April 30, 2012

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, D.C. 20006-2803

Re: Request for Public Comment: *Proposed Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications*, PCAOB Rulemaking Docket Matter No. 039

Dear Office of the Secretary:

We appreciate the opportunity to respond to the Public Company Accounting Oversight Board ("PCAOB" or "the Board") on its *Proposed Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications* (the "Proposed Amendments") as published in PCAOB Release No. 2012-002 dated February 28, 2012 (the "Release").

We appreciate the opportunity to provide feedback on the Release. Although we respectfully offer some suggestions that we believe will improve the Proposed Amendments, we are generally supportive of the Board's proposal.

Overall Comment

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amended various provisions of the Sarbanes-Oxley Act of 2002 by giving the Board oversight authority with respect to audits of brokers and dealers. The Dodd-Frank Act provides the Board with the authority to promulgate standards, conduct inspections, and undertake investigations and disciplinary proceedings with respect to the audits of brokers and dealers. We support the changes to the Board's rules and forms to reflect this oversight authority.

We believe that the audits of brokers and dealers should be conducted in accordance with PCAOB auditing and attestation standards once the Securities and Exchange Commission (SEC) adopts Rule 17a-5 and we support the changes to the Board's rules to reflect its pending jurisdiction over the auditors of brokers and dealers. However, we have concerns regarding the Proposed Amendments regarding notifications to be made by the auditor related to withdrawal of an auditor's report or issuer auditor changes, as well as those which address changes to the

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rules governing investigations and adjudications. Lastly, we have noted our concern with the planned effective date and the potential need for a transition period.

We recommend that the Board consider the following observations that we believe will enhance the effectiveness of the Proposed Amendments.

Registration and Reporting Forms - *Form 3: Special Report Form*

The Board is proposing to amend the Board's registration, withdrawal and reporting forms to incorporate information relating to a firm's audits of brokers and dealers. We are generally supportive of the amendments in this section but provide the following observations for the Board's consideration:

Withdrawn broker and dealer audit reports – The proposed amendments require the auditor to file a Form 3 with the PCAOB in the event that the audit report of a non-issuer broker dealer is withdrawn. We believe that it is important for financial statement users to be aware of instances in which an audit report has been withdrawn. However, we believe that the primary responsibility for this notification is that of the company and not the auditor. SEC regulations require issuers to report the withdrawal of the audit report, and PCAOB rules require the registered public accounting firm to report the withdrawal on Form 3 only if a timely Form 8-K is not filed by the issuer (i.e. on an exception basis). We believe that a similar approach for reporting withdrawn broker and dealer audit reports would be appropriate. We suggest that the SEC and the Board collaborate in the development of a mechanism for broker and dealer reporting of the withdrawal of audit reports, supplemented by Form 3 reporting by the registered audit firm on an exception basis. In the interim, we believe that PCAOB Interim Standard AU 561, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report, provides a mechanism for auditors to notify users if an audit report is withdrawn.

Issuer auditor changes - The Board requested comment on whether it is appropriate to amend the SECPS membership requirement that registered firms (that are former members of the SECPS) notify the SEC's Office of the Chief Accountant (OCA) of the cessation of an auditor's relationship with an issuer audit client by the end of the fifth business day after the firm determines that the client-auditor relationship has ended, irrespective of whether or not the issuer has reported the change in auditors in a timely filed SEC Form 8-K. We would suggest that the SECPS membership requirement be amended to require this notice only if the issuer has not timely filed an SEC Form 8-K (exception reporting), as making this notice when the company has made timely notification would be duplicative and inefficient.

Item 3.3 c. of Form 3 would require the auditor to state whether or not the audit committee recommended or approved the change in audit firms in instances where the firm has resigned, declined to stand for re-appointment, or been dismissed from an audit engagement, and the former client is an issuer and the issuer has failed to file a Form 8-K. This requirement should be limited to situations where the auditor has been dismissed, because the audit committee is not required to approve or disapprove the auditor's decision to resign or not stand for re-appointment.

Lastly, Item 3.3d diverges from the SEC's rule governing disclosure of changes in auditors. For example, the term "disagreements" is not defined in Item 3.3d, but guidance as to its meaning is provided in the SEC's rules.[1] To minimize confusion in the application of the requirements related to changes in auditors, we encourage the PCAOB to conform the Item 3.3 requirements to the related SEC rules, either by specifically tracking the language or by making a cross-reference to the SEC rule.

Investigations and Adjudications

The proposed amendments include changes to the rules governing investigations and adjudications which are unrelated to the Dodd-Frank Act, and which raise a number of questions in terms of their potential impact.

First, the Release proposes amendments to Rule 5422(b)(1)(i), which describes the documents that the interested division may decline to make available to a respondent for inspection and copying. Rule 5422(b)(1)(i) as currently written only excludes from production those documents which are "prepared by a member of the Board or of the Board's staff." The proposed amendment would expand this exclusion significantly to also include documents prepared by persons retained by the Board or the Board staff, as well as any document "obtained from" the Board or Board's staff or persons retained by the Board or its staff.

The proposed amendments go beyond the rationale described in the release which accompanied the issuance of the original Rules on Investigations and Adjudications (Release No. 2003-15 at A2-101), as well as the SEC's own analogous rule. See SEC rule of Practice 230 (which provides that a document can be withheld if it is "an internal memorandum, note or writing prepared by a Commission employee, other than an examination or inspection report as specified in paragraph (a)(1)(vi) of this rule, or is otherwise attorney work product and will not be offered in evidence"). We would also note that to the extent that documents prepared by those retained by the Board or the Board's staff would include documents also subject to the privilege or work product exclusions described in current 5422(b)(1)(ii), the proposed amendments could relieve the staff

[1] See Item 304 of Regulation S-K (Instruction 4).

of its logging obligations pursuant to Rule 5422(c), if those documents are deemed to be withheld on the basis of a newly-expanded Rule 5422(b)(1)(i).

The only explanation provided in the Release for these proposed amendments is that they are intended to "clarify" the scope of the current exclusion. We submit that these proposed changes could substantively expand the universe of documents which would not be available to a respondent for inspection and copying, as well as the conditions under which they could be withheld, and thus constitute a significant change warranting a more thorough explanation of the intended purpose and discussion of the potential impacts of the changes.

Second, the Release contains proposed amendments which would affect when special expedited procedures apply to non-cooperation charges. The Release states that the reasons for these changes are "[b]ased on its experience with these rules in practice" and because certain of the amendments "restrict the hearing officer's discretion in a way that is not necessary in every noncooperation case." The release which accompanied the original rule (at A2-53) stated it would "afford a streamlined approach that will allow for swift dealing" with noncooperation, and we would agree that such charges are best dealt with quickly. We are concerned that the proposed change could have the effect of allowing a disagreement over what conduct constitutes non-cooperation to take too long to resolve, creating uncertainty. The Release does not explain why the reasons which animated the original decision to have noncooperation charges proceed on an expedited path have not, in the Board's experience, served their purpose.

Finally, the proposed amendment to Rule 5109(d), which seeks to "encourage" associated persons and registered firms to submit evidence in connection with their statement of position, such as an affidavit or declaration by an individual with knowledge of the asserted facts, merits further explanation and exploration if it is to become an expectation of the Board in deciding whether to bring charges. The Release does not explain why the Board believes that the submission of such evidence should be encouraged, and we would note that no such expectation exists with respect to the analogous SEC Wells process. If the Board were to adopt this amendment, at a minimum we would suggest that it adopt additional procedures to ensure that respondents are provided with sufficient additional time to assemble and submit such evidence.

The Board asks (Release at 35) whether these proposed amendments are clear. We would submit that for a number of them they are not, and that the Board considers whether the proposed rule changes affecting the investigation and adjudication rules should be part of a separate rule making effort which would better explain the rationales and potential impacts of the proposed amendments.

Effective Date and Transition

The Board has indicated it will delay the date of required compliance with the Proposed Amendments to Rules 3521 through 3526 until the SEC determines that the PCAOB auditing, attestation, and related professional practice standards should govern the preparation and issuance of audit reports to be included in broker and dealer filings with the SEC. Our current understanding is that the intended effective date for Rule 17a-5 will be for audit years ending on

or after December 31, 2012. We are concerned that if Rule 17a-5 is not released by the middle of 2012, implementation of the PCAOB rules and standards to the 2012 audits of broker dealers will be challenging. Therefore, we suggest the Board consider a transition period to minimize such challenges.

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We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the PCAOB staff or the Board may have. Please contact Rodman Benedict (646-471-1139) or Paul Lameo (646-471-3495) regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP