



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

TOM QUAADMAN
SENIOR VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000

March 3, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Public Company Accounting Oversight Board: Notice of Proposed Rules on Improving the Transparency of Audits: Rules to Require Disclosure of Certain Audit Participants on a New PCAOB Form and Related Amendments to Auditing Standards (File Number PCAOB-2016-01)

Dear Mr. Fields:

The U.S. Chamber of Commerce (the “Chamber”) created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy.¹ The CCMC believes that businesses must have a strong system of internal controls, recognizes the vital role external audits play in capital formation, and supports efforts to improve audit effectiveness. Accordingly, the CCMC appreciates the opportunity to comment on the Public Company Accounting Oversight Board (“PCAOB”) *Proposed Rules on Improving the Transparency of Audits: Rule to Require Disclosure of Certain Audit Participants on a New PCAOB Form and Related Amendments to Auditing Standards* (the “Proposed Rules”).

The CCMC believes that the Proposed Rules should not be adopted in their current form because they are not liability neutral. Additionally, we believe that the economic analysis is insufficient to justify an application of the rules to Emerging Growth Companies (“EGCs”). Finally, the CCMC also believes that establishing a

¹ The Chamber is the world’s largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector. These members are both users and preparers of financial information.

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10-digit partner identifying number for a partner should not move forward as this was never subject to the notice and comment period for the PCAOB underlying rule. The CCMC recommends that the Proposed Rules should sunset after five years, unless a post implementation review finds that the Proposed Rules promote investor protection, capital formation and competition.

Background and General Comments

The Proposed Rules would require that auditors file a new PCAOB Form AP (Auditor Reporting of Certain Audit Participants) for each issuer audit disclosing the name of the engagement partner; the names, locations, and extent of participation of other accounting firms that took part in the audit for each firm whose work constituted five percent or more of the total audit hours; and the number and aggregate extent of participation of all other accounting firms that took part in the audit whose individual participation was less than five percent of the total audit hours. The standard deadline for reporting would be 35 days after the date the auditor's report is first included in a document filed with the Securities and Exchange Commission ("SEC").

The process that resulted in the final approved PCAOB rule, on disclosing the name of the engagement partner and other participants in the audit, dates back to 2009. The CCMC has provided the PCAOB with three comment letters during various stages in their process. Those letters are attached and we would respectfully request that they be made a part of the record.² We have repeatedly raised concerns that any required disclosure should be liability neutral, which is consistent with a recommendation of the U.S. Department of the Treasury Advisory Committee on the Auditing Profession ("ACAP"). The ACAP recommendation was the genesis of the initiative that led to the final approved PCAOB rules. While we recognize that the

² See CCMC letter dated August 31, 2015 on PCAOB Supplemental Request for Comment: *Rules to Require Disclosure of Certain Audit Participants on a New PCAOB Form* (PCAOB Release No. 2015-004, June 30, 2015; PCAOB Rulemaking Docket Matter No. 029); CCMC letter dated March 10, 2014 on PCAOB Exposure Draft 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* (PCAOB Release No. 2013-009, December 4, 2013; PCAOB Rulemaking Docket Matter No. 029); and CCMC letter dated January 9, 2012 on Proposed Rulemaking on *Improving the Transparency of Audits: Proposed Amendments to PCAOB Auditing Standards and Form 2* (PCAOB Release No. 2011-007, October 11, 2011; PCAOB Rulemaking Docket Matter No. 029).

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initiative has evolved over time, the Proposed Rules do not resolve our liability concerns. For this and other reasons, the CCMC recommends against the SEC approving the Proposed Rules.

The CCMC continues to believe that the information in the Proposed Rules should be a voluntary disclosure by issuer audit committees. Furthermore, if the information were to be a required disclosure, the CCMC believes it should be required by the SEC in the proxy statement. The CCMC notes that the SEC's *Concept Release on Possible Revisions to Audit Committee Disclosures* solicited public comment on these matters.³ These disclosures must also be viewed in the context of the disclosure effectiveness project designed to improve disclosures and the disclosure modernization and simplification requirements of the Fixing America's Surface Transportation Act ("FAST Act").

Nevertheless, if the SEC approves the Proposed Rules, the CCMC believes that it should not include EGC's. The CCMC does not believe that the economic analysis in the Proposed Rules is sufficient for the SEC's threshold for economic analysis. For example, the economic analysis of potential liability consequences is largely contained in one paragraph that states:

The Board believes that disclosure on Form AP appropriately addresses concerns raised by commenters about liability. As commenters suggested, disclosure on Form AP should not raise potential liability concerns under Section 11 of the Securities Act or trigger the consent requirement of Section 7 of that Act because the engagement partner and other accounting firms would not be named in a registration statement or in any document incorporated by reference into one. While the Board recognize[s] [sic] that commenters expressed mixed views on the potential for liability under Exchange Act Section 10(b) and Rule 10b-5 and the ultimate resolution of Section 10(b) liability is outside of its control, the Board nevertheless does not believe any such risks warrant not proceeding with the Form AP approach.⁴

³ See CCMC letter dated September 8, 2015 on SEC Concept Release on *Possible Revisions to Audit Committee Disclosures* (17 CFR Part 240; Release Nos. 33-9862, 34-75344; File No. S7-13-15; RIN 3235-AL70).

⁴ See the Proposed Rules, page 62.

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The CCMC believes that this analysis and the application of the Proposed Rule to EGCs are contrary to the intent of Congress in passing the Jumpstart Our Business Startups Act (“JOBS Act”).

Identification Number

The CCMC also is concerned with the requirement that each audit partner serving as the engagement partner on audits of issuers be assigned a unique 10-digit partner identifying number (“identification number” or “ticker”) by the audit firm. The number would be required to be disclosed on Form AP, even if the partner changes audit firms and, therefore, is assigned a new number. It is unclear why this requirement was added or at whose request. It must be noted that the identification number was not included in the consideration of the PCAOB’s rules and not published for notice and comment. The PCAOB rules were finalized after six years and three comment periods. If the rationale for the identification number was to avoid confusion, it should be noted that the PCAOB only found three instances of possible name confusion after the PCAOB staff evaluated six years of data on partner names for the largest four accounting firms.⁵

Sun Setting

Further, considering that the Proposed Rules have not been field-tested, the CCMC recommends that if the SEC approves the Proposed Rules (or any portion thereof) that the SEC do so with a “sunset” provision for the Proposed Rules to expire after say five years unless a post-implementation review demonstrates that the Proposed Rules promote investor protection, capital formation and competition. This will allow for an evidence based review to determine if the Proposed Rules are a positive or negative for the capital markets and if the Proposed Rules should remain in place, expire or be modified.

The CCMC believes that the Proposed Rules should not be adopted because they are not liability neutral, the economic analysis is insufficient to justify an

⁵ See the Proposed Rules, pages 15-16.

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application of the rules to EGCs and establishing a partner identifying number was never subject to the notice and comment period for the underlying PCAOB rules. The CCMC recommends that the Proposed Rules should sunset after five years, unless a post implementation review finds that the Proposed Rules promote investor protection, capital formation and competition.

Thank you for your consideration of these views and we stand ready to discuss these issues with you further

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Tom Quaadman

Cc: The Honorable Mary Jo White
The Honorable Michael Piwowar
The Honorable Kara Stein