

January 11, 2012

The Honorable Mary L. Schapiro  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Schapiro:

I am pleased to transmit to you a summary of the Public Company Accounting Oversight Board's most recent performance review entitled, Review of the Public Company Accounting Oversight Board's Enforcement and Investigations Program. The Board's Office of Internal Oversight and Performance Assurance ("IOPA") conducted this performance review. The Board formed IOPA to provide the Board, the Securities and Exchange Commission, and others assurance that the PCAOB is achieving the objectives of Title I of the Sarbanes-Oxley Act in an effective manner. IOPA conducts its reviews in conformance with Government Auditing Standards issued by the Comptroller General of the United States.

IOPA undertook this review to determine whether the PCAOB's Division of Enforcement and Investigations ("DEI") had effective processes in place to facilitate timely investigations and disciplinary procedures consistent with the Board's Strategic Plan. IOPA found that DEI had in place a comprehensive program to enforce audit-related laws and rules consistent with the Board's strategic goals. IOPA also found, however, that the Board's enforcement program faces significant challenges. Chief among those challenges were constraints imposed on the Board by the Act itself. Of course, both PCAOB investigations and any contested disciplinary proceedings we bring are, by law under Sarbanes-Oxley, non-public unless the respondents consent to publication of our complaints and decisions.

As you know, the PCAOB has asked Congress to change the law to allow the PCAOB to make its contested disciplinary proceedings public. On November 18, 2011, bipartisan legislation was introduced in both the House and Senate (H.R. 3503 and S. 1907) that would provide transparency to PCAOB disciplinary proceedings. The Board looks forward to working with Congress to pass this important legislation that would benefit both investors and the auditing profession.

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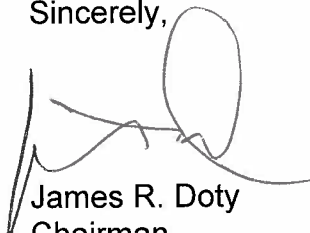
In the years since Sarbanes-Oxley passed, the PCAOB has built an active enforcement program, but unfortunately for investors, audit committees, the bar, and the audit profession itself, it takes place largely behind the scenes. DEI conducts rigorous investigations before recommending that the Board file any complaint. But when the Board does determine that the facts merit institution of a disciplinary proceeding, it will not be public. Nor will a Board decision to impose a sanction be public, in most cases, until any appeal to the SEC is exhausted.

As IOPA noted in its report, the Securities and Exchange Commission at one time had a similar regime of non-public disciplinary proceedings for auditors and other professionals. But it, too, found non-public proceedings unworkable and counter-productive.

IOPA also made a number of recommendations intended to further facilitate DEI's efforts to maximize its effectiveness and timeliness, and to further leverage the skills and experience of its staff members. The Director concurred with each of the recommendations and is developing plans to implement them.

The Board intends to publish the attached summary on the PCAOB's Web site on or about January 19, 2012. You and your staff should feel free to contact me or the Director of IOPA, Peter Schleck (202-207-9085), if you have any questions or would like any additional information about the review.

Sincerely,



James R. Doty  
Chairman

Enclosure: Review of the Public Company Accounting Oversight Board's Enforcement and Investigations Program (IOPA-2012-001), January 10, 2012

cc: The Honorable Elisse B. Walter  
The Honorable Luis A. Aguilar  
The Honorable Troy A. Paredes  
The Honorable Daniel M. Gallagher

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## **PERFORMANCE REVIEW**

### **REVIEW OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD'S ENFORCEMENT AND INVESTIGATIONS PROGRAM (IOPA-2012-001)**

**INTERNAL OVERSIGHT AND PERFORMANCE ASSURANCE  
JANUARY 10, 2012**

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### **INTRODUCTION AND OBJECTIVE**

Section 105 of the Sarbanes Oxley Act of 2002 (Act) requires the Public Company Accounting Oversight Board (PCAOB) to establish fair procedures for investigating and disciplining registered public accounting firms and associated persons of such firms. Those procedures are described in Section 5 of the Rules of the Board and provide that the Board may conduct investigations of registered public accounting firms and associated persons that may have violated provisions of the Act, the Rules of the Board, provisions of the securities laws relating to the preparation and issuance of audit reports, or professional standards. The PCAOB is focused on taking appropriate steps in its enforcement program to improve audit quality and enhance protection of the investing public. The Division of Enforcement and Investigations (DEI) is responsible for implementing the Board's rules on investigations and disciplinary proceedings. DEI is the PCAOB's third largest program area, with 53 employees and a 2011 budget of \$17.5 million.

The Office of Internal Oversight and Performance Assurance (IOPA) initiated this review to determine whether DEI has effective processes in place to facilitate timely investigations and disciplinary procedures consistent with the PCAOB's *Strategic Plan*.<sup>1/</sup>

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<sup>1/</sup> This is a public summary of the report. The full report, prepared in accordance with Government Auditing Standards, has been issued to the Board. The full report includes a detailed discussion of the review objective, scope, and methodology.

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### **RESULTS IN BRIEF**

IOPA found that DEI had in place a comprehensive program to enforce audit-related laws and rules consistent with the Board's strategic goals. We noted, moreover, that DEI had a highly-credentialed and, in our judgment, highly-motivated staff of attorneys, accountants, and other professionals. As called for in the PCAOB's *Strategic Plan*, DEI's Director and senior managers used risk analyses and standard procedures to manage a caseload of investigations and litigated matters with the intent to maximize efficiency, effectiveness, and timeliness.

DEI faced, however, significant challenges in carrying out its enforcement responsibilities. Chief among those challenges were constraints imposed on the Board by the Act itself. In this regard, the Director had expressed his view that the most significant issue facing the Board's enforcement program and its ability to effectively protect investors was the statute-mandated non-public nature of disciplinary proceedings. Non-public proceedings, in the Director's view:

- Deny the public access to important information regarding PCAOB cases;
- Incentivize firms and individuals to litigate cases regardless of merit, needlessly consuming valuable Board resources;
- Deprive interested parties of the transparency needed to evaluate the effectiveness of the Board's enforcement program; and
- Limit the Board's ability to use its enforcement authority as a tool to improve audit quality and deter violations of Board rules.

The Act also provides that if final Board sanctions are appealed to the Securities and Exchange Commission (SEC), the imposition and public reporting of those sanctions is stayed unless and until the SEC lifts the stay. The potential for this further delay adds even more incentive, in the Director's view, for firms to litigate as long as possible regardless of whether they believe they will ultimately prevail.

These structural constraints notwithstanding, our review also led us to conclude that a number of opportunities existed – within DEI's control – to improve internal processes and, potentially, case timeliness. Such opportunities included:

- Tracking, evaluating, and reporting case status and timelines more effectively;

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- Determining whether document reviews and other case-related workflows could be streamlined;
- Determining whether additional responsibilities could be delegated to the Associate Director level;
- Developing additional strategies for intra-DEI communication as cases progress and for leveraging lessons learned once cases are completed; and
- Conducting additional training for DEI staff.

IOPA also made a number of recommendations intended to further facilitate DEI's efforts to maximize its effectiveness and timeliness, and to further leverage the skills and experience of its staff members. The Director concurred with each of the recommendations.

Also, at the time of our review, the Director was working with the Office of Human Resources to consider potential organizational and process improvements intended to address a number of these matters. In addition, the Director organized a DEI working group to explore enhancements to the Division's preparation, review, and approval of critical work products.