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Via Email

Ms. Phoebe W. Brown
Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, DC, 20006-2803

RE: Public Company Accounting Oversight Board Rulemaking Docket Matter No. 051

Dear Ms. Brown:

On behalf of NYSE Group, Inc.[1] ("NYSE" or the "Exchange"), we are grateful for the opportunity to comment on the Public Company Accounting Oversight Board ("PCAOB") proposal to amend its standards related to an auditor's consideration of a company's noncompliance with laws and regulations in the performance of an audit (the "Proposal").[2] The NYSE is the world's largest equities exchange and home to more than 2,400 listed companies with an aggregate market capitalization of more than $35 trillion. In this capacity, the Exchange recognizes the important role that both the PCAOB and public accounting firms play in establishing standards for the preparation of informative, accurate and independent auditor reports for public companies. The NYSE believes that the evaluation and disclosure of material risks is critical to the preparation of comprehensive and informative audit reports and appreciates the PCAOB's focus on this important aspect of public company audits. We are concerned, however, that the Proposal's overly broad requirements will (i) unduly burden public companies while providing de minimis benefit to investors, and (ii) discourage companies from going public.

NYSE-listed companies are committed to providing investors with thorough corporate disclosure. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,[3] the SEC's rulemaking agenda[4] on topics from climate change to cybersecurity, and targeted requests from the investing public are just a few examples of ways in which the standards for

[1] NYSE Group submits this letter on behalf of New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc.

[2] Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations, PCAOB Release No. 2023-003 (June 6, 2023).

[3] Pub.L. 111–203, H.R. 4173.

[4] Office of Information and Regulatory Affairs, Agency Rule List - Spring 2023 (*available at:* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode&showStage=active&agencyCd=3235).

corporate disclosure have evolved over time. NYSE-listed companies consistently evaluate their public disclosure to ensure investors receive a complete and accurate picture of their business. But *more* disclosure does not necessarily mean *better* disclosure, especially when the additional disclosure is difficult and expensive to prepare and does not meaningfully improve an investor's ability to assess a company's business and operations. For the reasons set forth below, we believe that the Proposal is a prime example of regulation that embodies these concerns.

1. *The Proposal Does Not Distinguish Between Material and Immaterial Noncompliance and Will Result in Onerous Disclosure that Does Not Benefit Investors and Will be Costly to Produce.*

To have the greatest impact, corporate disclosure must strike a critical balance between value to investors and the cost (both monetary and in terms of employee resources) of producing it. In support of this premise, the SEC disclosure regime requires public companies to disclose *material* risks regarding *known* trends, events and uncertainties that are *reasonably* likely to have *material* effects on the company's business, financial position or results of operations. By appropriately qualifying its disclosure standards, the SEC recognizes that lengthy and overly complex disclosure risks becoming unreadable.

The NYSE believes that the Proposal's apparent indifference to whether noncompliance with a particular law or regulation is material to a company's business and operations is counter to an auditor's fundamental obligation to prepare informative audit reports. Public companies are subject to an ever-expanding list of law and regulation, depending on their industry, sector or place of operation and incorporation. A failure to comply with every aspect of every applicable rule or regulation may not have any meaningful impact on a company's financial statements, but under the terms of the Proposal an auditor would be required to consider it nonetheless. A counterintuitive and troubling outcome of the Proposal is that the greatest financial impact of a company's immaterial noncompliance could be the increased audit fees paid to identify these insignificant failures.

Public companies are rightly concerned that the cost to identify potential noncompliance is not inconsequential and could fundamentally alter the nature of their relationship with their external auditor. Rather than serving as an outside validator of a company's material disclosures, under the Proposal auditors would instead be required to develop an understanding of management's internal process to identify applicable laws and regulations and detect whether noncompliance may have occurred.[5] This meaningful expansion of auditor responsibility--presumably accomplished through a broad scope of new testing and procedures--would likely require the expenditure of substantial public company resources in the form of new personnel and increased legal and consulting costs

The increased costs of compliance with the Proposal--correctly noted as "substantial" in the Proposal--are especially concerning because they arise in the backdrop of an unprecedented agenda of SEC rulemaking impacting public companies. Under the current administration, the SEC has proposed more than 50 new rules often with overlapping implications and increased

[5] PCAOB Release No. 2023-003 (June 6, 2023), pages 5-6.

workflow that stretches the same internal corporate resources as the Proposal. Given the questionable utility of new disclosure that will result from the Proposal, and the burdensome cost of compliance, the Exchange encourages the PCAOB to reconsider the Proposal.

2. The Proposal's Onerous Requirements Could Have a Chilling Effect on Going Public

The Exchange is concerned that increase regulation--especially regulation with debatable value to investors like the Proposal--is making it less attractive to become a public company. This is especially true for smaller companies that will disproportionately bear the brunt of increased compliance costs necessitated by the Proposal and for whom there is no exemption provided. While the NYSE applauds smart regulation to ensure the protection of investors, we also believe in a regulatory environment that supports a healthy, robust pipeline of companies that seek to become and remain public. The benefits of increased public companies are numerous, including job growth, expanded pension funds and 401ks, strengthening of the U.S. economy as a whole.

The NYSE is concerned that the Proposal could incentivize companies to remain private longer, limiting investment opportunities for investors. In the last 20 years, compliance and administrative costs for public companies have adversely affected the U.S. IPO market. The average age of a company at time of IPO has risen from 5 years in 1982 to 11 years by 2021[6], in turn limiting retail investors' ability to participate in the most dynamic growth segment of a company's lifecycle.

As noted by the SEC Office of Advocate for Small Business Capital Formation, capital raised in private markets was nearly four times the amount raised in public markets in 2022.[7] Analysis shows that smaller private firms are increasingly incentivized to seek acquisition instead of listing their shares on public markets. As the cost of entering the public markets continues to rise, we expect to see companies remaining private longer at higher valuations to absorb these largely fixed costs, exacerbating the trend and limiting public investment opportunities.

Conclusion

The NYSE, and the more than 2,400 companies listed on the Exchange, recognize and appreciate the importance of preparing comprehensive disclosure that appropriately identifies those noncompliance risks that are critical to evaluating an investment in a particular company. But we collectively believe that the most useful disclosure is that which distinguishes between noncompliance risk that could materially impact a company and noncompliance risk that--even if subject to penalty or sanction--is unlikely to pose any significant threat to the enterprise. In its current form, the Proposal does not make this critical distinction. We therefore respectfully request that PCAOB withdraw the Proposal and reconsider it in light of the comments contained herein.

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[6] Initial Public Offerings: Updated Statistics, Jay R. Ritter, Table 4, page 3 (July 28, 2023).

[7] Accredited Investor Definition and Private Securities Markets, Congressional Research Service, Figure 1 (February 3, 2023).

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Respectfully submitted,

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NYSE Group, Inc.