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April 12, 2024

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

Re: Docket Matter No. 54 – *Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration*, Rel No. 2024-001 (Feb. 27, 2024)

Dear Ms. Brown:

Deloitte & Touche LLP ("D&T" or "we") is pleased to respond to the request for comment from the Public Company Accounting Oversight Board (the "PCAOB" or the "Board") on its *Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration*, which are proposed new rule 2400, *False or Misleading Statements Concerning PCAOB Registration and Oversight*, proposed amendments to Form 3 – *Special Reporting Form*, and proposed amendments to rule 2107, *Withdrawal from Registration* (the "proposal" or the "proposing release").

Executive Summary

Overall, we support the proposal, including the amendments to allow for constructive withdrawal from registration. D&T is committed to protecting investors through the independent audit process and the vital role the audit plays in maintaining the integrity of the financial reporting process and preserving the public's trust in our capital markets. Registration with the PCAOB is an important element of this process and, in turn, the PCAOB plays a critical role in overseeing registered auditors. As such, it is important for investors and other stakeholders that registered firms do not misrepresent what it means to be registered with the PCAOB and the extent of the PCAOB's oversight of a registered firm's services.

D&T and other large network firms operate in increasingly complex and global financial markets. This means both D&T and our clients are subject to an array of rules and regulations that affect the standards under which we provide our services and the content of the reports we issue. To enhance transparency, we ask the PCAOB to consider, as more fully detailed below, the following:

- Clarify that proposed Rule 2400 does not apply to statements regarding PCAOB registration made in auditors' reports for audits listed in Paragraph 5 of Section 4110, *PCAOB Registration*, of the U.S.

Securities & Exchange Commission ("SEC"), Division of Corporation Finance, Financial Reporting Manual ("SEC FRM") (i.e., where the SEC requires a registered firm to refer to PCAOB standards).[1]

- Confirm that representations required to be made when services other than an audit of an issuer, broker, or dealer must be performed by a PCAOB-registered firm would be excluded from the rule.
- Clarify that any disclaimer language may be tailored to fit particular facts and circumstances.
- Instead of amending Form 3, consider alternatives that would make this information easier for investors and other users of audit reports to find (e.g., in a firm's annual report or on a firm's profile page on the PCAOB's website).

Auditors' Reports for Entities Other Than Issuers, Brokers, or Dealers

We ask the PCAOB to clarify that proposed Rule 2400 does not apply to statements regarding PCAOB registration in auditors' reports for audits listed in Section 4110.5 of the SEC FRM (i.e., where the SEC requires a registered firm to refer to PCAOB standards). Under these circumstances, assurance providers must refer to PCAOB standards because the entity is expected to become an issuer by virtue of an impending transaction for which the audit is being performed and, thus, audits of these entities will become subject to inspection. In addition, in the case of a non-issuer for which an auditor's report is filed under Rule 2-05 of Regulation S-X, such report "relates to an issuer" [2] and, thus, is subject to PCAOB oversight.[3] We believe auditors' reports that include a disclaimer in these situations would be confusing to investors and other stakeholders given that audits of these entities either are or will soon be subject to PCAOB oversight. Alternatively, we suggest that the final rule allow firms in these situations to not refer to themselves as "registered" in these auditors' report, so that a disclaimer is not needed.

PCAOB-Registered Firm Required Even When the Engagement Is Not Performed Under PCAOB Standards

In some circumstances, entities are required to engage a PCAOB-registered firm, even when the work is not performed pursuant to PCAOB standards. For example, the SEC's custody rule[4] requires that certain examination or verification procedures for assets that are not held by a qualified custodian be performed by firms that are both registered with the PCAOB and subject to regular inspection, even though the specific work the firms are engaged to perform may not be subject to the PCAOB's current inspection program. As recently as 2023, the SEC proposed to retain this requirement in amendments to the custody rules,[5] noting its belief that "registration and periodic inspection of an independent public accountant's system of quality control by the PCAOB provides investors with some additional level of confidence in the quality of audit produced under the proposed rule" even where the specific engagement is not subject to inspection.

In connection with such engagements, firms may be required to represent to clients or potential clients that they are registered and subject to inspection. We suggest that the PCAOB clarify firms' obligations in these circumstances. This could be done by exempting from the final rule any communications that

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[1] *See* SEC FRM, Section 4110.5, at https://sec.gov/files/cf-firm.pdf, which includes a chart outlining the application of certain PCAOB requirements in various filings with the SEC.

[2] *See* SEC FRM, Topic 4110.5, FN 4.

[3] Circumstances listed in SEC FRM Topic 4110.5 include auditors' reports included in confidential submission of an initial public registration statement; Form 10 to effect the spin-off from a public parent company or merger of two existing companies that will form a new entity; Form 10-K or 20-F to satisfy SEC Rule 2-05, *Examination of Financial Statements by More than One Accountant*, of Regulation S-X; and a registration statement filed by a company entering a reverse merger with a shell company.

[4] Rule 206(4)-2 under the Investment Advisers Act of 1940.

[5] Release No. IA-6240, *Safeguarding Advisory Client Assets* (Feb 15, 2023) at https://www.sec.gov/files/rules/proposed/2023/ia-6240.pdf.

are made in relation to fulfilling a legal or regulatory requirement. Alternatively, the PCAOB could underscore that the language describing the limits of PCAOB oversight can be tailored to fit the particular facts and circumstances. For example, requiring registered firms to disclaim "PCAOB oversight" (language used throughout the proposing release) in the context of the SEC's custody rule could undermine the SEC's reasoned decision to have PCAOB-registered firms perform this type of work and cause confusion about whether the firms' systems of quality control are subject to regular inspection. Instead, it may be more appropriate for a disclaimer in this situation to be more narrowly crafted to note that these particular services are not subject to "PCAOB inspection."

Clarification That Disclaimer May Be Tailored to Fit the Circumstances

To reiterate what we have noted above, we believe the language about the PCAOB's oversight would present less risk of confusion if it was tailored to fit the circumstances. While it seems the proposed PCAOB rule allows for variation, the examples in the proposing release use similar language throughout.[6] We encourage the PCAOB to clarify that disclaimer language about a firm's PCAOB registration may be tailored to fit the circumstances and to reinforce this point by providing more examples of language that would be acceptable under the rules in a greater variety of circumstances. Another example of a situation where the disclaimer may need to be tailored is when a registered firm does not sign PCAOB audit opinions or play a substantial role on issuer audits but does participate in the audits of issuers (e.g., as an "other auditor"). In those circumstances, its work is subject to potential PCAOB inspection in connection with an inspection of the lead auditor's work, and a broad disclaimer that the firm is "not currently providing services subject to PCAOB oversight" could be confusing.

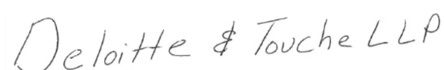
Information Reported by Registered Firms

We understand that the PCAOB is recommending new Item 2.3A on PCAOB Form 3 to provide transparency to investors and other stakeholders when a registered firm is issuing an audit report for an issuer, broker, or dealer, or playing a substantial role in such an audit, after not having done so for three years or more. Given that a reader of a specific audit report may not know to look for such a Form 3, instead of amending Form 3, we suggest the PCAOB consider alternatives that would make this information easier for investors and other users of audit reports to find (e.g., in a firm's annual report or on a firm's profile page on the PCAOB's website).

Conclusion

We are committed to serving investors and the capital markets, and to building confidence in the independent audit process. We appreciate the opportunity to provide our perspectives. If you have any questions or would like to discuss our views further, please contact John Treiber (312-486-1808) or Consuelo Hitchcock (202-220-2670).

Sincerely,



Deloitte & Touche LLP

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[6] To add to the uncertainty around this point, the proposal's Question 11 is worded in such a way ("[s]hould we consider alternative language") as to imply that the language used as an example is the only acceptable language. *See* proposing release at p. 21.