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**Inspection of
Miller, Ellin & Company, LLP**

**Issued by the
Public Company Accounting Oversight Board**

October 23, 2008

THIS IS A PUBLIC VERSION OF A PCAOB INSPECTION REPORT

**PORTIONS OF THE COMPLETE REPORT ARE OMITTED
FROM THIS DOCUMENT IN ORDER TO COMPLY WITH
SECTIONS 104(g)(2) AND 105(b)(5)(A)
OF THE SARBANES-OXLEY ACT OF 2002**

PCAOB RELEASE NO. 104-2008-203



Notes Concerning this Report

1. Portions of this report may describe deficiencies or potential deficiencies in the systems, policies, procedures, practices, or conduct of the firm that is the subject of this report. The express inclusion of certain deficiencies and potential deficiencies, however, should not be construed to support any negative inference that any other aspect of the firm's systems, policies, procedures, practices, or conduct is approved or condoned by the Board or judged by the Board to comply with laws, rules, and professional standards.
2. Any references in this report to violations or potential violations of law, rules, or professional standards should be understood in the supervisory context in which this report was prepared. Any such references are not a result of an adversarial adjudicative process and do not constitute conclusive findings of fact or of violations for purposes of imposing legal liability. Similarly, any description herein of a firm's cooperation in addressing issues constructively should not be construed, and is not construed by the Board, as an admission, for purposes of potential legal liability, of any violation.
3. Board inspections encompass, among other things, whether the firm has failed to identify departures from U.S. Generally Accepted Accounting Principles ("GAAP") or Securities and Exchange Commission ("SEC" or "Commission") disclosure requirements in its audits of financial statements. This report's descriptions of any such auditing failures necessarily involve descriptions of the related GAAP or disclosure departures. The Board, however, has no authority to prescribe the form or content of an issuer's financial statements. That authority, and the authority to make binding determinations concerning an issuer's compliance with GAAP or Commission disclosure requirements, rests with the Commission. Any description, in this report, of perceived departures from GAAP or Commission disclosure requirements should not be understood as an indication that the Commission has considered or made any determination regarding these issues unless otherwise expressly stated.



INSPECTION OF MILLER, ELLIN & COMPANY, LLP

The Public Company Accounting Oversight Board ("PCAOB" or "the Board") has conducted an inspection of the registered public accounting firm Miller, Ellin & Company, LLP ("the Firm"). The Board is issuing this report of that inspection in accordance with the requirements of the Sarbanes-Oxley Act of 2002 ("the Act").

The Board is making portions of the report publicly available. Specifically, the Board is releasing to the public Part I of the report and portions of Part IV of the report. Part IV of the report consists of the Firm's comments, if any, on a draft of the report.^{1/}

The Board has elsewhere described in detail its approach to making inspection-related information publicly available consistent with legal restrictions.^{2/} A substantial portion of the Board's criticisms of a firm (specifically criticisms of the firm's quality control system), and the Board's dialogue with the firm about those criticisms, occurs out of public view, unless the firm fails to make progress to the Board's satisfaction in addressing those criticisms. In addition, the Board generally does not disclose otherwise nonpublic information, learned through inspections, about the firm or its clients. Accordingly, information in those categories generally does not appear in the publicly available portion of an inspection report.

^{1/} The Board does not make public any of a firm's comments that address a nonpublic portion of the report unless a firm specifically requests otherwise. In addition, pursuant to section 104(f) of the Act, 15 U.S.C. § 7214(f), and PCAOB Rule 4007(b), if a firm requests, and the Board grants, confidential treatment for any of the firm's comments on a draft report, the Board does not include those comments in the final report at all. The Board routinely grants confidential treatment, if requested, for any portion of a firm's response that addresses any point in the draft that the Board omits from, or any inaccurate statement in the draft that the Board corrects in, the final report.

^{2/} See Statement Concerning the Issuance of Inspection Reports, PCAOB Release No. 104-2004-001 (August 26, 2004).

PART I

INSPECTION PROCEDURES AND CERTAIN OBSERVATIONS

Members of the Board's inspection staff ("the inspection team") conducted primary procedures for the inspection from November 27, 2006 to December 1, 2006. These procedures were tailored to the nature of the Firm, certain aspects of which the inspection team understood at the outset of the inspection to be as follows:

Number of offices	1 (New York, New York)
Ownership structure	Limited liability partnership
Number of partners	7
Number of professional staff ^{3/}	25
Number of issuer audit clients ^{4/}	17

Board inspections are designed to identify and address weaknesses and deficiencies related to how a firm conducts audits.^{5/} To achieve that goal, Board

^{3/} "Professional staff" includes all personnel of the Firm, except partners or shareholders and administrative support personnel. The number of partners and professional staff is provided here as an indication of the size of the Firm, and does not necessarily represent the number of the Firm's professionals who participate in audits of issuers or are "associated persons" (as defined in the Act) of the Firm.

^{4/} The number of issuer audit clients shown here is based on the Firm's self-reporting and the inspection team's review of certain information for inspection planning purposes. It does not reflect any Board determination concerning which, or how many, of the Firm's audit clients are "issuers" as defined in the Act. In some circumstances, a Board inspection may include a review of a firm's audit of financial statements of an issuer that ceased to be an audit client before the inspection, and any such former clients are not included in the number shown here.

^{5/} This focus necessarily carries through to reports on inspections and, accordingly, Board inspection reports are not intended to serve as balanced report cards or overall rating tools.

inspections include reviews of certain aspects of selected audits performed by the firm and reviews of other matters related to the firm's quality control system.

In the course of reviewing aspects of selected audits, an inspection may identify ways in which a particular audit is deficient, including failures by the firm to identify, or to address appropriately, respects in which an issuer's financial statements do not present fairly the financial position, results of operations, or cash flows of the issuer in conformity with GAAP.^{6/} It is not the purpose of an inspection, however, to review all of a firm's audits or to identify every respect in which a reviewed audit is deficient. Accordingly, a Board inspection report should not be understood to provide any assurance that the firm's audits, or its issuer clients' financial statements, are free of any deficiencies not specifically described in an inspection report.

A. Review of Audit Engagements

The inspection procedures included a review of aspects of the Firm's auditing of financial statements of six issuers. The scope of this review was determined according to the Board's criteria, and the Firm was not allowed an opportunity to limit or influence the scope.

The inspection team identified what it considered to be audit deficiencies.^{7/} The deficiencies identified in four of the audits reviewed included deficiencies of such significance that it appeared to the inspection team that the Firm did not obtain sufficient

^{6/} When it comes to the Board's attention that an issuer's financial statements appear not to present fairly, in a material respect, the financial position, results of operations, or cash flows of the issuer in conformity with GAAP, the Board's practice is to report that information to the SEC, which has jurisdiction to determine proper accounting in issuers' financial statements.

^{7/} PCAOB standards require a firm to take appropriate actions to assess the importance of audit deficiencies identified after the date of the audit report to the firm's present ability to support its previously expressed opinions. See AU 390, *Consideration of Omitted Procedures After the Report Date*, and AU 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report* (both included among the PCAOB's interim auditing standards, pursuant to PCAOB Rule 3200T). Failure to comply with these PCAOB standards could be a basis for Board disciplinary sanctions.

competent evidential matter to support its opinion on the issuer's financial statements.^{8/}
Those deficiencies were –

- (1) the failure to perform sufficient audit procedures to determine the reasonableness of the estimated reserve for excess and obsolete inventory;
- (2) the failure to perform sufficient audit procedures to test the completeness and accuracy of recorded revenue;
- (3) the failure to perform sufficient audit procedures to test the recoverability of an income tax benefit;
- (4) the failure to perform sufficient audit procedures to determine whether an aspect of an equity transaction was accounted for properly;
- (5) the failure to perform sufficient audit procedures related to the use of the work of a specialist in auditing the valuation of intangible assets; and
- (6) the issuance of an unqualified audit opinion despite the Firm's unresolved concerns regarding the valuation of intangible assets.

^{8/} In some cases, an inspection team's observation that a firm failed to perform a procedure may be based on the absence of documentation and the absence of persuasive other evidence, even if a firm claims to have performed the procedure. PCAOB Auditing Standard No. 3, *Audit Documentation* ("AS No. 3"), provides that, in various circumstances including PCAOB inspections, a firm that has not adequately documented that it performed a procedure, obtained evidence, or reached an appropriate conclusion must demonstrate with persuasive other evidence that it did so, and that oral assertions and explanations alone do not constitute persuasive other evidence. See AS No. 3, paragraph 9; Appendix A to AS No. 3, paragraph A28. For purposes of the inspection, an observation that the Firm did not perform a procedure, obtain evidence, or reach an appropriate conclusion may be based on the absence of such documentation and the absence of persuasive other evidence.

B. Review of Quality Control System

In addition to evaluating the quality of the audit work performed on specific audits, the inspection included review of certain of the Firm's practices, policies, and procedures related to audit quality. This review addressed practices, policies, and procedures concerning audit performance, training, compliance with independence standards, client acceptance and retention, and the establishment of policies and procedures. As described above, any defects in, or criticisms of, the Firm's quality control system are discussed in the nonpublic portion of this report and will remain nonpublic unless the Firm fails to address them to the Board's satisfaction within 12 months of the date of this report.

END OF PART I



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PARTS II AND III OF THIS REPORT ARE NONPUBLIC
AND ARE OMITTED FROM THIS PUBLIC DOCUMENT

PART IV

RESPONSE OF THE FIRM TO DRAFT INSPECTION REPORT

Pursuant to section 104(f) of the Act, 15 U.S.C. § 7214(f), and PCAOB Rule 4007(a), the Firm provided a written response to a draft of this report. Pursuant to section 104(f) of the Act and PCAOB Rule 4007(b), the Firm's response, minus any portion granted confidential treatment, is attached hereto and made part of this final inspection report.^{9/}

^{9/} In any version of this report that the Board makes publicly available, any portions of the Firm's response that address nonpublic portions of the report are omitted unless a firm specifically requests otherwise. In some cases, the result may be that none of a firm's response is made publicly available.



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September 8, 2008

Mr. George H. Diacont
Director
Division of Registration and Inspections
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, DC 20006

Re: Miller, Ellin & Company, LLP ("ME & Co." or the "Firm") Response to Draft Report
on the 2006 Inspection of the Firm

Dear Mr. Diacont:

We are pleased to submit our response to the Public Company Accounting Oversight Board's (the "PCAOB" or the "Board") August 6, 2008 draft of its Report relating to the 2006 Inspection of our Firm (the "Draft Report"). This letter is to respond to Part I of the Draft Report.

ME & Co. is committed to the highest standards of audit quality and to continually improving the quality of our performance of audits. We believe that the observations in the Draft Report reflect the fact that judgments are involved in auditing an Issuer's financial statements and in later inspecting any such audits. Judgments of reasonable people may differ as to the nature and extent of necessary auditing procedures, the conclusions reached and the extent of required documentation. We believe that we have made reasonable judgments but respectfully disagree with a number of the comments.

We recognize the Board's commitment to ensuring the performance of high quality audits in furtherance to enhancing the reliability of financial reporting as well as the constructive intent of the inspection process. Our Firm is also committed to performing high quality audits and to furthering the reliability of the financial statements on which we report. Consequently, we want to fully cooperate with the Board and the PCAOB staff. Therefore, we have or will take appropriate action on each of the matters described in Part I of the Draft Report. Upon receiving the Draft Report we have again considered the requirements of AU 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report* and in no instance did we find it necessary to change our auditor's reports.

All of the matters that the inspection team identified in Part I as deficiencies involve subjective judgments. In addition, we do not believe that some of the descriptions in the Draft Report are fully accurate with respect to the matters that the inspection team believes are deficiencies.

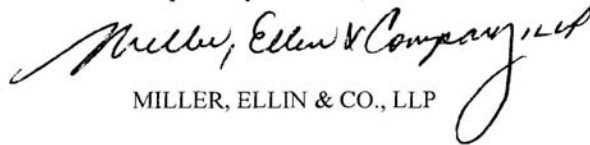


MillerEllin / company LLP

The inspection team believes that the Firm did not perform sufficient audit procedures in all but one of the matters it asserts are deficiencies. We have reconsidered the necessity of performing additional procedures in accordance with AU 390, *Consideration of Omitted Procedures After the Report Date* and have reached the following conclusions regarding each of the deficiencies stated by number on page 4 of Part I of the Draft Report:

- (1) The Firm believes that it adequately audited the inventory reserve and inventories as a whole. Also in light of these facts, the Firm rendered an audit report emphasizing substantial doubt about the ability of the client company to continue as a going concern. The Firm does not believe that any additional audit procedures are necessary but will add documentation to the work papers.
- (2) The Firm believes that it sufficiently tested the completeness and accuracy of recorded revenue by reference to all existing client records and independent third-party information.
- (3) The performance of sufficient audit procedures is a matter of professional judgment especially when the recorded amount, in this case deferred tax assets, is particularly dependent on future events. The Firm believes that it sufficiently evaluated the Company's assumptions and reasoning and will supplement the documentation in the work papers.
- (4) The Firm believes that it performed sufficient audit procedures to determine whether an equity transaction was accounted for properly.
- (5) ME & Co. believes that it performed sufficient audit procedures to test the valuation of an intangible asset and that proper consideration was given as to the use of a specialist.
- (6) ME & Co. believes that the assertion that the Firm had "significant unresolved doubts about whether the financial statements were fairly presented in accordance with GAAP in all material respects" is not an apt description of the circumstances and that the issuance of an unqualified audit opinion which included an emphasis paragraph was appropriate.

Respectfully submitted,



MILLER, ELLIN & CO., LLP

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