June 7, 2024

Via email: comments@pcaobus.org

Public Company Accounting Oversight Board
Attn: Office of the Secretary
1666 K Street NW
Washington, D.C. 20006-2803

Re: Proposing Release: Firm Reporting; PCAOB Rulemaking Docket Matter No. 055

Dear Office of the Secretary:

BDO USA, P.C. welcomes the opportunity to comment on the Public Company Accounting Oversight Board's (PCAOB or the Board) proposing Release No. 2024-003, Firm *Reporting* (the Proposal).

We are supportive of the PCAOB's mission to protect investors and further the public interest in the preparation of informative, accurate, and independent reports through this and other efforts.

Notwithstanding that support, as outlined below, we believe that some of the proposed expanded areas of Firm Reporting are duplicative of other existing reporting protocols or require a level of effort by the reporting Firms that is disproportionate to the benefits. Further, we are concerned with whether the manner of reporting contemplated by the Proposal could compromise the confidentiality of highly sensitive business and competitive information. Finally, we note that the Center for Audit Quality has raised concerns with whether some aspects of Firm Reporting contemplated by the Proposal fall within the statutory mandate of the PCAOB; we believe that issue requires further research by the Board.

Confidential Treatment as Considered in the Proposal

Information provided through inspection procedures is protected under the confidentiality provision of Section 105(b)(5)(A) of the Sarbanes-Oxley Act; however, such confidential protections do not appear to apply to information contemplated by the Proposal to the extent provided through the PCAOB's special reporting process. While the Proposal notes the intention of the PCAOB to protect information called for by the Proposal as confidential, we note the absence of such information falling within the statutory protections provided under Section 105(b)(5)(A) of the Sarbanes-Oxley Act. We understand that the law on protection of information provided to the PCAOB in the manner proposed by the Proposal is not well-developed and are concerned with whether highly sensitive business and competitive information will be immune from civil litigation and therefore not subject to production in civil litigation or other legal processes. Given that uncertainty, we believe that any information required by the Proposal should be submitted by firms to the PCAOB only through the inspections process.

There are unique additional concerns with respect to the disclosure of information contemplated by the Proposal relating to cybersecurity matters. We believe firms should not be required to disclose information to the PCAOB confidentially or otherwise that exceeds applicable federal and state laws, rules and regulations. Confidentiality for cybersecurity incidents is often required at law enforcement agencies' direction or as a matter of effective incident response. Cybersecurity events often involve investigations into and responding to criminal conduct and issues of national security. Law enforcement agencies may prevent sharing of information with regulators or other parties while an investigation is pending or to prevent the cybercriminals from becoming aware that an

investigation or countermeasures are being deployed. Finally, publicity given to an attack, particularly a ransomware, through a public reporting process provides notoriety to attackers and delivers further leverage over a cyberattack victim during the critical time when a firm would be mounting an initial defense and response. Such notoriety and leverage would only embolden attackers to further target the accounting industry.

Financial Information

Fee Information

Currently, Form 2 requires disclosure of the percentage of total fees billed to issuer clients for audit services, other accounting services, tax services, and non-audit services relative to the total fees billed for the period. It is not clear to us how requiring reporting of fee information further disaggregated by dollar amount, inclusive of services to non-issuers, will be useful to stakeholders, nor whether requiring such disclosure of information that in many instances does not relate to audits of issuers and broker-dealers falls within or supports the PCAOB's mandate.

Further, to the extent disaggregated fee information by dollar amount is required, the PCAOB should consider applying a materiality standard to reduce the risk of reporting errors.

Financial Statements

Our understanding is that while some PCAOB-registered accounting firms currently have GAAP financial statements, many do not. While we recognize there may be theoretical benefits to a consistent basis of financial reporting for all accounting firms, we believe mandating this would be quite costly. Further, we question the utility of a consistent basis of accounting for these privately held entities and note that there would still be significant issues relating to comparability of financial reporting and meaningful comparisons between firms. We believe that as privately held firms, each firm should have the flexibility to provide financial statements in the operational framework used by firm management as such financial statements are designed to provide firms and their owners what they consider to be the most meaningful method of accounting and reporting to facilitate their effective management. Smaller accounting firms would undoubtedly find the shift to a new basis of accounting to be particularly burdensome.

Fiscal Years

With respect to Question 15, fiscal years will vary for firms as the facts and circumstances of their operations and legal structures vary, and firms should have the flexibility to report with a fiscal year that best suits their operations. In some instances, the legal structures of firms mandate a specified fiscal year. Therefore, we recommend that any financial statements be submitted be for the firm's last fiscal year ending before the date specified by the PCAOB.

Process and Reporting

In response to Question 19, PCAOB reporting currently does not consider de minimis thresholds which can result in updating filings for incremental information that likely is not useful or impactful to stakeholders given the insignificance of the incremental change. We believe that a de minimis threshold should be considered for reporting fee information, particularly if dollar values are to be disclosed. We would also recommend that the PCAOB consider applying similar thresholds to other applicable areas of Form 2 as well as to Form 3, Form AP and any future required forms.

Governance Information

Although the proposed requirements would provide the PCAOB, investors and other stakeholders a view as to how a firm is structured, the method for reporting appears to be duplicative in certain instances such as requiring disclosure of individuals who have ultimate and operational responsibilities for the firm's system of quality management.

Network Information

We recommend that the PCAOB consider affording the same confidentiality considerations to any financial information (e.g., loans to or from network entities) as afforded to the financial statements of the largest firms. We also do not see how providing membership agreements would be useful outside of the inspection process and believe that provision of any such agreements should be afforded the confidentiality protections noted within Section 105(b)(5)(A) of the Sarbanes-Oxley Act. The public disclosure of such confidential network information could put some firms and networks at a competitive disadvantage.

Special Reporting

Events to Be Reported

There is an ever-evolving body of securities law on what constitutes material information triggering disclosure requirements for SEC registrants; by contrast, the law on what constitutes material information for accounting firms themselves is not well-developed. While we recognize that it is beneficial to the PCAOB's mandate for PCAOB-registered accounting firms to report matters that pose a material risk as noted within page 35 of the proposal, we recommend that the PCAOB consider providing specific parameters of what should be reported rather than providing a non-exhaustive listing.

With respect to enhancing reporting in the area of auditor resignations, withdrawals, or dismissals, Form 8-K (and comparable reporting for foreign private issuers) has long been the one source for notification of auditor resignations, withdrawals, and dismissals, and investors are familiar with these filings. The securities laws and common practice already provide an effective means for follow-up to the extent SEC registrants fail to meet their reporting obligations relating to auditor changes. Accordingly, we believe additional reporting to the PCAOB would be duplicative and unnecessary.

Timing

We believe that the current timing for the reporting framework of the PCAOB is appropriate. While it may be possible in some instances to report to the PCAOB more quickly, we are concerned that shortening the time period will in many instances limit the ability of a firm to assess and understand events. We also are concerned that accelerating firm reporting will result in otherwise avoidable errors in reports. In its PCAOB Release No. 2008-004, Rules on Periodic Reporting by Registered Public Accounting Firms, the Board concluded that a period greater than 14 days was necessary. While we recognize that maturing information and processing systems may provide more accurate information to management, the subsequent evaluation process is intensely manual, often leveraging internal and external legal counsel, to further internally investigate and conclude on matters. The PCAOB noted this issue in Release No. 2008-004, recognizing that "[s]everal commenters expressed concern that 14 days was not sufficient time in which to review and assess an event and report the required information, and that was particularly true for non-U.S. firms that may need to assess possible legal obstacles to reporting and prepare the materials necessary to comply with Rule 2207." Time remains necessary to appropriately evaluate and provide disclosures. Therefore, we suggest generally retaining the 30-day reporting period.

We agree that for certain limited and highly material events (e.g. acquisition / divesture, financial stress, etc.) a more accelerated timetable for reporting may benefit the PCAOB's oversight activities. However, even for events of that nature, we do not believe that accelerated reporting aligning with SEC 8-K reporting requirements is appropriate. Finally, we believe there needs to be clarity around the trigger for accelerated reporting. We suggest retaining the existing trigger of when any partner, shareholder, principal, owner, or member of the Firm first becomes aware that the event is pending and adding a second materiality consideration.

Reporting Method

If the PCAOB adopts requirements to report planned or anticipated acquisitions, changes to the firm's organization, legal structure, or governance, the window for filing a required Form 3 would likely overlap the time period for filing a required Form 4. Therefore, it would be beneficial to combine Form 4 with Form 3.

Cybersecurity

Definitions

The cybersecurity events reporting requirement should be enhanced by clarifying the circumstances that trigger a reporting requirement. The Proposal's current definition leaves room for interpretation as to a) the determination of significance, b) what constitutes an entity's "critical operations", and c) which incidents are "reasonably likely to lead to disruption / degradation / unauthorized access / substantial harm". These ambiguities can be expected to cause confusion, potential delay in response to the incident, and unnecessary exposure to regulatory sanction.

We recommend aligning the Proposal with an existing industry or federal guideline such as FISMA or another industry-appropriate equivalent and confirming that disclosure may be delayed at the request of federal law enforcement, including the FBI or DOJ. With respect to the Proposal's requirement to report incidents that substantially harm the firm or a third party, we recommend

narrowing this requirement such that notification is required only where the incident would impact the firm's ability to audit public companies or SEC-registered broker-dealers. We also request additional clarity around the types of harm to third parties, especially investors, that would trigger a reporting obligation.

We also recommend removing the term "reasonably likely" from the definition of significant cybersecurity incidents. This would clarify that the reporting obligation arises from actual disruption or degradation, actual unauthorized access, and actual harm, and would avoid overreporting due to concern over how a decision that the future events are "reasonably unlikely" might later be viewed with the benefit of hindsight.

Timing

The Proposal's five-day reporting requirement for cybersecurity incidents does not provide enough time to assess a cyber incident's impact and to conduct a harm analysis, as required to determine whether there is any reporting obligation. If unchanged, the requirement would force reporting at a time when the firm's understanding of the facts is changing rapidly and might delay the important work of investigating and remediating the incident. This likely would result in overreporting in certain instances and incomplete, partial or inaccurate disclosures in others. We recommend adopting a 14-day timeline instead.

The Proposal also should address supplemental reporting. Cyber investigations take weeks or months, especially where the breach is large-scale or involves sophisticated methods. Even if the Proposal were modified to include a 14-day timeline, it is inevitable that many reports would lack essential information. Moreover, because the Proposal anticipates "regulatory follow-up," the Proposal puts reporting firms in the difficult position of having to provide unconfirmed or speculative information in the time frame required, or risk regulatory sanction. We recommend that the Proposal incorporate a process for supplementing any report with information as it becomes available.

Content

The Proposal does not provide clarity as to whether the required notice must include reference to or details about the company's response capabilities, including its cyber defenses and response techniques. If construed broadly, the Proposal could require reports that might effectively "roadmap" a firm's vulnerabilities and response strategy to attackers. We recommend that the Proposal clarify that such details need not be provided. We also recommend that the Proposal make clear that, if and to the extent necessary, reporting firms can provide estimates.

Economic Analysis

We believe that the baseline considerations should also include state reporting requirements that are triggered in certain instances with Form 2 and 3 filings. Specifically, this is directed towards the additional reporting requirements under state accounting regulators and the follow-on actions taken by state accounting regulators upon notification of a Form 2 and 3 filing.

With respect to costs, the proposal acknowledges that "Firms would incur private coordination costs to collectively develop and comply with a system of standardized voluntary disclosures. If regulation makes the information available in a standardized manner, then the coordination costs would instead be covered by the regulator." Regardless of how the information is made available, firms will incur

incremental costs in providing the information. Firms manage themselves in different ways, and the proposed required information may cause firms to implement new processes and infrastructure to produce the required information.

The PCAOB notes the following:

> *"Some firms may find it efficient to automate some or all of their systems, which would likely increase the one-time costs associated with infrastructure. In addition, recurring costs from operating manual systems are likely to be higher as scale increases, which may cause some firms to invest in automated systems."*

As noted, automated processes are useful to alerting firms of events requiring disclosure; however, the subsequent evaluation process is intensely manual, often leveraging internal and external legal counsel, to further internally investigate and conclude on matters. Therefore, the proposal may be overly leveraging automated processes and not fully considering the incremental cost of experienced personnel and external parties that may occur when compressing timeframes. Further, the incremental costs associated with this Proposal would place an undue burden on foreign firms, particularly those that audit few issuers and may encourage some firms to deregister, which could impact the ability of some firms to perform transnational engagements and limit competition.

The PCAOB notes that they "considered, but are not proposing, enhancing our collection of supplemental information through the inspection process, including the collection instruments, procedures for collection, and the data storage infrastructure." This approach was not pursued given that information provided would not be publicly available utilizing this process. We recommend that the Board reconsider utilizing the inspection process for submission of confidential information to receive protection under Section 105(b)(5)(A).

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We appreciate your consideration of our comments and recommendations and would be pleased to discuss them with you at your convenience. Please direct any questions to Blake Wilson at (214) 259-1497 (bwilson@bdo.com).

Very truly yours,

BDO USA, P.C.

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