

**Comment on PCAOB Concept Release dated June 21, 2011, PCAOB Release No. 2011-003,
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I will confine my comment to Question 2.

I have already argued in my article, "The Primacy of 'Present Fairly' in the Auditor's Report," *Accounting Perspectives*, Vol. 6, no. 1, (2007), that "present fairly" should be decoupled from "in conformity with U.S. generally accepted accounting principles." It should be the responsibility of the auditor to give a professional opinion on whether the financial statements "present fairly," without making that judgment contingent on the contents of 17,000 pages of rule-laden GAAP. Today's standard opinion is little more than an affirmation that the financial statements are in conformity with GAAP, because the quality of "present fairly" is not defined other than by reference to GAAP.

Between 1946 and 1962, Arthur Andersen & Co. gave the following decoupled opinions: the financial statements present fairly...and were prepared in accordance with generally accepted accounting opinions. See my article, "Arthur Andersen & Co. and the Two-Part Opinion in the Auditor's Report: 1946-1962," *Contemporary Accounting Research*, Spring 1992. Andersen believed that it was the professional responsibility of the auditor to give its opinion on "present fairly" without taking refuge in the rules of GAAP. Judge Henry J. Friendly, writing for the Second Court of Appeals in *U.S. v. Simon*, 425 F.2d 796 (1969), known as the Continental Vending case, ruled that the conformity of financial statements with GAAP does not necessarily mean that they present fairly. Friendly's ruling is still valid law today.

Rather than repeat my own views on this matter, I prefer to quote from Sir David Tweedie, the former Chairman (1990-2000) of the UK Accounting Standards Board and former Chairman (2000-2011) of the International Accounting Standards Board. From 1986 to 1988, he was Vice Chairman of the UK Auditing Practices Committee. In 1986, when he was the national research partner of KMG Thomson McLintock, he wrote as follows:

"The auditor's opinion in North America and in the United Kingdom in a given situation would probably be very similar. The North American position, however, appears to be more defensive and slightly more restrictive. 'Present fairly' can only be applied within the framework of generally accepted accounting principles which encompasses not only specific rules, practices and procedures relating to particular circumstances but also broad principles and conventions of general application. There appears to be less opportunity or incentive than in the UK and Ireland to use true professional judgment or to break with convention. ...

"The British position makes clear, without ambiguity, the overriding importance of the true and fair view. The auditor is obliged to look not simply at the *rules* but at the *facts*. In the United Kingdom we do not relate the true and fair view to accounting standards or directly to the detailed provisions of the law.

The true and fair view is deemed to be a corpus of practices which are constantly changing and which are derived from sources similar to those of American GAAP. While the North Americans suggest that the auditor should look at substance over form, in the United Kingdom this should be rendered almost unnecessary by the fact that the true and fair view demands that the reality of a company's interaction with the economic environment is fairly portrayed in its financial statements." David Tweedie, "An International View," Chapter 5 in *APC – The First Ten Years* (London: Auditing Practices Committee of CCAB Limited, 1986), p. 57.

Tweedie's comparison between the auditor's affirmation in the UK and that in the United States is hardly flattering to the latter. It seems to me that the time has come to change the auditor's required affirmation from "present fairly" in accordance with the myriad rules of GAAP to "present fairly" standing by itself. It would be most unfortunate if the PCAOB were to ignore this challenge during its review of the auditor's reporting model.