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April 9, 2024

Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
Washington, D.C. 20006-2803

Via email: comments@pcaobus.org

Re: **PCAOB Rulemaking Docket Matter No. 054 – Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration**

Dear Members of the Public Company Accounting Oversight Board (PCAOB):

The National Association of State Boards of Accountancy (NASBA) appreciates the opportunity to comment on the PCAOB's Release, *Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration* (Proposal).

Founded in 1908, NASBA serves as a forum for the nation's Boards of Accountancy (State Boards), representing fifty-five jurisdictions. NASBA's mission is to enhance the effectiveness and advance the common interests of the State Boards that regulate all Certified Public Accountants (CPAs) and their firms in the United States and its territories, which includes all audit, attest and other services provided by CPAs. State Boards are charged by law with protecting the public.

In furtherance of that objective, NASBA offers the following comments.

General Comments

NASBA overall supports the PCAOB in the proposed new rule which would regulate the manner in which firms present to clients, potential clients, or the public their PCAOB registration status, including the scope of the PCAOB's oversight of their work. Additionally, NASBA supports the new procedural mechanism for removal from PCAOB registration by creating a process for constructive withdrawal request.

The proposed new paragraph (h) of current PCAOB Rule 2107, *Withdrawal from Registration*, would, under certain conditions, allow the PCAOB (i) to treat a firm's failure both to pay annual fees and to file annual reports for at least two consecutive reporting years as a constructive request by the firm for leave to withdraw from registration, and (ii) to deem the firm's registration withdrawn.

We are supportive of the current wording of the Proposal on the condition of both the failure to pay annual fees and to file annual reports. We would also be supportive if the conditional wording was either the failure to pay annual fees or the failure to file annual reports.

The background information included in the Proposal did not include the rationale for using two consecutive reporting years as the timeframe for establishing constructive withdrawal. It only indicated that a period of less than two years was considered to be too short to understand a registered firm's intent to withdraw their registration. Failure to pay annual fees and file annual reports are violations of the Board's annual reporting and payment requirements and should not be tolerated.

In the absence of extenuating circumstances, we would be supportive of a one-year threshold for both the failure to pay annual fees and to file annual reports. We acknowledge that there may be extenuating circumstances which may require longer periods. For example, there may be situations in which a registered firm plays a substantial role in an audit of an issuer on an irregular basis and has no other issuer clients. They perform such audits at the direction of the parent company auditors and may have no other control over the periods to be audited. Nevertheless, they would need to be registered for the periods audited. We believe that it would be appropriate to provide guidance in situations such as these.

The proposed general prohibition from making false or misleading statements concerning PCAOB registration or oversight states that the firm and its associated persons must not make any untrue statement of material fact or omit stating a material fact. The term "material" is not defined and could vary on interpretation based on the context and perspective. We recommend providing resources or user outreach to mitigate the potential for misinterpretation.

The Proposal does not differentiate between misconduct by a registered firm versus that of a sole individual associated with the firm. We recommend clarification on the matter of liability for a firm if an associated person makes untrue statements about PCAOB registration that are clearly not firm-sanctioned and do not follow firm guidance. The related question that arises is whether associated persons responsible for the representations can be held liable if the PCAOB concludes that the firm is not liable.

With respect to the proposed paragraph (b)(2) (by virtue of the three-year lookback period), firms that choose to state or imply that the firm is registered with the PCAOB or is subject to the PCAOB's oversight would need to clarify that the firm is not currently providing services to issuers. The example provided states that the firm is "PCAOB Registered – Not Currently Providing Services Subject to PCAOB Oversight." The background information included in the Proposal explains that oversight means subject to PCAOB inspection; however, would a client, potential client or the public understand what oversight means? We recommend providing resources or user outreach to help achieve the intent of the Proposal.

Effective Date

We recommend a twelve-month implementation date for compliance with the proposed Rule 2400 and the proposed amendments to Form 3 instead of the proposed six months. We believe that twelve months would allow firms to perform a more diligent review to comply in good faith with the Proposal. Effective implementation of standards is in the public interest.

Special Consideration for Emerging Growth Companies (EGC)

While the risk profile of an EGC is different from more mature entities, we agree that the Proposal should apply to EGCs as applicable. To exclude EGCs from the Proposal would be inconsistent with protecting the public interest.

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Again, we appreciate the opportunity to comment on the Proposal.

Very truly yours,

Stephanie M Saunders

Ken L. Bishop

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NASBA Chair

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