

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-97514; File No. PCAOB-2023-01

May 16, 2023

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Amendments to Conform PCAOB Rule 6100 to the Consolidated Appropriations Act, 2023

I. Introduction

On March 29, 2023, the Public Company Accounting Oversight Board (the “Board” or the “PCAOB”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 107(b)¹ of the Sarbanes-Oxley Act of 2002 (“SOX”) and Section 19(b)² of the Securities Exchange Act of 1934 (the “Exchange Act”), a proposal to adopt amendments (the “Proposed Amendments”) to existing PCAOB Rule 6100 to align with recent changes to SOX that relate to Board determinations under the Holding Foreign Companies Accountable Act (the “HFCAA”).³ The Proposed Amendments were published for comment in the *Federal Register* on April 4, 2023.⁴ We received no comment letters in response to the notice. This order approves the Proposed Amendments, which we find to be consistent with the requirements of SOX and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

¹ 15 U.S.C. 7217(b).

² 15 U.S.C. 78s(b).

³ The HFCAA requirements were amended by the Consolidated Appropriations Act, 2023 (Pub. L. No. 117-328, 136 Stat. 4459 (Dec. 29, 2022)).

⁴ See *Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments to Board Rule Governing Determinations Under the Holding Foreign Companies Accountable Act*, Release No. 34-97223 (Mar. 30, 2023) [88 FR 20002 (Apr. 4, 2023)], available at <https://www.sec.gov/rules/pcaob/2023/34-97223.pdf>.

II. Description of the Proposed Amendments

On March 28, 2023, the PCAOB adopted the Proposed Amendments.⁵ The Proposed Amendments would amend existing PCAOB Rule 6100 to align the rule with recent changes to Section 104(i)(2)(A)(ii) of SOX enacted by the Consolidated Appropriations Act, 2023.⁶ These amendments would allow the Board to make a determination regarding its inability to inspect or investigate completely a registered public accounting firm based on positions taken by authorities in any foreign jurisdiction, not just the foreign jurisdiction in which the firm is headquartered or has an office.

III. Effective Date

The Proposed Amendments would be effective immediately upon Commission approval.

IV. Comment Letters

The comment period on the Proposed Amendments ended on April 25, 2023. We received no comment letters in response to this notice.

V. Effect on Emerging Growth Companies

Pursuant to Section 103(a)(3)(C) of SOX, the rules and related amendments to PCAOB standards are subject to a separate determination by the Commission regarding their applicability to audits of emerging growth companies (as defined in Section 3(a)(80) of the Exchange Act). The Commission would approve such rules only if it makes a determination that the application of such additional requirements is necessary or appropriate in the public interest after considering the

⁵ See *Amendments to Board Rule Governing Determinations Under the Holding Foreign Companies Accountable Act*, PCAOB Release No. 2023-002 (Mar. 28, 2023), available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-050/pcaob-release-no.-2023-002--rule-6100-amendments.pdf?sfvrsn=c4c270d0_4.

⁶ Pub. L. No. 117-328, 136 Stat. 4459 (Dec. 29, 2022).

protection of investors and whether the action will promote efficiency, competition, and capital formation.⁷ The PCAOB concluded that Section 103(a)(3)(C) of SOX does not apply to this rulemaking because the Amendments neither require “mandatory audit firm rotation or a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit firm and the financial statements” of issuers nor do they impose any “additional requirements” on audits of emerging growth companies. We agree with the PCAOB’s conclusion that Section 103(a)(3)(C) of SOX does not apply to this rulemaking.

While we agree with the Board’s conclusion that Section 103(a)(3)(C) of SOX does not apply to the Proposed Amendments and thus do not need to make the additional determination described above, we nonetheless believe the Proposed Amendments are necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation. Specifically, all firms, including auditors of EGCs, and investors will benefit from the clarification regarding the Board’s determinations set forth in the Proposed Amendments.

VI. Conclusion

The Commission has carefully reviewed and considered the Proposed Amendments and the information submitted therewith by the PCAOB.

⁷ See Section 103(a)(3)(C) of SOX.

In connection with the PCAOB's filing and the Commission's review, the Commission finds that:

- A. The Proposed Amendments are consistent with the requirements of SOX and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and
- B. Section 103(a)(3)(C) of SOX does not apply to the Proposed Amendments.

IT IS THEREFORE ORDERED, pursuant to Section 107 of SOX and Section 19(b)(2) of the Exchange Act, that the Proposed Amendments (File No. PCAOB-2023-01) be and hereby are approved.

By the Commission.

Vanessa A. Countryman,

Secretary.