

December 14, 2011

Mr. J. Gordon Seymour  
Secretary  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington, DC 20006

Re: PCAOB Rulemaking Docket Matter No. 37  
Concept Release on Auditor Independence and Audit Firm Rotation

Dear Mr. Seymour:

We are pleased to submit this comment letter to the Public Company Accounting Oversight Board (PCAOB) on its Concept Release on Auditor Independence and Audit Firm Rotation.

The signatories of this letter currently serve, or have served, as members of audit committees of publicly held corporations. We have a shared interest in the proper functioning of audit committees within our overall system of corporate governance.

**General Comments** Chief Justice Myron Steele of the Supreme Court of Delaware recently said that “serving on a Board of Directors means living in a fishbowl.”<sup>1</sup> Service on a board’s audit committee carries with it even greater scrutiny.

This is as it should be. The audit committee, as a former chief accountant of the Securities and Exchange Commission (SEC) observed, “is central to insuring the integrity of published financial statements on which investors rely, and which are central to the efficiency of our capital markets.”<sup>2</sup>

Those independent board members who serve on an audit committee, therefore, carry a heavy responsibility. Failure to meet that responsibility puts at risk their public reputations and exposes them, potentially, to legal challenge. No one has a greater interest in preventing an audit failure than the members of an audit committee.

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<sup>1</sup> “Be Prepared: Serving on a Board of Directors Today Means Living in a Fishbowl,” Audit Committee Brief, AICPA, June 30, 2011. Available at [www.aicpa.org/BIG](http://www.aicpa.org/BIG).

<sup>2</sup> Robert K. Herdman, “Making Audit Committees More Effective,” March 7, 2002. Available at [www.sec.gov/news/speech/spch543.htm](http://www.sec.gov/news/speech/spch543.htm)

Consequently, we are open to any proposal from the PCAOB or the SEC to improve the ability of audit committees to carry out their work. We take very seriously the PCAOB's Concept Release in regard to the desirability of mandatory auditor rotation. However, upon careful consideration, we must oppose this idea.

***A Step Backward*** One purpose of the Sarbanes-Oxley Act of 2002 (SOX) was to bolster the role of the audit committee in order to align the interests of shareholders, and the capital markets writ large, with the functioning of the outside audit.

To that end, SOX:

- required that audit committees be independent of management;
- gave to audit committees direct responsibility for the appointment, compensation, retention and oversight of the work of the outside audit firm;
- required that audit committees establish procedures for the receipt, retention, and treatment of complaints regarding all external and internal auditing matters;
- gave to audit committees the authority to engage independent counsel and other advisors; and,
- insured that issuers provide sufficient funding to allow audit committees to do their work.<sup>3</sup>

These reforms, cognate with other changes requiring audit partner rotation and the establishment of the PCAOB as the independent watchdog over audit firms, were designed to eliminate, or at least effectively mitigate, what the chairman of the PCAOB has described as the “inherent conflict built into the structure of our system of corporate governance, in that the company itself hires, fires, and pays the [outside] auditor.”<sup>4</sup>

The new proposal to require the periodic dismissal of an outside auditor, without cause, in favor of a new firm undercuts the SOX reforms as they pertain to audit committees.

In essence, mandatory audit rotation says to directors serving on audit committees of public companies that, regardless of how well you have done your

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<sup>3</sup> Securities and Exchange Commission, “Standards Relating to Listed Company Audit Committees,” Final Rule, Release No. 33-8220, available at [www.sec.gov/rules/final/33-8220.htm](http://www.sec.gov/rules/final/33-8220.htm).

<sup>4</sup> “‘Prizes Captured, Shops Sold, Et Cetera’: the Importance of Keeping Investors Properly Informed,” Remarks of James R. Doty before the New York State Society of CPAs Auditing Conference, November 3, 2011.

job, regardless of how efficient and independent the audits you supervise, regardless of the controls you have put into place, regardless of the satisfaction of shareholders, the capital markets, and the SEC with the audits you have overseen, you must periodically start all over and rebuild with a new audit firm the very same level of competence that you were compelled to abandon.

Imposition of a mandatory audit rotation rule would thus be a step backward in corporate governance. Only a few years after a nearly unanimous Congress increased the independent role of audit committees through SOX, this proposed rule would reduce it.

**Costs Outweigh Benefits** Restricting the discretion of audit committees to hire and retain an auditor of the committee's choice – a choice ratified in most cases by shareholders – would indisputably entail large new expenses for shareholders (who, of course, must ultimately pay for audit services) without improvement in audit quality.

We are unaware of any evidence that demonstrates a causal connection between the length of tenure of an auditing engagement and the likelihood of an audit failure. We suspect that the reverse may be true, that, in other words, the risk of audit failure is highest in the early years of an audit relationship.

Each year audit committees set goals aimed at improving the quality of the audit. They strive to improve internal systems to provide more prompt, accurate, and auditable financial reports. These goals can only be realized through familiarity with the methods, requirements, and expertise of the outside auditor. At the same time, the auditor must be equally familiar with its client's business, the members of the audit committee, and key company personnel.

Mandatory auditor rotation would destroy this reciprocal understanding while forcing the new auditor and the audit committee to reinvent it, possibly at the cost of substandard audits in the early years of the new engagement.

Until evidence emerges to the contrary, we think mandatory rotation is a solution in search of a problem and therefore cannot credibly promise measurable *benefits* for shareholders in the form of better audits.

On the other hand, no one denies the added costs that mandatory auditor rotation would entail.

We fully expect that audit fees during the first few years of a new audit engagement would exceed those that companies would otherwise need to pay. These new costs would derive in part from the process of interviewing prospective new auditors and the (billable) time the new auditor would spend with company staff and members of the audit committee to obtain the information and

access to perform the audit according to shareholder expectations. This is an expensive, unnecessary, and wasteful process.

Moreover, mandatory rotation would push up audit costs because of the scarcity of top-ranked audit firms. Many of the companies in the S&P 1000 are global firms. They require the type of audit services that only the largest accounting firms can provide.

Typical of most public companies, midsize companies have already retained two or three of the four large accounting firms to provide internal audit, tax services or other non-audit services. Should one of those firms be the likely “new” auditor, it could set off a game of musical chairs whereby one large firm might well change places with another. And, in the event that the accounting firms providing non-audit services to a company are deemed insufficiently independent to replace the current outside auditor, the one or two large firms that remained eligible would be in a position to dictate terms to the audit committee of their new (captive) client.

Imposition of new regulatory costs on America's public companies, absent a rigorous cost/benefit analysis, never makes sense. It is especially counterproductive to impose such costs, in the words of the Concept Release, “during a period of economic weakness and heightened global competition.” On this basis, we think the proposal for mandatory auditor rotation should be discarded.

**Alternative Reforms** We do not want to be understood as arguing that financial reporting cannot be improved. It can.

A good starting point, from a corporate governance perspective, would be to require that all public companies place auditor ratification on their proxy ballots, together with enhanced disclosure about the issuer's relationship with the audit company (for example, length of tenure) as the SEC may think relevant.

Along with that simple reform, we support the proposal, contained in the comment letter of the Aerospace Industries Association to the PCAOB, calling for the timely sharing with relevant audit committees the results of the PCAOB's auditor reviews.<sup>5</sup> Such information would obviously improve an audit committee's evaluation of the auditor.

These are incremental changes, of course. But they represent a practical alternative to mandatory auditor rotation, which would be costly, ineffective, and doomed to failure.

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<sup>5</sup> See letter of Susan K. Tonner, Assistant Vice President, Aerospace Industries Association, to the PCAOB, regarding Docket 037: Concept Release on Auditor Independence and Audit Firm Rotation, October 19, 2011.

Sincerely,

Greg Bentley  
Former Chairman  
Audit Committee  
SunGard Data Systems

Tobias Buck  
Former Member  
Audit Committee  
MJM International

Frank Hennessey  
Chairman, Audit Committee  
DTE Energy Company

David B. Kay  
Former Member  
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Saul Centers, Inc., and  
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R. James Macaleer  
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Marne Obernauer, Jr.  
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Barry K. Rogstad  
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