

April 12, 2024
Public Company Accounting Oversight Board (PCAOB)
Office of the Secretary, PCAOB
1666 K Street, NW, Washington, DC 20006-2803

Subject: PCAOB Rulemaking Docket Matter No. 054

On behalf of the Chamber of Digital Commerce (“the Chamber”), we respectfully submit our comments on the Public Company Accounting Oversight Board’s (“PCAOB”) Proposed Rule 2400 (“proposal”).

Introduction

The Chamber is the world’s first and largest blockchain trade association. Our mission is to promote the acceptance and use of digital assets and blockchain technology. In all our activities we promote the adoption of blockchain and digital assets in a manner that is responsible and reasonably regulated such that the inevitable benefits of capital formation, creation of intellectual property, and innovation in digital assets can inure to the benefit of the U.S. economy while also staying ahead of national security risks.

We are supported by a diverse membership that represents the blockchain industry globally. Our members include the industry’s leading innovators, large operators both public and private, global law firms, GNF CPA firms, and investors in the blockchain ecosystem. Through education, advocacy, and close coordination with policymakers, regulatory agencies, and industry across various jurisdictions, our goal is to develop a responsible, pro-growth environment for digital assets highlighting the opportunities this emerging industry will present to the U.S.

We believe responsible regulation and clear rules for digital assets is critically important. The Chamber’s Accounting Initiative spends considerable time researching, analyzing, and responding to public consultations and other regulatory matters such. For that reason, we felt it was in the best interest of the industry to respond to this proposal. Our responses are outlined below, and we thank you for your consideration.

We look forward to engaging more on this topic with you and stand ready to serve as a resource to the Board on all matters related to digital assets.

Sincerely,

Cody Carbone

Cody Carbone
Chief Policy Officer

PCAOB QUESTIONS & MEMBERSHIP RESPONSES

Questions #1-6. Relating to false or misleading statements concerning a firm’s PCAOB registration status.

The Chamber views the proposed rules regarding false and misleading statements by PCAOB registered firms to be rational and supported by PCAOB data.

Question #12. “Is the proposed rule governing reference to a firm’s PCAOB registration or PCAOB oversight in auditors’ reports for clients that are not issuers or broker-dealers clear and appropriately tailored? Why or why not?”

A. The Proposal Expands PCAOB Authority without Sufficient Rationale for Rulemaking.

The rule is not appropriately tailored because the PCAOB’s governing statute¹ does not support the PCAOB’s expansion of regulatory purview to audits performed by PCAOB registered firms for clients that are not issuers, brokers, or dealers. If adopted, proposed rule 2400(b)(4) would expand the oversight of the PCAOB without requisite legal authority.

As the Board correctly notes, “Proposed paragraph (b)(4) would apply ‘[w]hen issuing an auditor’s report for any client that is not an issuer, broker, or dealer.’ [However], the scope of the Board’s oversight authority relates only to audit work in connection with audits of “issuers” and “broker-dealers,” as those terms are defined in the Act.”

The quantitative and qualitative information provided in support of identifying a “problem” is too speculative to warrant the proposed “solution” because no clear, pervasive, or addressable harm is articulated.

B. Proposed rule 2400(b)(4) is Not Tailored to Address the Risk of Harm the PCAOB Speculates is Present.

The PCAOB should not expand its own authority as dictated by the proposed changes of 2400(b)(4) without congressional action. Moreover, the PCAOB should still not adopt proposed rule 2400(b)(4) to oversee registered firms’ audits of businesses which are not issuers, brokers, or dealers, because the PCAOB has not made clear that there is any current harm to investors. Indeed, in the “Economic Analysis” section, the PCAOB speculates that, “PCAOB-registered firms *may* hold out their PCAOB registration status with respect to services that are not subject to PCAOB oversight. [...] Given that the PCAOB lacks inspection or enforcement authority for audits of non-issuers, these references to firms’ PCAOB registration *could* lead to confusion unless they are qualified.”

In fact, the only reasonable conclusion to draw from the PCAOB’s own sample of 30 such reports, produced by 25 different firms, is: the selected firms are following the existing rules in 100% of selected reports. PCAOB staff provided, “[w]e understand that the interaction of SEC reporting requirements and AS 3101 mandates that registered firms reference their PCAOB registration in auditors’ reports that are prepared in accordance with PCAOB standards for some entities that are not issuers or broker-dealers. A

¹ Sarbanes-Oxley Act of 2002 Public Law Number: Pub. L. 107-204 Date Enacted: July 30, 2002 Full Text: <https://www.sec.gov/about/laws/soa2002.pdf>

staff review of 30 auditors' reports, issued by 25 firms registered with the PCAOB for non-issuers that file reports with the Commission, confirmed that PCAOB-registered firms are referencing their PCAOB-registration status in those reports."

There is not a single example provided for an investor action related to detrimental reliance on such a report, any noted complaints provided to the PCAOB, note of whistleblowing from inside a CPA firm or other tangible evidence of the like.

Rather, as "[a] tangible example of this potential for confusion [...]," the PCAOB offers "recent questions around the PCAOB's role with respect to certain attestation engagements that PCAOB-registered firms performed for cryptocurrency entities (proof-of-reserve engagements)." Foot note 113 makes clear that there are no "recent questions;" there is only a reference to the PCAOB's own Office of the Investor Advocate's blog post offering an Investor Advisory.

Even if we were to assume that the statements in the Investor Advisory were complete and accurate, which we can fairly say they are not, the Investor Advisory itself fails to provide examples of investor harm or confusion from Proof of Reserves reporting (hereinafter, "PoR") issued by PCAOB registered firms. Instead, the information available in the public domain would seem to favor of the opposite conclusion. In the wake of bankruptcies, including Voyager (an SEC registrant), consumers were very interested in PoR reporting; public debate in online media made clear that such reports were not audits, were not replacements for financial statement audits, reports needed to be consumed knowledgeably, and that further innovation and regulatory adoption as a condition of licensing could improve such reporting.

The Chamber has invested considerable resources and time to educate on the topic of PoR. We are proud of these efforts because PoR, particularly Auditor-Attested Proof of Platform Reserves reports issued under AICPA standards (AT-C 215)² are a narrowly focused transparency measure (directed at the heart of the FTX.com, Voyager, BlockFi, Celsius, and Genesis customer reserves problem) and a meaningful compliment to financial statement audit, regulatory examination, and other third-party attest reporting such as SOC 1, SOC 2 and other security and internal controls reporting.

Moreover, attestations to stablecoin reserves are another area sometimes referred to as PoR reports. Our current understanding is that private businesses tokenizing such assets are not issuers, brokers or dealers; however, the fact that such attest reporting has become table stakes for these businesses is a positive development.

Intended users of stablecoin reserves attest reporting generally seem to be knowledgeable about these reports and we have no reason to believe that (1) any PCAOB firm issuing such attestations for a stablecoin issuer has included note of their PCAOB registration status in their Independent Accountant's Report, or (2) that inclusion of "PCAOB Registered, but this service not covered by PCAOB oversight" would make the reports any more useable or any less likely to confuse or mislead readers. What could help investor protection, capital formation, and marketplace clarity would be additional standards

² American Institute of Certified Public Accountants. (2021). AT-C Section 215, Agreed-Upon Procedures Engagements. <https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/at-c-00215.pdf>

related to stablecoin reserves attestations, and thankfully the AICPA³ as well as state regulators⁴ have moved in this direction.

The proposal only raises PoR as a red herring. The Board has failed to present a concrete, pervasive, or addressable problem stemming from PoR as a general concept, PCAOB registered firms' issuance of Auditor-Attested Proof of Platform Reserves reports, or PCAOB registered firms' issuance of stablecoin reserves attestations, which would justify proposed rule 2400(b)(4).

C. The PCAOB Should Not Adopt Proposed Rule 2400(b)(4), Especially with Respect to Auditor-Attested Proof of Reserves Reports Because Such Reports are Independent Accountant's Reports Issued Under AICPA Standards, Not Audits.

Even if the PCAOB grants itself new powers under Rule 2400(b)(4), the Board's own statements reflect that that inspection and enforcement power should only extend to "audits."

While there are two main classes of reports issued in the market to date (AT-C 205 Examination Reports and AT-C 215 Agreed Upon Procedures Reports), across three main use cases (exchange platforms, stablecoin issuers, and exchange-traded product issuers), in all cases, the asset-liability matching exercise attested to by PCAOB and non-PCAOB registered CPA firms is accomplished through Independent Accountants reports which are attestation reports under AICPA standards, not audits under AICPA or PCAOB standards. (see Exhibit A, Definitional Framework & Taxonomy for Proof of Reserves)

The Chamber's Accounting Initiative reviewed existing publicly available PoR or PoR-like reports issued by CPAs. We did not find a single example of a stablecoin reserves attestation, a Proof of Platform Reserves report, or an AUP or examination over reserves of crypto-backed securities issuers (only non-U.S. examples) that references PCAOB registration of the firm in the Independent Accountant's report.

D. Even if the PCAOB adopts proposed rule 2400(b)(4), using Proof of Reserves as a Justification Will Create a Chilling Effect on Innovative Services Proven to Offer Meaningful Transparency to Market Participants in a Domain Outside the PCAOB's Current Regulatory Purview.

The AICPA attestation standards utilized by U.S. firms to issue every PoR or PoR-like report to date are the same flexible attestation standards that PCAOB and non-PCAOB registered firms use to address myriad subject matter across myriad criteria, both AICPA-defined and management-defined. PoR reports being used as an example to justify the proposed rule is curious because a fair estimation would be that such reports make up far less than 1% of examination reports and AUP reports issued by firms nationally. SOC 2 reports would have been a much better example of reports that vary widely in quality and consistency, are widely utilized by issuers and non-issuers, and which the largest PCAOB firms are very active in offering to the market.

³ The AICPA is nearing final criteria for attestations related to stablecoin reserves reports. <https://www.aicpa-cima.com/resources/download/proposed-criteria-for-the-presentation-of-the-sufficiency-of-assets-for>

⁴ The New York Department of Financial Services now requires stablecoin issuers to provide at least monthly stablecoin reserves attestations as well as annual independent accountant's attestations regarding the design and operating effectiveness of internal controls relevant to reserve asset management and other stablecoin operations.

The PCAOB recognizes the significant impact of AUP attestation reports concerning reserve assets, which often relate to millions of customers and involve billions of dollars in customer reserve value. And while, such reports are admittedly made more widely available than other examples of AUP reporting commonly used by private and public companies, the CPA-Attested examples in the marketplace to date show that these reports adhere to applicable professional and reporting standards. Said differently, the subject matter and reach of an Independent Accountant's report should be irrelevant; what matters is whether such reports conform to standards. However, the PCAOB's current approach, which highlights CPA-Attested PoR reporting as a critical concern needing regulatory action only serves to deter reputable firms from providing these valuable reports. This hesitation allows actual consumer risks to persist unmitigated.

Questions 18-24. Generally relating to the withdrawal and constructive withdrawal of firms' registration.

The Chamber does not have any strong objections to this proposal and proposed due process. The PCAOB should have clear rules, process and capabilities to administer the registration of firms, especially those that are non-compliant with annual reporting and/or delinquent in payments to support the overall system of audit quality.

Conclusion

While the proposal is not squarely aimed at PoR, we cannot overstate the deleterious impacts of the PCAOB highlighting Auditor-Attested PoR attestation reports as justification for 2400(b)(4).

As noted, there are stronger examples of non-audit reporting by PCAOB firms for issuer and non-issuer clients that *theoretically could*, with concrete examples provided, support such a rule. However, the bare mention of Proof of Reserves without any concrete data to support that investors are being misled or confused only serves to chill the further adoption and refinement of a new and novel type of attestation report. Importantly, a type of report that offers to address the largest and most glaring consumer protection issue in the crypto market today. Voyager, FTX.com, BlockFi, Celsius, Genesis failures harmed millions of consumers to the tune of billions of U.S. Dollars. And no, it is not an unreasonable leap to conclude that adoption of PoR as a condition of licensing could have protected consumers by preventing one or more of these companies from engaging in poor or fraudulent reserves management.

With this recent backdrop, we urge the PCAOB not to use PoR as fodder, or as unsubstantiated justification for new rulemaking, but rather to take up study of the issue. Additionally, we'd encourage PCAOB staff to offer the market helpful interpretations and suggested best practices such that CPA practitioners, registered and not, can enter the market to create more digital asset reserves transparency reporting.

We have many more technical details to share in our upcoming version of the Practitioners' Guide to Proof of Reserves Engagements.⁵ We are here to serve as a resource for you and welcome further engagement with PCAOB staff on this important topic.

⁵ The Chamber of Digital Commerce. May 2021 (Version 1). Proof of Reserves: The Practitioner's Guide to an Emerging Standard for Increasing Trust and Transparency in Digital Asset Platform Services. <https://d3h0qzni6h08fz.cloudfront.net/reports/Proof-of-Reserves-.pdf>

EXHIBIT A:

Collateralized Crypto Claim (CCC) Framework & Taxonomy

DEFINITIONAL FRAMEWORK			
Class of CCC	Asset-Backed Tokens	Crypto Platform Account Liabilities	Crypto Security Instruments
Class Archetypes	<p>Stablecoins and CryptoDollars</p> <p>Commodity-backed Tokens</p> <p>Cross-chain Collateralized Assets</p> <p>Liquidity Pool Tokens</p> <p>Interest-accruing Tokens</p>	<p>Exchanges and Custodians</p> <p>CeFi Lending Platforms</p> <p>Brokers</p> <p>Margin, Futures, and Derivative Platforms</p>	<p>Exchange-Traded Products</p> <p>Crypto-backed Notes</p> <p>Crypto-denominated Bonds</p> <p>Crypto Fund LP Shares</p>
Description	<p>Tokens issued on a public blockchain, collateralized by another asset which is either on or off chain. The token typically represents a callable claim (and/or a value pegged to, the underlying asset).</p> <p>Defined by: IOUs (claims) existing on a public blockchain or distributed ledger.</p>	<p>Centralized service businesses issue IOUs to customers which represent a claim on digital assets custodied or controlled by the service business.</p> <p>Defined by: Deposits or custody of digital assets with a service business where the service business controls private keys and issues the customer/user an IOU on online platform.</p>	<p>Notes and financial instruments issued to investors/counterparties which represent equity interest or a claim that tracks the market value of an underlying digital asset.</p> <p>Defined by: An issuing entity offering IOUs (claims) to investors and managing capital in the form of digital assets.</p>

