

April 12, 2024

By email: comments@pcaobus.org

Ms. Phoebe W. Brown
Office of the Secretary
PCAOB
1666 K Street, NW
Washington, DC 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 054: *Proposal Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration* (PCAOB Release No. 2024-001)

Dear Ms. Brown:

Crowe LLP (“Crowe”) appreciates the opportunity to comment on the Public Company Accounting Oversight Board’s (“PCAOB” or “the Board”) proposed new Rule 2400, amendment to PCAOB Rule 2107 related to false or misleading statements and constructive withdrawal requests, and amendment to Form 3 (the “Proposal” or the “Proposed Rule”).

General Observations

We support clear communication about the scope of PCAOB oversight that is not misleading to investors, audit committee members, or other stakeholders. The general prohibition in the rule is clear and the description of “marketing or otherwise holding out” is adequately defined. We agree that PCAOB-registered firms should not disseminate false or misleading information concerning their registration and the extent of PCAOB oversight. We also agree with the proposed new procedural mechanism that would enable the Board to remove a firm’s registration if they are delinquent in paying their annual fees or filing its annual report.

It is important for firms to factually disclose the PCAOB’s oversight without misleading clients, potential clients or the public about their annual or triannual inspection. We agree firms should not mischaracterize their inspection as being a seal of approval or a measure of quality.

Firms also should not claim they are subject to PCAOB oversight solely based on their association with another firm that is subject to PCAOB oversight. This causes confusion to market participants who may incorrectly assume their auditor is subject to PCAOB oversight when they are not.

Specific Observations

PCAOB Oversight

The Proposal directs auditors to avoid making false or misleading statements related to the PCAOB’s oversight when a registered firm is providing services not subject to PCAOB oversight. If a firm does not provide any services related to audits of issuers or broker-dealers, then no aspect of the firm’s professional practice falls under the PCAOB’s oversight. The Proposal (footnote 14) clarifies that the PCAOB’s oversight authority is not confined exclusively to the financial statement audits of issuers or

broker-dealers and extends to services that involve audits of issuers and broker-dealers. We believe this definition of oversight is clear in the existing rules and standards. However, there may be confusion in the future related to the extent of the PCAOB's oversight. The PCAOB's proposed quality control standard (QC 1000) would require all registered firms to design a quality control (QC) system. This explicit requirement for firms that may not otherwise perform engagements pursuant to PCAOB standards, combined with the PCAOB's ability to inspect aspects of a firm's QC system, may lead firms to believe they are subject to PCAOB oversight. We suggest the PCAOB clarify that their oversight does not extend to a firm that is designing a QC system unless the firm is also providing auditing services related to issuers and broker-dealers.

Conforming Changes to PCAOB Standards

The Proposed Rule states an auditor can exclude reference to PCAOB registration in their report; however, as noted in footnote 43, AS 3101 requires the auditor to state that the auditor is registered with the PCAOB and to use a title that includes the word "registered". We encourage the PCAOB to amend AS 3101 to remove the requirement for an auditor to reference they are "registered". Absent this amendment, auditors will not have the option of excluding their registration status from the auditor's report and still comply with the PCAOB's auditing standards.

If the PCAOB does not amend AS 3101, we suggest Rule 2400 clarify whether an auditor is required to include the disclaimer in both the report title and in the basis for opinion paragraph since AS 3101 requires reference to registration in both places or would including the disclaimer in just one location be sufficient.

There are multiple situations where the auditor is required to conduct an audit in accordance with PCAOB standards, yet the audit is not subject to PCAOB oversight. Footnote 38 acknowledges instances in which the auditors are required to conduct engagements in accordance with PCAOB standards, and the proposal uses voluntary filers as an example. In addition to voluntary filers, we are required to issue audit reports using PCAOB standards for confidential filers and financial statements filed under SEC Rule S-X 2-05, and those audits are not subject to PCAOB oversight. In the case of confidential filings, our understanding is that if we need to include a prominent disclosure in the report until the registration statement becomes effective; once effective, we will need to remove the disclosure. Amending AS 3101 will allow firms to take advantage of the options presented in the Proposed Rule and facilitate the adoption of the rule.

Effective Date

PCAOB Rule 2400 can be effective if applied prospectively but will cause undue burden if applied retroactively. A prospective approach will require firms to review active marketing materials and other materials in use (websites, online media, templates, audit report templates, etc.) to ensure materials would not violate the rule on a prospective basis. On the other hand, there would be minimal, if any, benefit to requiring firms to review and revise inactive materials or work product and any benefit is outweighed by the significant time and financial burden this would place on firms. We do not have any objections to the proposed effective date for Rule 2107(h) assuming the final rule is effective prior to when the 2024 fees and annual reports are due.

Form AP

The Proposal states that proposed Item 2.3A of Form 3 will align information on the PCAOB's website with a firm's marketing or holding out statements. While we agree this Form 3 filing would sufficiently provide notice to the public about the firm's change in status related to PCAOB oversight, we also believe Form AP would provide sufficient notice. Since the accountant is already required to file Form AP within 30 days, we do not believe the additional Form 3 filing is necessary.

We appreciate the opportunity to share our perspectives on the Board's Proposal. We would be pleased to discuss our comments with the Board or its staff. If you have any questions, please contact Jennifer Kary or Matthew Schell.

Sincerely,

A handwritten signature in black ink that reads "Crowe LLP". The letters are cursive and connected, with a large initial 'C'.

Crowe LLP