



Members of the Investor Advisory Group

Via Email

April 12, 2024

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

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 Secretary Brown and Members of the Public Company Accounting Oversight Board (PCAOB or Board):

The Members of the Investor Advisory Group (MIAG)¹ appreciate the opportunity to comment on the PCAOB's "Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration" (Proposal).² We strongly support the Board in addressing the related issues, which have existed prior to the current board.

Background

The Proposal seeks to address three shortcomings in its registration process. The first shortcoming is the inappropriate use by a professional certified public accounting (CPA) firm of its registration with the PCAOB, to market the services it provides beyond the audit(s) of issuers and broker dealers. This would include marketing services such as consulting, advisory and income tax services, which are beyond the scope of the PCAOB's oversight as set forth in the Sarbanes-Oxley Act of 2002 (SOX).³ This includes inappropriate and improper

¹ This letter represents the views of Investor Advisory Group (IAG) and does not necessarily represent the views of all its individual members, or the organizations by which they are employed. IAG views are developed by the members of the group independent of the views of the Public Company Accounting Oversight Board (PCAOB) and its staff. For more information about the IAG, including a listing of the current members, their bios, and the IAG charter, see <https://pcaobus.org/about/advisory-groups/investor-advisory-group>.

² Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration, PCAOB Release No. 2024-001 (Feb. 27, 2024), https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-054/2024-001-registration.pdf?sfvrsn=51869da_2.

³ See Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 101(c), 116 Stat. 745, 751-52 (July 30, 2002), available at <https://www.govinfo.gov/content/pkg/PLAW-107publ204/html/PLAW-107publ204.htm> ("Duties of the Board.--The Board shall, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section--(1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102; (2) establish or

statements by a registered firm that states or implies that registration with the PCAOB is an endorsement, support of, or recommendations of the services of the firm.

A second shortcoming set forth in the Proposal is the registration of firms who:

- a. Fail to comply with the rules of the Board with respect to timely filing of required Form 2⁴ annual reports and/or timely payment of annual fees; and/or
- b. Have registered with the PCAOB but are inactive and not performing audits of issuers or broker dealers.

These firms cause the PCAOB to use its limited staff and resources to maintain registration data of firms for which the Board has no oversight authority or function. It is unclear what reason these firms remain registered other than to be able to represent to the public they are registered with the PCAOB.

The third item in the Proposal would permit the Board to consider prior false or misleading statements by a firm when considering a firm's registration.

At the time of the passage of SOX Congress debated whether the PCAOB would have oversight of audits of public company issuers, or both public and private companies. Congress decided the provisions of SOX would not be applicable to accounting firms that perform audits of only private companies. The following language from the legislative history of SOX makes this point clear:

Title I and II of the Sarbanes-Oxley Act of 2002 are designed to apply only to accounting firms that audit public companies. They are not designed to apply to audits of private companies.⁵

Since 2002, CPA firms, investors and the American public have come to associate the PCAOB audits with efforts to produce higher quality audits.⁶ As a result, and as the Proposal indicates, "inactive" accounting firms by the hundreds – almost half of all firms registered – have voluntarily decided to associate themselves with the PCAOB through its registration process.⁷ Such registration is not required, is voluntary, and comes with the full knowledge that the published rules of the PCAOB requires a firm which registers (1) to file an annual report on Form 2 by the deadline date, and (2) to pay an initial and ongoing annual fee.⁸

adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103; (3) conduct inspections of registered public accounting firms, in accordance with section 104 and the rules of the Board; (4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with section 105; (5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest; (6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and (7) set the budget and manage the operations of the Board and the staff of the Board.”)

⁴ See Form 2 - Annual Report For Summary Table of Contents, PCAOB (last visited Apr. 9, 2024), https://pcaobus.org/about/rules-rulemaking/rules/form_2.

⁵ S. Rep. No. 107-205, at ILF (July 3, 2002), available at <https://www.congress.gov/107/crpt/srpt205/CRPT-107srpt205.pdf>.

⁶ See PCAOB Release No 2024-001 at 42 (“In particular, academic research indicates that PCAOB-registered firms subject to PCAOB inspection tend, on average, to have higher audit quality than PCAOB-registered firms that are not subject to PCAOB inspection.” [footnotes omitted]).

⁷ See *id.* at 39 (Figure 1).

⁸ See *id.* at 9 (“Each year, a registered firm must file an annual report with the Board and pay an annual fee to the Board.”).

Any professional firm that does not audit public companies can avoid having to file an annual report and pay fees, simply by (1) not registering with the PCAOB or (2) withdrawing its registration, thereby avoiding any cost or burden.⁹ In addition, the PCAOB has stated in its *Frequently Asked Questions Regarding Registration with the Board*, “[T]he Board does not encourage the registration of firms that are not required to be registered and are not actively seeking to develop their practice to provide services for which registration is required.”¹⁰

As indicated in the Proposal, “[r]egistration with the PCAOB provides access to a key privilege: the ability to issue audit reports for issuers and broker-dealers or to play a substantial role in those audits.”¹¹ In their role as gatekeepers, we agree with the Board that PCAOB registered (public) accounting firms “bolster the reliability of financial information disclosed by issuers and broker-dealers to investors and other stakeholders.”¹²

MIAG Comments

As a result, we support the Proposal’s basic idea that as gatekeepers, accounting firms should not be permitted to use PCAOB registration as a marketing tool or an implied endorsement with respect to activities – like crypto proof-of-reserve reports¹³ – that are outside the PCAOB’s authority. This includes both firms whose registrations are active and inactive. We also generally agree that requiring a statement in the context of work that the PCAOB cannot inspect is a reasonable approach to deal with the issue. We recommend the statement be more specific and convey additional information to the reader such as: “Services Not Subject to PCAOB Oversight including inspections for compliance with PCAOB standards and enforcement.”

In addition, we support the Proposal’s provisions, deeming firms which do not file annual reports and do not pay the annual registration fee as having made a constructive request to withdraw from PCAOB registration. We agree that it makes sense to get these firms off the registration rolls without having to use the PCAOB’s budgetary and staffing resources, including resources for registration, inspection, and enforcement staff. However, we believe a simplified and more efficient approach to this problem should be adopted.

More specifically, we believe a firm which (1) has not timely filed its annual report and (2) has not paid its annual fee on time, should be sent a notice in writing to its latest available address noting delinquency. The notice should state that if (1) the firm remains noncompliant with the PCAOB rules, and (2) the noted two deficiencies are not corrected within 60 days, the firm’s registration will be terminated. The PCAOB should post a list of such notices on its website, as well as a list of firms whose registrations have been terminated in the last year.

We also believe the PCAOB’s resources can be put to better use than maintaining firm registrations and associated data for firms that are inactive and serve no useful purpose. For those firms whose registrations have been inactive for more than one year, we believe the PCAOB should send them a notice that their registrations will be terminated

⁹ *See id.* at 56 (“For firms that are no longer in existence, are not operational, or are amenable to withdrawing from PCAOB registration, there would be no costs associated with being removed from the PCAOB’s registration list.”).

¹⁰ *Frequently Asked Questions Regarding Registration with the Board*, PCAOB Release 2003-011F at 5 (Dec. 4, 2017) (emphasis added), https://pcaobus.org/Registration/Information/Documents/Registration_FAQ.pdf.

¹¹ PCAOB Release No. 2024-001 at 2.

¹² *Id.*

¹³ *See id.* at 48 (We generally agree with the PCAOB that: “To the extent that PCAOB-registered firms provide proof-of-reserve engagement services to their cryptocurrency clients, there is a risk that investors and other market participants might mistakenly believe such services fall under PCAOB oversight, when they do not.”).

in 90 days unless they can reasonably demonstrate that they expect to perform an audit of an issuer or broker dealer or an audit required by a regulator within the next year.

We strongly support permitting the Board to consider prior false or misleading statements by a firm when considering a firm's registration. We were surprised such a rule had not previously existed.

The Proposal also raises a question as to why the Board's processes and procedures, have not been subject to quality controls that would have identified these deficiencies in the past and resulted in the issues being addressed and resolved in the more than two decades the PCAOB has existed. Notably, the proposed rules cover, and the PCAOB's analyses of economic impacts consider, only registered firms. Unregistered firms may also inappropriately and unlawfully indicate PCAOB registration in their marketing materials. The costs and benefits of policing these types of inappropriate and unlawful acts of non-registered firms should be considered. While the PCAOB has established a tip and referral line for use by individuals, the Board states: "that the PCAOB does not provide monetary awards for tips or referrals."¹⁴ We encourage the PCAOB to establish whistle blower hotlines as many federal agencies have and to offer monetary awards. If necessary, we would encourage the Board to request authority to do so from the Securities and Exchange Commission and/or Congress.

Finally, and more broadly, we observe that the Proposal, including the "Proposed Rule Text and Form Amendments,"¹⁵ uses the term "client"¹⁶ throughout, referring to an audited company and its management as the "client," and failing to recognize the "public responsibility transcending any employment relationship with the client."¹⁷ In those instances in the Proposal, including the "Proposed Rule Text and Form Amendments", when the term "client" is referring to an audited company and its management, we would prefer that "client" be replaced with the term "company under audit."¹⁸ As we have previously requested, we would prefer to see it handled this way in all future proposed and final standards.¹⁹

¹⁴ Tips and referrals, Information that Assists PCAOB Enforcement and Inspection Efforts, PCAOB (last visited Apr. 9, 2024), <https://pcaobus.org/oversight/enforcement/tips-referrals>.

¹⁵ PCAOB Release No. 2024-001 at A-1 to A-3.

¹⁶ *See, e.g., id.* at A1 ("When marketing or otherwise holding out a registered public accounting firm to a client, potential client, or the public, the firm and its associated persons must not make any untrue statement of material fact, or omit stating a material fact necessary to make the statements made not misleading, concerning the firm's PCAOB registration status, including the extent of the PCAOB's oversight of the firm's services.").

¹⁷ *U.S. v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984), available at <https://supreme.justia.com/cases/federal/us/465/805/>.

¹⁸ Letter from Members of the IAG to Office of the Secretary, PCAOB 2 (May 16, 2023), https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-049/3_miag.pdf?sfvrsn=d18fac00_4.

¹⁹ *See id.* ("In those instances where the term 'client' is referring to the company and its management, we would prefer that 'client' be replaced with the term 'company under audit[]' [and] [i]n fact, we would prefer to see it handled this way in any future proposed standards.").

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Thank you for considering the comments of the MIAG, who represent the primary customers of audited financial reports. If you, any members of the Board, or your staff have questions or seek further elaboration of our views, please contact Amy McGarrity at amcgarrity@copera.org.

Sincerely,

Members of the Investor Advisory Group

Members of the Investor Advisory Group

APPENDIX

APPENDIX

Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration

Responses to Questions

April 12, 2024

This Appendix should be read with our letter, it includes additional specific responses to the questions raised in the "Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration"¹:

1. Is the proposed general prohibition on false or misleading statements concerning a firm’s PCAOB registration status, including the extent of the PCAOB’s oversight of a firm’s services, clear and appropriately tailored? Why or why not?²

We believe the proposed general prohibition on false or misleading statements concerning a firm’s PCAOB registration status, including the extent of the PCAOB’s oversight of a firm, is written succinctly with a clear scope.

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?³

We believe 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 captures all of a firm’s marketing and otherwise holding out statements.⁴ We, however, see no justifiable reason for an auditor to misrepresent their relationship with the PCAOB, in any manner. We, therefore, would not object to a broader rule that would encompass all misrepresentations of an auditor’s relationship with the PCAOB.

3. Is the proposed prohibition on statements suggesting that the PCAOB has sponsored, recommended, or otherwise endorsed a firm or any of its services clearly expressed and appropriately structured? Why or why not?⁵

We believe the proposed prohibition on statements suggesting the PCAOB has sponsored, recommended, or otherwise endorsed a firm or any of its services is clearly expressed and appropriately structured.

¹ Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration, PCAOB Release No. 2024-001 (Feb. 27, 2024), https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket-054/2024-001-registration.pdf?sfvrsn=51869da_2.

² *Id.* at 12 (emphasis added).

³ *Id.*

⁴ *Id.* at A1 & A2.

⁵ *Id.* at 14 (emphasis added).

4. Should the scope of the prohibition be adjusted? If so, in what ways should it be narrowed or broadened?⁶

We believe the scope of the prohibition should not be adjusted. However, as indicated in response to Question 2, we would not object to a broadening of the scope of the prohibition if the PCAOB concluded that a broader scope is consistent with the protection of investors.

5. Is the proposed prohibition on firms not currently providing services subject to PCAOB oversight and their associated persons clear and appropriately tailored?⁷

We believe the proposed prohibition on firms not currently providing services subject to PCAOB oversight and their associated persons is clear. See the commentary in our letter with respect to how we believe the rule should be appropriately tailored.

6. Is a lookback period of three years clear? Is it appropriate for assessing whether the firm is currently providing services that subject the firm's work to PCAOB oversight? If not, should this lookback period be longer or shorter, and why?⁸

We believe the lookback period of three years is too long. For example, assume an audit firm stops providing public company services in March of 2020. By adopting a lookback period of three years, the firm could escape the rule for the remainder of 2020, 2021, 2022, and until March of 2023. We believe this would be inappropriate.

We understand the PCAOB may take up to three years to complete inspections of the firm's most recent audits and issue its inspection reports. However, we do not believe that justifies a three-year reprieve from having to comply with the rule. We believe the three years should be shortened to one year.

In addition, we would not object if the PCAOB established a policy that any penalties imposed for violations of the proposed requirements be structured such that the longer a firm is, or has been, in violation of the rules the larger or more onerous the penalties.

7. Is the phrase "prominently indicating in that statement," which is used throughout proposed Rule 2400(b), sufficiently clear? If not, why not?⁹

We believe the phrase "prominently indicating in that statement," is sufficiently clear.¹⁰

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

⁶ *Id.*

⁷ *Id.* at 18 (emphasis added).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at A1 & A2.

¹¹ *Id.* at 18-19 (emphasis added).

We believe the phrase “PCAOB Registered – Not Currently Providing Services Subject to PCAOB Oversight” should be more specific and convey additional information to the reader such as: “Services Not Subject to PCAOB Oversight including inspections for compliance with PCAOB standards and enforcement.”

9. Should firms that are newly registered with the PCAOB have some period of time before they (and their associated persons) are required to disclose in firm marketing or other public statements that such firms are “PCAOB Registered – Not Currently Providing Services Subject to PCAOB Oversight,” if such firms or their associated persons mention PCAOB registration in those statements? If so, how long should that transition period last? What would be the purpose of such a transition period? What qualification language, if any, should be required during that transition period?¹²

We question why the PCAOB would exempt a firm from the proposed disclosure requirements during a transition period simply because it decided to register with the PCAOB. The PCAOB has failed to adequately explain why a transition period protects investors and is in their best interests.

At the time the firm decided to register with the PCAOB, it was aware of the prohibition on using the PCAOB registration to market the firm and agreed to abide by those rules. We, therefore, would agree with the PCAOB if it concluded that in certain circumstances a transition period was inappropriate because of the potential harm to market participants resulting from drawing inaccurate conclusions from the firm’s marketing or other public statements.

10. Is the proposed rule governing use of a firm’s PCAOB registration or PCAOB oversight in statements concerning services that are not subject to PCAOB oversight clear and appropriately tailored? Why or why not?¹³

We believe the proposed rule governing use of a firm’s PCAOB registration or PCAOB oversight in statements concerning services that are not subject to PCAOB oversight is clear and appropriately tailored.

11. 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?¹⁴

We recommend the phrase “PCAOB Registered – Not Currently Providing Services Subject to PCAOB Oversight” should be more specific and convey additional information to the reader such as: “Services Not Subject to PCAOB Oversight including inspections for compliance with PCAOB standards and enforcement.”

12. Is the proposed rule governing reference to a firm’s PCAOB registration or PCAOB oversight in auditor’s reports for clients that are not issuers or broker-dealers clear and appropriately tailored? Why or why not?¹⁵

¹² *Id.* at 18 (emphasis added).

¹³ *Id.* at 21.

¹⁴ *Id.*

¹⁵ *Id.* at 23.

We believe the proposed rule governing reference to a firm’s PCAOB registration or PCAOB oversight in auditor’s reports for clients that are not issuers or broker-dealers is clear and appropriately tailored. We agree with the Board that “it is important that such references do not lead to confusion, deception, or mistakes among the firm’s clients, or the public about the nature and extent of the PCAOB’s oversight of the firm’s professional services.”¹⁶

13. Is the phrase “PCAOB Registered – Services Not Subject to PCAOB Oversight” appropriate and understandable in this context? Should we consider alternative suggested disclaimer language? If so, what language would be preferable, and why?¹⁷

See comments in our letter and response to Question 11.

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?¹⁸

We believe a conforming change should be made to AS 3101¹⁹ or AS 3105²⁰ to cross-reference the disclosure obligation of proposed Rule 2400(b)(4)²¹ applicable to audits performed in accordance with PCAOB standards for entities that are not issuers or broker-dealers. We agree with the PCAOB that without the disclosure required by proposed 2400(b)(4) “statements concerning PCAOB registration in auditors’ reports for clients that are not issuers or broker-dealers are false or misleading and may cause confusion, deception, or mistakes among clients, potential clients, or the public, since that audience may be misled into thinking that work that is outside of the PCAOB’s oversight falls within it.”²²

15. Is the proposed rule regarding firms with pending withdrawal requests clear and appropriately tailored? Why or why not?²³

We believe the proposed rule regarding firms with pending withdrawal requests is clear and appropriately tailored. We agree with the PCAOB “that it would be false or misleading for a firm that has a request for leave to withdraw from registration pending with the PCAOB, or such firm’s associated persons, to state to a client, potential client, or the public that the firm is registered with the PCAOB without disclosing the firm’s pending withdrawal

¹⁶ *Id.* at 22.

¹⁷ *Id.* at 24 (emphasis added).

¹⁸ *Id.*

¹⁹ AS 3101: The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, PCAOB (last visited Apr. 9, 2024), <https://pcaobus.org/oversight/standards/auditing-standards/details/AS3101>.

²⁰ AS 3105: Departures from Unqualified Opinions and Other Reporting Circumstances, PCAOB (last visited Apr. 9, 2024), <https://pcaobus.org/oversight/standards/auditing-standards/details/AS3105>.

²¹ PCAOB Release No. 2024-001 at A-2 (“Auditors’ Reports for Clients Other Than Issuers, Brokers, or Dealers. When issuing an auditor’s report for any client that is not an issuer, broker, or dealer, a registered firm must not state in its auditor’s report that the firm is registered with the PCAOB or is subject to the PCAOB’s oversight without also prominently indicating in that auditor’s report that such services are not subject to PCAOB oversight (for example, “PCAOB Registered – Services Not Subject to PCAOB Oversight”)”).

²² *Id.* at 23-24.

²³ *Id.* at 25 (emphasis added).

request.”²⁴ However, we would support the PCAOB if it went further and prohibited firms with pending withdrawal requests from using any form of “PCAOB Registered” in its public statements.

16. Is the proposed rule regarding consideration of a registration applicant’s or its personnel’s false or misleading statements regarding the firm’s PCAOB registration status, including the extent of PCAOB oversight of the firm’s services clear and tailored appropriately? Why or why not?²⁵

We believe the proposed rule regarding consideration of a registration applicant’s or its personnel’s false or misleading statements regarding the firm’s PCAOB registration status, including the extent of PCAOB oversight of the firm’s services is clear and tailored appropriately. We agree with the PCAOB “that such false or misleading statements may have resulted from the firm’s failure to exercise the degree of care that the Board would expect of a public accounting firm under the circumstances.”²⁶

17. Is the proposed amendment to Form 3 clear and appropriately tailored? Why or why not?²⁷

We believe the proposed amendment to Form 3²⁸ is clear and appropriately tailored. We agree with the PCAOB that “[a]mending Form 3 to require the filing of a special report within 30 days after a firm first issues an audit report for an issuer or broker-dealer, or initially plays a substantial role in such an audit . . . would . . . expedit[e] the public’s access to this information on the PCAOB’s website.”²⁹

18. Would proposed Rule 2107(h) strike the right balance between expediting our ability to clear from PCAOB registration firms that no longer wish to remain registered and giving potentially affected firms appropriate procedural safeguards? What are the advantages and disadvantages of the proposed approach? Are there alternative procedural mechanisms we should consider to withdraw the registrations of firms that fail to meet their annual reporting and fee payment obligations?³⁰

We do not believe the proposed Rule 2107(h)³¹ strikes the right balance between expediting the PCAOB’s ability to clear from PCAOB registration firms that no longer wish to remain registered and giving potentially affected firms appropriate procedural safeguards. A professional accounting firm clearly understands its obligations when it is required to, or voluntarily, registers with the PCAOB.

It is questionable as to why an accounting firm which fails to fulfill its legal requirements for a year needs procedural safeguards before they are removed from PCAOB registration. The existence of the proposed safeguards imposes on the PCAOB an obligation to spend resources trying to track down the firm, which may have been located outside the U.S. at last notice. In those circumstances when the required annual reports have

²⁴ *Id.* at 24.

²⁵ *Id.* at 26 (emphasis added).

²⁶ *Id.* at 25.

²⁷ *Id.* at 27 (emphasis added).

²⁸ *Id.* at A2 (“The Firm has issued an audit report for an issuer, broker, or dealer, or played a substantial role in such an audit, following a period of three years or more in which the firm neither issued an audit report for an issuer, broker, or dealer nor played a substantial role in any related audit (Complete Part VIII.)”).

²⁹ *Id.* at 27.

³⁰ *Id.* at 36 (emphasis added).

³¹ *Id.* at A-3.

not been filed *and* the annual fees have not been paid, we believe the firm’s registration should be automatically withdrawn 60 days after the PCAOB has notified the firm of its delinquencies.³²

19. Is it appropriate to infer, for purposes of proposed Rule 2107(h), that a registered firm that has not filed an annual report and has not paid an annual fee for at least two consecutive reporting periods has made a constructive request for leave to withdraw from PCAOB registration? If not, why not? Would omitted annual reports and annual fees across a different period of time be more appropriate? If so, how long?³³

See comments in our letter and response to Question 6. We believe that it is appropriate to infer, for purposes of proposed Rule 2107(h)³⁴ that a registered firm that (1) has not filed an annual report *and* (2) has not paid an annual fee for a year has made a constructive request for leave to withdraw from PCAOB registration. And we agree with the PCAOB that “three or more years of delinquency seems too long of a period to presume that a firm wishes to continue to remain registered.”³⁵

20. Is written notice to the last reported address of the firm’s primary contact with the Board (i.e., the address our rules mandate must be kept current) an appropriate means of informing a firm that its registration could be withdrawn? If not, what additional or alternative notice procedures should we consider?³⁶

For the reasons discussed in our letter and responses to Questions 6 and 18, we do not believe the proposed notice procedures are necessary. More specifically, we believe that when the required annual reports have not been filed *and* the annual fees have not been paid, the firm’s registration should be automatically withdrawn subject to notification of the delinquency to the firm and a 60-day period to remedy the shortcoming. This should be adequate time for the firm to notify the PCAOB in case the PCAOB has made an error in its own records.

For accounting firms who are repeatedly delinquent (recidivists) in making their annual fee payment, sending a notice as we recommend, with a 30-day period as proposed by the Board, is appropriate.³⁷

21. Is notice on our website an appropriate supplemental means of providing the firm with notice that its registration could be withdrawn? Are there any other forms of notice that we should consider?³⁸

See commentary provided in our letter. If the Board concludes that notice procedures should be required, we believe that notice on the PCAOB’s website is an appropriate supplemental means of providing the firm with

³² This is analogous to a driver letting their driver’s license expire, and not filing the renewal application and paying the renewal fees. When that occurs, we understand that at least in some authorities one’s driver’s license does not continue in good standing until and unless the licensing agency contacts them. Likewise, the Public Company Accounting Oversight Board (PCAOB) rules should also provide that if a certified public accountant’s license is withdrawn by its state board of accountancy, the PCAOB may also take the necessary steps to deregister the firm.

³³ PCAOB Release No. 2024-001 at 36 (emphasis added).

³⁴ *Id.* at A-3.

³⁵ *Id.* at 33.

³⁶ *Id.* at 36 (emphasis added).

³⁷ *See id.* at 35 (“If, after the 30-day period in proposed Rule 2107(h), the firm has not emailed the Registration staff, the Board would be able to treat the firm’s repeated failures to file annual reports and to pay annual fees as a constructive request for leave to withdraw from registration and deem the firm’s registration withdrawn.”).

³⁸ *Id.* at 36 (emphasis added).

notice that its registration could be withdrawn. We note that “[d]isclosing the firm’s pending withdrawal on . . . [the PCAOB] website would . . . be consistent with the current firm-initiated withdrawal process.”³⁹

22. The website posting also would provide the firm’s current and former clients—and the broader public—with notice that the firm’s registration could be withdrawn. Are there any other forms of notice to current and former clients or other stakeholders that we should provide? If so, how might we ascertain the identity of, and contact information for, such stakeholders?⁴⁰

We believe website posting is appropriate and the PCAOB should not at this time provide any other forms of notice to current and former clients or other stakeholders.

23. Is 30 days a reasonable amount of time for a registered firm to act and to prevent the withdrawal of its registration? If not, how long should the opportunity to contact the Registration staff be?⁴¹

As indicated in response to Question 20, in those circumstances involving repeated delinquencies, we agree with the PCAOB that “30 days is a reasonable amount of time for the firm to review the notice, consider whether it wishes to remain registered, and send an email to the Registration staff.”⁴²

24. Is email a reasonable way to require a firm to contact the Registration staff? If not, what alternative method(s) of contacting staff would be preferable?⁴³

We believe sending either a letter or “[r]equiring that an email be sent by the firm’s primary contact would increase the likelihood that the person who contacts the PCAOB is an authorized representative of the firm [and] . . . would increase the likelihood that future communications made to the firm’s primary contact would be most likely to result in actual notice to the firm.”⁴⁴

25. We request comment generally on the baseline for evaluating the economic impacts of the proposed rules. Are there additional data or academic studies that we should consider?⁴⁵

We believe the baseline for evaluating the economic impacts of the proposed rules on registered firms is appropriate and we are not currently aware of any additional data or academic studies that the PCAOB should consider.⁴⁶

26. We request comment generally on the analysis provided above regarding the need for the proposals. Should we consider any additional arguments, academic studies, or data related to the need for rulemaking?⁴⁷

³⁹ *Id.* at 34.

⁴⁰ *Id.* at 36 (emphasis added).

⁴¹ *Id.* at 37.

⁴² *Id.* at 34.

⁴³ *Id.* at 37 (emphasis added).

⁴⁴ *Id.* at 35.

⁴⁵ *Id.* at 44 (emphasis added).

⁴⁶ Notably, the proposed rules cover and the PCAOB’s analyses of economic impacts consider only registered firms. Unregistered firms may also inappropriately and unlawfully indicate PCAOB registration in their marketing materials. The costs and benefits of policing these types of inappropriate and unlawful acts of non-registered firms is beyond the scope of the proposed rules.

⁴⁷ PCAOB Release No. 2024-001 at 52 (emphasis added).

We believe the analysis provided by the PCAOB regarding the need for the proposals is appropriate. As two examples, we note PCAOB Chair Erica Y. Williams statement that “[u]nfortunately, we have seen too many instances of firms promoting their PCAOB registration in a way that could mislead clients, investors, and others.”⁴⁸ We also note PCAOB Board Member Anthony C. Thompson statement that:

The Board’s approval of a firm’s registration application does not, however, amount to an endorsement of the firm and does not speak to the quality or excellence of the firm’s professional services. As such, it is important that a firm’s messaging regarding its PCAOB-registration status is precise and accurate, such that the public and investors are not unwittingly misled.⁴⁹

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?⁵⁰

We concur with the PCAOB’s evaluation of the costs and benefits. Of particular note, we generally agree with the PCAOB that one of the important benefits is that “Proposed Rule 2400”⁵¹ could improve “transparency and accuracy of information in the audit market [that] would aid clients, potential clients, investors, and other market participants in making well-informed decisions regarding audit services, and other decisions in the capital markets, with lower information search costs.”⁵² Similarly, we agree with PCAOB Chair Williams that the benefits of Proposed Rule 2400 include:

[It] would strengthen investor protections against false and misleading information by ensuring accountability in three ways:

- First, the rule would prohibit a registered firm and its associated persons from making false or misleading statements concerning the firm’s PCAOB registration status, including the extent of the PCAOB’s oversight of a firm’s services.
- Second, the proposal outlines a non-exhaustive list of scenarios that would violate the general prohibition, including implying the PCAOB sponsors, recommends, or otherwise endorses the firm or its services, or connecting PCAOB registration to services not subject to PCAOB oversight.
- Finally, proposed Rule 2400 would codify the Board’s current practice of considering any prior false or misleading statements made by a firm or its personnel regarding the firm’s PCAOB

⁴⁸ Erica Y. Williams, Chair, PCAOB, Chair Williams’ Statement on the Proposal of a New Rule on False or Misleading Statements on Registration and Oversight (Feb. 27, 2024), <https://pcaobus.org/news-events/speeches/speech-detail/chair-williams-statement-on-the-proposal-of-a-new-rule-on-false-or-misleading-statements-on-registration-and-oversight#:~:text=Registration-.Chair%20Williams'%20Statement%20on%20the%20Proposal%20of%20a%20New%20Rule,Statements%20on%20Registration%20and%20Oversight&text=Auditors%20play%20a%20vital%20role,represent%20themselves%20and%20their%20work.>

⁴⁹ Anthony C. Thompson, Board Member, PCAOB, Statement on Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from, Registration (Feb. 27, 2024), <https://pcaobus.org/news-events/speeches/speech-detail/statement-on-proposals-regarding-false-or-misleading-statements-concerning-pcaob-registration-and-oversight-and-constructive-requests-to-withdraw-from-registration.>

⁵⁰ PCAOB Release No. 2024-001 at 56 (emphasis added).

⁵¹ *Id.* at 55 (emphasis omitted).

⁵² *Id.* at 53.

registration status, including the extent of PCAOB oversight of the firm, when reviewing a firm's registration application.⁵³

We also generally agree with the PCAOB that another important benefit is that “proposed Rule 2107(h) would allow the PCAOB to more effectively allocate staff resources that are currently used to attempt to contact delinquent firms, which would enhance the PCAOB's ability to advance its investor protection mission.”⁵⁴

Finally, we agree with PCAOB Board Member George R. Botic about the benefits of ensuring “transparency in registered firms' public communications and emphasize[ing] [the Board's] mission of investor protection and the public interest.”⁵⁵

28. Are there additional academic studies or data related to the benefits and costs of the proposals? If so, please provide citations and other reference information for such studies and data.⁵⁶

We are currently unaware of any additional academic studies or data related to the benefits and costs of the proposals.

29. Are there any data that could provide a quantitative estimation of the benefits and costs? If so, please provide the sources of such data.⁵⁷

We are currently unaware of any additional data that could provide a quantitative estimation of the benefits and costs.

30. We request comment on the potential unintended consequences of the proposals. Are the responses to the potential unintended consequences discussed in the release adequate? Are there additional potential unintended consequences that we should consider? If so, what responses to them should be considered?⁵⁸

We believe the responses to the potential unintended consequences discussed in the proposals are adequate. More specifically, with respect to the “unintended consequence [that] could arise if a firm was withdrawn from registration contrary to the firm's wishes,”⁵⁹ see response to Questions 6 and 18, and comments in our letter.

In addition, with respect to potential unintended consequences regarding the “Impacts on Non-PCAOB Markets,”⁶⁰ we generally agree with the PCAOB that “Proposed Rule 2400 would benefit markets outside of the PCAOB's jurisdiction by requiring firms to accurately report which services are not subject to PCAOB oversight,

⁵³ Erica Y. Williams, Chair, PCAOB, Chair Williams' Statement on the Proposal of a New Rule on False or Misleading Statements on Registration and Oversight.

⁵⁴ PCAOB Release No. 2024-001 at 55.

⁵⁵ George R. Botic, PCAOB, Board Member, Statement in Support of Proposed Changes to Certain PCAOB Registration Rules (Feb. 27, 2024), <https://pcaobus.org/news-events/speeches/speech-detail/statement-in-support-of-proposed-changes-to-certain-pcaob-registration-rules>.

⁵⁶ PCAOB Release No. 2024-001 at 56 (emphasis added).

⁵⁷ *Id.*

⁵⁸ *Id.* at 60.

⁵⁹ *Id.* at 58.

⁶⁰ *Id.* (emphasis omitted).

which could enhance transparency for market participants, including investors, enabling them to make more informed decisions.”⁶¹

31. We request comment on the alternative approaches described in this release that we considered but are not proposing. Are any of these approaches, or any other approaches, preferable to the approaches that are being proposed? What reasons support those approaches over the approaches proposed?⁶²

We believe that none of the current alternative approaches described in the release are preferable to the approaches being proposed. More specifically, we support the PCAOB’s decision to reject the alternative approach of “proposing a requirement that a registered firm must disclose in audit reports issued for issuers or broker-dealers that the engagement is subject to PCAOB oversight, along with making conforming changes to AS 3101, The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion and AS 3105, Departures from Unqualified Opinions and Other Reporting Circumstances.”⁶³ We agree with the PCAOB that “a firm’s indication in an audit report for an issuer or broker-dealer that the firm is registered with the PCAOB is not false or misleading [and] [t]hus, there would be no value to investors or other users of those reports in requiring additional, more specific disclosures.”⁶⁴

We respect to other approaches that may be preferable to the approaches that are being proposed, we note that the release indicates that of the 1,599 firms registered as of December 31, 2023, 699 (49%) are inactive.⁶⁵ We believe the PCAOB should reconsider the costs and benefits of having those firms registered. The registration of such firms requires the PCAOB to spend valuable and limited resources reading, reviewing, and approving the initial registrations for such firms. Those registrations subsequently require the use of time and dollars processing annual filings and fees, and confidentially maintaining the data on an ongoing basis. Those firms do not audit public companies. And there is little to no benefit to those registrations as far as protection of investors and enhancement of trust in the capital markets. As they are inactive, those firms are not serving to increase the pool of available audit firms and competition. The vast majority of firms are smaller firms that while they may audit and provide valuable services to private companies, they most likely lack the necessary quality controls, staff competence with respect to the applicable securities laws and auditing standards applicable to audits of public companies, and knowledge of the requisite Securities and Exchange Commission auditor independence rules.

While enhanced competition in the auditing market based on quality is vitally important as described in the U.S. Treasury Advisory Committee on the Auditing Profession,⁶⁶ we doubt the registration of inactive firms contributes in any meaningful way to that objective and goal. Because of the very genuine issues those firms face from economies of scale, many firms choose to spend their resources where they will achieve the highest rate of return. And for many of those firms, allocating resources to a limited market of smaller public companies they can serve and provide a high-quality audit is a decision they themselves often choose not to make. We note that we requested additional information from the PCAOB staff regarding this issue and were unable to obtain it.

⁶¹ *Id.*

⁶² *Id.* at 61 (emphasis added).

⁶³ *Id.* at 60.

⁶⁴ *Id.*

⁶⁵ *See id.* at 38 (“Among all 1,599 registered firms as of December 31, 2023, 1,424 registered firms (89 percent) filed the required Form 2 filings for reporting years 2021 through 2023 [and] [a]mong those 1,424 registered firms, 49 percent (699 registered firms) are ‘inactive.’”).

⁶⁶ *See* Advisory Committee on the Auditing Profession, Final Report, U.S. Dep’t Treasury at VII (Oct. 6, 2008) (on file with the Council of Institutional Investors) (“CONCENTRATION AND COMPETITION”).

The PCAOB has not encouraged the registration of inactive firms.⁶⁷ As a result, the PCAOB should consider including in its final rules language consistent with the comments in our letter. Certainly, SOX did not intend such firms to register with the PCAOB. And the resources of the PCAOB could be more effectively used for matters that would contribute to the protection of investors.

32. We request comment on the analysis of the proposals on EGCs. Are there reasons why the proposals should not apply to audits of EGCs? If so, what changes should be made so that the proposals would be appropriate for audits of EGCs?⁶⁸

We believe the PCAOB’s analysis of the proposals on EGCs is appropriate. More specifically, we agree with the PCAOB that:

To the extent that audit committees and investors of EGCs are less experienced in seeking PCAOB-registered public accounting firms to perform their audits, both audit committees and investors of EGCs may have a higher risk of being confused by firms’ misleading statements regarding PCAOB registration and the extent of PCAOB oversight. Therefore, *the benefits of proposed Rule 2400 may be greater for EGCs than for non-EGCs.*⁶⁹

33. What impact would the proposals likely have on EGCs, and how would this affect efficiency, competition, and capital formation?⁷⁰

See response to Question 32.

34. Are the proposed effective dates appropriate? If not, what would be appropriate effective dates for the proposed rules and the proposed amendment to Form 3?⁷¹

We believe the proposed effective dates are appropriate.

⁶⁷ See Frequently Asked Questions Regarding Registration with the Board, PCAOB Release 2003-011F at 5 (“the Board does not encourage the registration of firms that are not required to be registered and are not actively seeking to develop their practice to provide services for which registration is required”).

⁶⁸ PCAOB Release No. 2024-001 at 62-63 (emphasis added).

⁶⁹ *Id.* at 63 (emphasis added).

⁷⁰ *Id.*

⁷¹ *Id.*