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August 17, 2017

VIA EMAIL

Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N. E.
Washington, D.C. 20549

Re: File Number PCAOB-2017-01 Proposed Rules on The Auditor's Report, etc. Release No. 34-81187 (July 21, 2017)

Dear Mr. Fields:

I am an attorney practicing in Washington, D.C., in the fields of securities regulation and professional liability. Over the years, I have represented a number of auditors and audit committees. I respectfully submit these comments on my own behalf and not on behalf of any current or former client.

I urge the Commission to reject the rule as proposed. Specifically, the requirement that critical audit matters be included in the auditor's report is unnecessary and disruptive to important corporate prerogatives.

In a recent speech, SEC Chairman Jay Clayton noted that regulators "have slowly but significantly expanded the scope of required disclosures beyond the core concept of materiality."

Remarks at the Economic Club of New York, New York, N.Y. (July 12, 2017), <https://www.sec.gov/news/speech/remarks-economic-club-new-york> Another expansion as proposed here merits the closest scrutiny.

In the PCAOB's own words, a critical audit matter "is any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee." PCAOB Release No. 2017-001 (June 1, 2017) at page A1 – 7. <https://pcaobus.org/Rulemaking/Docket034/2017-001-auditors-report-final-rule.pdf> Such matters, involving "especially challenging, subjective, or complex auditor judgment," are communicated to the audit committee in order to allow the committee to fulfill its function overseeing the audit process. Investors might be interested in those points as the PCAOB asserts, but that does not make disclosure beyond the audit committee either necessary or desirable.

The PCAOB suggests that this would "reduce the information asymmetry between investors and management." PCAOB Release No. 2017-001 (June 1, 2017) at page 2 <https://pcaobus.org/Rulemaking/Docket034/2017-001-auditors-report-final-rule.pdf> First, information asymmetries are an accepted part of securities regulation. The Supreme Court, in Chiarella v. U.S., 445 U.S. 222 (1980), repudiated the notion that all market participants must enjoy equal information. If reduction of asymmetry is desirable, it can be accomplished much more directly by altering issuer disclosures, not cutting and pasting from required communications between auditors and audit committees. Indeed, the PCAOB recognized that "critical audit matters are not a substitute for disclosures required of the company under the applicable financial reporting framework." Release No. 34-81187; File No. PCAOB-2017-01 (July 21, 2017) at page 37 n. 24. <https://www.sec.gov/rules/pcaob/2017/34-81187.pdf> If the PCAOB's required modification to the auditor's report is not a substitute for the company's disclosures, it's surplusage.

The Commission should also note that the PCAOB, in substance, touts the fact that most such critical audit matters would have been previously disclosed as a feature, not a flaw in response to concerns that under the rule auditors might be required to disclose previously undisclosed corporate information. The PCAOB rule also shrugs off the issue of auditor displacement of management's role in the timing of disclosures. "When describing critical audit matters in the auditor's report, the auditor is not expected to provide information about the company that has not been made publicly available by the company unless such information is necessary to describe the principal considerations that led the auditor to determine that a matter is a critical audit matter or how the matter was addressed in the audit." PCAOB Release No. 2017-001 (June 1, 2017) at page A1-9 <https://pcaobus.org/Rulemaking/Docket034/2017-001-auditors-report-final-rule.pdf> Again, if a matter has been previously disclosed, repetition in an auditor's report likely adds little or nothing to the "total mix" of information available to market participants.

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The maintenance of the primacy of the issuer in disclosure matters has important consequences. “Even with respect to information that a reasonable investor might consider material, companies can control what they have to disclose under these provisions by controlling what they say to the market.” Matrixx Initiatives, Inc. v. Siracusano, 563 U. S. 27, 45 (2011). Mandating new disclosures from a non-issuer source like the auditor impairs the ability of the issuer to control the content and timing of corporate disclosures.

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I thank you for the opportunity to submit the foregoing comments, reflecting my personal views on Proposed Rules on The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, and Departures from Unqualified Opinions and Other Reporting Circumstances, and Related Amendments to Auditing Standards.

Respectfully submitted,

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