



April 12, 2024

Office of the Secretary  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
Washington, DC 20006-2803

**RE: PCAOB Rulemaking Docket Matter No. 054**

Dear Madam Secretary:

We appreciate the opportunity to comment on the Public Company Accounting Oversight Board's proposal, *Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration*, included in PCAOB Release No. 2024-001 ("Rule 2400").

**Overview**

We appreciate that the Board's objective is to respond to concerns that some registered accounting firms make false and misleading statements concerning their registration and PCAOB oversight as a means of marketing to potential clients. While some of these concerns would have to be addressed by regulatory action beyond the PCAOB's jurisdiction for firms that are not registered with the PCAOB, in principle, we support the Board action addressing firms within its jurisdiction.

We are concerned, however, that the proposal does not adequately consider certain existing regulatory requirements (e.g., SEC and CFTC requirements) and in fact inadvertently introduces potential conflict with them, which may result in confusion for the users of the reports issued in certain engagements, including investors. We believe this unintended consequence and other specific matters should be resolved before the Board moves forward. Specifically, we do not believe it is necessary for a final rule to address auditor reporting in order for the PCAOB to achieve its objectives related to prohibiting firms and their associated person from making false or misleading statements on which clients and potential clients, investors, and other stakeholders may rely.

**Areas for which additional consideration may be necessary**

*The proposal does not adequately consider existing regulatory requirements for engagements to be performed in accordance with PCAOB standards by registered accounting firms.*

The proposing release highlights that the Board "understand[s] that the interaction of the SEC's reporting requirements, which necessitate or permit entities that are not issuers or broker-dealers to be audited under PCAOB standards, combined with the PCAOB's auditor reporting standards, currently requires registered firms to reference their PCAOB registration in auditors' reports issued under PCAOB standards for some entities that are not issuers or broker-dealers. These references appear in the title and the 'basis for opinion' section of these auditors' reports."<sup>1</sup> These reference requirements may be applicable in a number of different instances. One routine situation involves "dual standards" engagements in which auditors who are members of the AICPA are required to also perform the engagement in accordance with AICPA standards. For those engagements, AICPA standards require the auditor to follow the form and content of the PCAOB's auditor report in accordance with AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*.

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<sup>1</sup> See proposing release at 21.



Some examples of dual-standards reporting include: (1) confidential draft registration statements furnished to the SEC in advance of a public filing; (2) financial statements for the target company in a merger with a special purpose acquisition company (“SPAC”); and (3) auditor’s reports for certain subsidiaries or components of an issuer involved in a spinoff transaction.<sup>2</sup> Similarly, as a result of SEC reporting requirements for Regulation Crowdfunding, entities that choose to report under these regulations are not considered issuers subject to PCAOB jurisdiction but may choose to have their financial statements audited in accordance with PCAOB standards.<sup>3</sup> In all of these circumstances, to comply with AS 3101, the auditor’s report includes factual statements about the firm’s registration status.

We do not believe it was the Board’s intent to create a conflict with these existing regulatory requirements. In addition, we question whether the proposal should apply when there is no intent to market PCAOB registration or oversight but rather adhere to existing regulatory requirements. Further, in choosing to require these engagements to be performed by registered accounting firms, the SEC has discussed in its rulemaking potential benefits to quality when registered accounting firms are subject to PCAOB inspection, regardless of whether the engagement itself is within the scope of the PCAOB’s inspection program. For example, in establishing regulatory requirements for custody of client assets by registered investment advisers, which require engagements to be performed by registered accounting firms subject to PCAOB oversight, the SEC stated, “We have greater confidence in the quality of the surprise examination and the internal control report when prepared by an independent public accountant that is registered with, and subject to regular inspection by, the PCAOB.”<sup>4</sup> The SEC further noted, “While PCAOB inspection is focused on public company audit engagements, we believe that requiring that the accountant not only be registered with the PCAOB but subject to its inspection can provide indirect benefits regarding the quality of the accountant’s other engagements.”<sup>5</sup>

We do not believe it should be necessary in these circumstances to require the auditor’s report to “prominently indicate that such services are not subject to PCAOB oversight” or to make other changes to factual statements otherwise required by AS 3101. These statements are not intended as “marketing or otherwise holding out the firm” as described in the release, and the nature and scope of the PCAOB’s inspection program is readily accessible information. We therefore believe the requirement in proposed paragraph (b)(4) should be deleted.

However, if the PCAOB ultimately decides it is necessary to address concerns regarding the current reporting requirements, we suggest amendments to AS 3101 to clarify how auditors should report to avoid inadvertently violating Rule 2400. For example, the requirement in paragraph .06 of AS 3101 could be amended to require a title that indicates it is the report of an independent auditor; similarly, the requirement in paragraph .09(g) of AS 3101 could be revised to require only the statement regarding independence with no reference to the firm’s registration in the auditor’s report.

*The intent of the phrase “registered firms not currently subject to PCAOB oversight” is unclear.*

Limited circumstances exist in which registered accounting firms perform audits of issuers but the PCAOB cannot currently inspect the engagements because cooperative arrangements with non-US regulators are not in place. As this is not explicitly addressed in the proposal and there are other specific

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<sup>2</sup> SEC Financial Reporting Manual 4110.5 identifies additional instances.

<sup>3</sup> See 17 CFR Part 227 (Regulation Crowdfunding).

<sup>4</sup> See SEC Final Rule Release, *Custody of Funds or Securities of Clients by Investment Advisers*, at 36, at <https://www.sec.gov/files/rules/final/2009/ia-2968.pdf>.

<sup>5</sup> See *id.* at 37. The SEC also noted, “The PCAOB performs regular inspections with respect to any registered public accounting firm that, during any of the three prior calendar years, issued an audit report with respect to at least one issuer.” See *id.* at footnote 122.



SEC and PCAOB rules addressing these circumstances, we do not believe it is the PCAOB's intent to require any particular action or new disclosures in such circumstances. For avoidance of doubt, we suggest that this be explicitly stated in the adopting release accompanying the final rule.

*The rule should not apply to unintentional conduct.*

We agree with (1) the Board's position that "[b]ecause it applies to "material" facts, minor errors would not be sanctionable under proposed Rule 2400(a), but material misrepresentations would be" and (2) the discussion of how materiality may be determined.<sup>6</sup> However, we are concerned with language in footnote 25 of the proposing release, which notes that "the PCAOB would not be required to prove that a misstatement or omission was made with the intent to deceive, manipulate, or defraud under proposed Rule 2400(a). Nor would there be a need to demonstrate reliance on the misstatement or omission, economic loss incurred by anyone, or a causal link between the misstatement or omission and any such loss."<sup>7</sup> We do not believe this reduced threshold is appropriate. The rule should not apply to unintentional conduct when a registered accounting firm or an associated person is making a statement of fact that the firm is a registered accounting firm and the firm has a reasonable process in place to monitor whether there is a risk that the firm or its associated persons are intentionally making false or materially misleading statements. We suggest this be explicitly addressed in the adopting release accompanying the final rule.

*Additional transition time will be needed to effectively implement a final rule.*

We believe the proposed rule is intended to focus on statements other than factual statements that a firm makes in the ordinary course of business. We expect firms will establish policies and procedures to address compliance with the new rules, including the look-back rules, when applicable. Accordingly, additional time will be needed to implement the final rule, as a period of six months from the date of approval by the SEC is likely not sufficient to enable firms to develop and implement appropriate policies and procedures, as well as potential changes to auditor reporting and training.

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We appreciate the opportunity to provide input and would be pleased to engage with the Board and its staff on this topic. Please contact Brian Croteau at [brian.t.croteau@pwc.com](mailto:brian.t.croteau@pwc.com) regarding our submission.

Sincerely,

A handwritten signature in black ink that reads "PricewaterhouseCoopers LLP". The signature is written in a cursive, flowing style.

PricewaterhouseCoopers LLP

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<sup>6</sup> See proposing release at 11.

<sup>7</sup> This appears similar to language in *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability*, which, if adopted, would reduce the threshold culpability for secondary liability from at least recklessness to simple negligence.