCs from the requirements of the final standards, as we believe investors of these companies would have similar interest in the additional information.

On the other hand, we do believe there is a basis for excluding these disclosure requirements in the context of audits of non-issuer broker dealers. As explained previously by the PCAOB,[14] there are no issuers among the 4,230 brokers and dealers that filed annual audited financial statements with the SEC and only 9% are subsidiaries of issuers. Of the remaining brokers and dealers, approximately 90% are owned by an individual or an entity that owns more than 50%, and approximately 75% have five or fewer owners. Additionally, almost 45% of brokers and dealers file statements of financial condition separately from the balance of the financial statements to obtain confidential treatment of their filings, including the full set of financial statements. For these brokers and dealers, only the auditor's report on the statement of financial condition would be available to the public, and the auditor's report on the full set of financial statements would be confidential and not available to the public. While applying the disclosure requirements of the reproposal to non-issuer brokers and dealers would be possible, given (1) the closely held nature of many broker dealers, (2) the fact that in many instances, only limited financial information is available publicly, and (3) what appears in most cases to be a limited number of users of these financial statements, we do not believe that there would be corresponding value in providing the name of the engagement partner or the names of other accounting firms and other persons not employed by the auditor.

* * *

D&T appreciates the opportunity to provide our perspectives on these important topics. Our comments are intended to assist the PCAOB in analyzing the relevant issues and potential effects of the reproposal. We encourage the PCAOB to engage in active and transparent dialogue with commenters as the reproposal is evaluated and changes are considered. If you have any questions or would like to discuss these issues further, please contact Joseph Ucuzoglu at 202-879-3109, William Platt at 203-761-3755, or Megan Zietsman at 203-761-3142.

Very truly yours,



[13] See "Statement on the Reproposal on Improving Transparency Through Disclosure of Engagement Partner and Certain Other Participants in Audits" by Board Member Jay D. Hanson, Dec. 4, 2013.

[14] See PCAOB Release No. 2013-005, Appendix 5.

cc: James R. Doty, PCAOB Chairman
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