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By email: [comments@pcaobus.org](mailto:comments@pcaobus.org)

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

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

Dear Office of the Secretary:

We appreciate the opportunity to comment on the Public Company Accounting Oversight Board's (PCAOB or the Board) Release No. 2024-001, *Proposal Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration* (the Proposal or Proposing Release). We support the Board's objective to protect investors against false and misleading information.

We acknowledge the importance of preventing confusion, deception or errors among stakeholders about the nature and extent of the PCAOB's oversight of firms' professional services. We also appreciate the possibility of such matters arising from how firms' registrations with and oversight from the PCAOB are portrayed. We have identified areas for clarification regarding certain aspects of the Proposal to further support the Board's stated objective. We provide our observations and feedback in this letter indicating the considerations we believe the Board should evaluate further before adopting PCAOB Rule 2400.

**Conforming changes to the auditing standards on the auditors' report**

To further support the PCAOB's mission to protect investors and further the public interest in the preparation of informative, accurate and independent audit reports, we recommend the PCAOB make conforming amendments to AS 3101 and AS 3105. As mentioned in the Proposing Release, certain non-issuer and non-broker-dealer entities<sup>1</sup> require, or are permitted to undergo, audits performed in accordance with PCAOB standards. We believe conforming amendments to AS 3101 and AS 3105, illustrating where and how auditors should prominently indicate in their report that such services are not subject to PCAOB oversight, would promote consistency and comparability for investors and other users of the auditor's report.<sup>2</sup> Without such conforming amendments, differences in the application of Proposed Rule 2400(b)(4) may lead to potential confusion for investors and other users of the auditors' report.

We suggest amending paragraphs .06 and .09g of AS 3101 to specify the necessary modifications to the auditors' report for compliance with both the auditing standards and the requirements of Proposed Rule 2400(b)(4). Similarly, we propose a cross-reference from AS 3105 to AS 3101 to incorporate these conforming amendments. These amendments will enhance consistency and simplify adoption by

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<sup>1</sup> For example, entities that submit confidential filings under the Jumpstart Our Business Startups (JOBS) Act, entities seeking to conduct an initial public offering that do not qualify as an EGC that submit a draft registration statement for nonpublic review, target entities of SPACs, entities filing using Form 10, and voluntary filers.

<sup>2</sup> For example, as it relates to the form of the auditors' report, commenters supported changes to the auditors' report that 'help facilitate a comparison between auditor's reports'. See PCAOB Release No. 2017-001 (p.60).

accounting firms. We would recommend similar amendments to AS 4105 related to auditors' interim review reports when performed in accordance with both PCAOB and AICPA standards.

### **Clarity about the interaction of the Proposal and federal securities laws**

We recommend providing clarification regarding the relationship between auditors' responsibilities under the federal securities laws and the Proposal where accounting firms registered with the PCAOB provide services to an issuer, broker or dealer that are not subject to PCAOB oversight. It is unclear how statements made by issuers, brokers or dealers regarding accounting firms' registration status or PCAOB oversight impact the auditors' responsibilities under the federal securities laws, including anti-fraud violations, when those statements do not align with the requirements in the Proposal for statements made by the accounting firms. For example, a registered accounting firm may provide non-PCAOB audit services to an issuer that are not subject to PCAOB oversight, and the issuer may disclose that the accounting firm is registered with the PCAOB without disclosing that such services were not subject to PCAOB oversight.

SEC Rule 206-(4)-2 under the Investment Advisers Act of 1940 (the Custody Rule) requires, in certain instances, an accounting firm that is registered with and subject to regular inspection by the PCAOB to perform independent verifications, prepare internal control reports, and perform audits of pooled investment vehicles. In Form ADV, registered investment advisors report the name of the accounting firm, whether the accounting firm is registered with the PCAOB, and whether the accounting firm is subject to regular inspection by the PCAOB.<sup>3</sup> However, Form ADV does not also require disclosure stating that these services are not subject to PCAOB oversight. In contrast, the SEC's Climate Rule appears to complement the objectives in the Proposal insofar as an issuer may engage a registered public accounting firm to perform the attestation engagements required by the SEC's climate-related rule and issuers will be required to disclose whether the GHG attestation provider is subject to any oversight inspection program, including the PCAOB's oversight, as well as whether the GHG emissions attestation engagement itself is included within the scope of authority of such oversight inspection program.<sup>4</sup>

The Proposal may have the unintended consequence of exposing an auditor to litigation or regulatory enforcement liability related to statements made by issuers, brokers or dealers in the event such statements do not align with what the Proposed Rule requires of accounting firms in describing their registration status and whether the services are subject to PCAOB oversight. Were such inconsistency ascribed to the accounting firm and further deemed to constitute a violation of the anti-fraud provisions of the federal securities laws, it could result in action under Rule 102(e) of the Commission's Rules of Practice or even direct action by the SEC under the anti-fraud provisions.<sup>5</sup> To that end, we encourage the Board to coordinate with the SEC to provide clarification about auditors' responsibilities related to such statements made by issuers, brokers, or dealers to further support the Board's objective of providing clear and appropriate information regarding registration status and PCAOB oversight.

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<sup>3</sup> See Schedule D of Form ADV.

<sup>4</sup> §229.1506(d)(1) and 229.1506(e)(6) both state the issuer is required to disclose whether the GHG emissions attestation provider is subject to any oversight inspection program, and if so, which program (or programs), and whether the GHG emissions attestation engagement is included within the scope of authority of such oversight inspection program.

<sup>5</sup> In a statement, Paul Munter stated, "an accounting firm should carefully consider the contents of any statements that it or its clients make about the scope of work performed and the nature of the procedures followed because material misstatements regarding those subjects could result in legal liability for the accounting firm." See The Potential Pitfalls of Purported Crypto "Assurance" Work, Paul Munter, July 27, 2023 [SEC.gov | The Potential Pitfalls of Purported Crypto "Assurance" Work](https://www.sec.gov/newsroom/statement-paul-munter-2023-07-27)

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We appreciate the Board's consideration of our comments and observations related to the Board's efforts to improve investor protections against false and misleading statements. We would be pleased to discuss our comments with the Board and its staff at your convenience. We look forward to continuing our engagement with the Board and its staff in support of our shared commitment of investor protection.

Sincerely,

**KPMG LLP**

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