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Phoebe W. Brown, Secretary
Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, NW
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12 April 2024

PCAOB's Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration (PCAOB Release No. 2024-001; Docket Matter No. 054)

Dear Ms. Brown:

Ernst & Young LLP is pleased to submit its comments on the above-referenced proposal (the Proposal) to the Public Company Accounting Oversight Board (PCAOB or Board). In preparing these comments, we solicited and incorporated views from those with roles elsewhere in the EY global network of firms.

We generally support the Proposal. As independent auditors, we are privileged to serve an important role promoting confidence in financial reporting and in our vibrant capital markets. And as a PCAOB-registered firm, we benefit from the feedback provided through our regular external inspections. We also believe stakeholders benefit from understanding the important role that the PCAOB plays when it comes to audits of issuers and broker-dealers. Therefore, it is important that registered firms and associated persons not be permitted to misstate the scope, nature or implications of PCAOB oversight. Those making such misrepresentations should be held accountable.

Below we provide observations and suggestions in response to selected questions from the proposal that should be read in the context of our overall support of it.

2. Does the phrase "marketing or otherwise holding out a registered public accounting firm to a client, potential client, or the public," which is used in multiple provisions of proposed Rule 2400, accurately capture all of a firm's marketing and otherwise holding out statements? Should it be broader or narrower? Is its scope clear?

We suggest that the Board clarify the circumstances that would create liability for those whose conduct would violate the proposed rule. Specifically, it is not clear when associated persons would be liable for statements that were prepared or endorsed in some way by a registered firm or by other associated persons in the firm. Similarly, it is not clear when the firm would be liable for statements of associated persons that are inconsistent with the firm's marketing materials.

The proposal would apply to "***all of the marketing statements that*** a public accounting firm or ***its associated persons communicate*** or transmit to a client, potential client, or the public."[1] However, the proposal also refers to statements "on the firm's website, letterhead, business cards, brochures, flyers, posters, ***or other firm-produced*** materials"[2] (emphases added). For example, if an associated person makes a misstatement regarding the scope of the PCAOB's oversight of a firm, (1) can that associated person be liable even when the statement clearly was not a "firm-produced" statement, and when the PCAOB concludes that the firm did not violate the proposed rule, and (2) can the firm be held liable for statements made by an associated person that do not follow a firm's own marketing templates and internal guidance?

We recommend that the Board consider adopting a safe harbor from firm liability for statements by associated persons if a firm has implemented one or more reasonably designed and operating controls to promote the distribution of marketing materials that would comply with the proposed rule.

11 and 13. Is the phrase "PCAOB Registered – Services Not Subject to PCAOB Oversight" appropriate and understandable? Should we consider alternative disclaimer language? If so, what language would be preferable, and why?

We suggest that the Board reconsider whether the reference to "Services" in this disclaimer would be sufficiently clear. A reader, especially one less familiar with the PCAOB's mandate, could incorrectly interpret the disclaimer to mean that none of the firm's services would be subject to oversight. We suggest referring to "These Services" instead (i.e., "PCAOB Registered – These Services Not Subject to PCAOB Oversight").

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?

We do not take exception to providing appropriate transparency in auditors' reports for audits of entities that are not subject to the PCAOB's oversight.[3] The proposal's footnote 43 states, "[w]e understand 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." The Board identifies certain types of audits that would be subject to Proposed Rule 2400(b)(4);

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1 Proposal at 12.

2 Proposal at 12.

3 AICPA AU-C 700.A63 Examples of situations in which an auditor may be engaged to conduct an audit in accordance with the standards (or auditing standards) of the PCAOB for an entity whose audit is not within the jurisdiction of the PCAOB include audits for clearing agencies and futures commission merchants registered with the U.S. Commodities Futures Trading Commission (CFTC), as well as other entities registered with the CFTC; audits of financial statements included in certain securities offering documents pursuant to Regulation A of the Securities Act of 1933; and circumstances in which a non-issuer company desires, or is required by contractual agreement, to obtain an audit of its financial statements in accordance with the standards of the PCAOB.

however, we believe, based on our experience, that the range of situations is broader and, for example, includes when a company makes a confidential submission on an initial public offering registration statement and when a company files a Form 10 registration statement. We would like to make sure that the Board is aware of the extent of situations where we expect proposed Rule 2400(b)(4) would apply to audit reports included in filings with the SEC.

14. Should a conforming change be made to AS 3101 or AS 3105 to cross-reference the disclosure obligation of proposed Rule 2400(b)(4) applicable to audits performed in accordance with PCAOB standards for entities that are not issuers or broker-dealers? Should we consider alternative conforming changes to PCAOB standards? If so, what changes would be preferable, and why?

We recommend that the Board make conforming changes to extant standards AS 3101 and AS 3105, as well as to extant standard AS 4105 to address situations mentioned in our response to question 12 (e.g., when a company has made a confidential submission on an initial public offering registration statement and either the initial confidential registration statement or the confidential amendments include interim information for which a review report is required to be issued under the American Institute of Certified Public Accountants (AICPA) AU-C 930.30). We believe amendments to these extant standards would help keep the public informed, avoid misconceptions and drive consistency in application of Rule 2400(b)(4).

17. Is the proposed amendment to Form 3 clear and appropriately tailored? Why or why not?

We suggest that the Board clarify why the benefits of the proposed disclosure requirement would outweigh its costs, given that other similar disclosure requirements exist.

The proposal would require a registered firm to report on Form 3 within 30 days of the first time it issues an audit report for an issuer or broker-dealer or plays a substantial role in such an audit if the firm has not done either of those things in the past three years or more. However, the Proposal recognizes that such firms already are required to make such a disclosure in their annual reports on Form 2. The Board also recognizes that disclosure of an issuer audit report is required to be filed on Form AP, which is due within 35 days (or sometimes earlier) after the audit report is first included in a document filed with the Securities and Exchange Commission.

While the Proposal estimates that about 20 firms would be required to make such a Form 3 filing every year, a broader set of firms would need to put in place controls to prepare such reports when they are required. Given that relevant information already is included in filings on Form 2, and to a lesser extent on Form AP, we suggest that the Board further assess the benefit of requiring a similar disclosure on Form 3. This could include determining the costs of compliance relative to the expected benefits to Form 3 users including, for example, data concerning how often Form 3 filings are accessed on the PCAOB's website.

27. Do commenters concur with our evaluation of the costs and benefits? Are there additional benefits or costs that should be considered? If so, what are they?

We note that the proposal does not quantify the costs of compliance to registered firms and asserts that firms' assessments of marketing and other communications "should not impose significant additional costs on [them],"[4] even though the proposal would apply to "all of the marketing statements that a public accounting firm or its associated persons communicate or transmit to a client, potential client, or the public."[5]

We suggest that the PCAOB present information concerning the number of registered firms and associated persons, and clients of same, for example, in estimating the number of communications that might be subject to the proposal. We also suggest that the PCAOB estimate the number of hours registered firms would need to spend creating controls to comply with the proposed requirements, for example.

Additionally, refer to the response to Question 17 above.

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We thank the Board and its staff for their consideration of this letter. We would be pleased to discuss our comments at their convenience.

Very truly yours,

4 Proposal at 55.

5 Proposal at 12.