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June 7, 2024

By email: comments@pcaobus.org

Ms. Phoebe W. Brown
Office of the Secretary
PCAOB
1666 K Street NW
Washington, DC 20006-2803

Re: PCAOB Rulemaking Docket Matter No. 055: *Firm Reporting* (PCAOB Release No. 2024-003)

Dear Ms. Brown:

Crowe LLP appreciates the opportunity to comment on the Public Company Accounting Oversight Board's (PCAOB or the Board) proposal to amend reporting requirements for registered firms (the Proposal).

Crowe is committed to providing relevant, decision-useful information about both the firm and the audits we perform for the benefit of audit committees, shareholders and investors, regulators, and other stakeholders. In our annual audit quality report, we voluntarily describe our firm's governance as we understand this information may be of interest to readers. Certain of the information requested in the Proposal, however, appears to go beyond what is necessary for audit committee's or investor's decision making and places the PCAOB in a role to assess the stability or solvency of auditing firms, akin to a prudential regulator.

General Observations

Statutory Authority

Many of the items proposed for reporting have little relationship with the PCAOB's stated authority under the Sarbanes-Oxley Act of 2002 ("SOX"). As set forth in more detail below, we do not believe the Board has sufficiently established that it has the statutory authority to require the proposed reporting, nor has it established that such information is necessary for the protection of investors. In the Proposal, the Board appears to primarily identify SOX Sections 101(c)(5) and 102(d) as the principal bases for this rulemaking. Section 101(c)(5) allows the Board to perform "duties and functions" which are "necessary or appropriate...in order to protect investors or to further the public interest." One such function is to require reports of "additional information as the Board...may specify, in accordance with subsection (b)(2)." SOX 102(d). While Section 102(b)(2) enumerates a list of information which shall be included in a firm's annual report, it also includes a "catch-all" in Section 102(b)(2)(H) which notes that the Board may specify that reporting include "…such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors." The Board appears to rely on this "such other information" clause for the Proposal here.

The "catch-all" clause in Section 102(b)(2)(H), while arguably granting the Board the power to request some information beyond the categories explicitly enumerated in Section 102(b)(2), also imposes constraints on that grant. That section is limited on its face to requiring reporting only on such information

that is "necessary or appropriate in the public interest or for the protection of investors." As the Supreme Court has held, "the words 'public interest' in a regulatory statute [are] not a broad license to promote the general public welfare," but rather "take [their] meaning from the purposes of the regulatory legislation." Similarly, "statutory reference" to the adoption of regulations that are "necessary or appropriate" does not give an agency "authority to act, as it [sees] fit, without any other statutory authority." The Board's authority under Section 102(b)(2)(H), then, "must be read with 'some concept of the [Board's] relevant domain' in mind." The words "such other information" have a similar effect under established precedent, which holds that "general words" that "follow specific words in a statutory enumeration" should be "construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words."

We note additionally that the Supreme Court is currently considering a case, *Loper Bright Enterprises v. Raimondo*, in which the D.C. Circuit held that an agency "may not rely on a 'necessary and appropriate' clause to claim implicitly delegated authority beyond its regulatory lane or inconsistent with statutory limitations or directives." The Court's decision in Loper Bright may also operate to further constrain the Board's authority.

Applying these principles to Section 102(b)(2), the Board's authority to require the provision of "other" information under Section (b)(2)(H) is limited to information of the type enumerated in Sections (b)(2)(A) through (b)(2)(G), which includes the names of clients, fees received from issuers and broker-dealers, certain other financial information, quality control policies, the names of accountants, criminal or civil proceedings, and instances of accounting disagreements. That list does not suggest that Congress contemplated the disclosure of most of the detailed information called for by the Proposal – and does not contemplate the PCAOB requesting information to assess the stability or solvency of auditing firms akin to that collected by a prudential regulator.

The Board also appears to lack the authority to issue the proposed reporting requirements under SOX Section 101(c)(5). That provision grants the Board authority only to "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." This provision is subject to the same limitations on the applicability as mentioned above. Based on the constraints in place on the "public interest" and "necessary and appropriate" clauses, we question whether the Board has the statutory authority to engage in the proposed rulemaking.

Fundamental Purposes for Firm Reporting

As discussed in the Proposal, the Board identified three fundamental purposes when establishing the firm reporting requirements in 2008:

- Report information to keep the PCAOB's records current;
- Report information about the firm's audit practice to facilitate analysis and planning related to the PCAOB's inspection responsibilities, to inform other PCAOB functions, and to provide potentially valuable information to the public, and
- Report circumstances or events that could merit follow-up through the PCAOB's inspection or enforcement processes, and that may otherwise warrant being brought to the public's attention.

Certain of the information proposed to be included in Form 2 or Form 3 does not align with these fundamental purposes for firm reporting. For example, reporting an event or matter that is reasonably likely to materially impact the firm's total revenue is not necessary for the PCAOB's records, nor needed to plan for inspections, nor would it merit follow-up through an enforcement action. Similarly, a cybersecurity incident that does not affect the firm's issuer audit practice does not fall into one of the established fundamental purposes for reporting. The Proposal also does not articulate what has changed since 2008 that would warrant a change to those fundamental purposes. We believe the Board should articulate the fundamental purposes for firm reporting that were used in drafting the current Proposal, including an explanation of why it is important for the fundamental purposes to change.

Intended Benefits

The Proposal identifies benefits from disclosure generally, but does not clearly and consistently articulate how the specific disclosures included in the Proposal would reasonably achieve those benefits. For example, the Proposal notes, "…robust disclosure is the cornerstone of the U.S. federal securities regulatory regime and is essential to efficient capital formation and allocation." We agree with this statement as it relates to investors' capital allocation decisions. The disclosures that are the subject of this proposal, however, will not inform investors in their capital allocation decisions. The reporting proposed in this rule, such as of certain cybersecurity events or anticipated changes to the firm's organization, is not disclosure that would contribute to "efficient capital formation and allocation." The Proposal also states that "…improvements should be made to facilitate more public disclosure about aspects of registered firms' operations that could impact firms' ability to conduct quality audits, and that such disclosure would be informative and useful to investors, audit committees, and other stakeholders." The Proposal notes, however, that the disclosures "would not necessarily have a direct relationship to audit quality." As such, we believe the cost associated with implementing new policies and procedures, accumulating supporting data, and reporting these disclosures will far outweigh the benefits that stakeholders may receive.

In the Proposal, the PCAOB notes that a benefit of the reporting would be to enhance its regulatory functions. It is not clear, however, how the information would assist the PCAOB in achieving its mission. To the extent the information is relevant to, or necessary for, the PCAOB's inspections process, we would be supportive of providing information to the PCAOB as part of the inspections process (which would include affording firms the confidentiality protections of SOX Section 104). For example, the PCAOB stated that the governance information would be "particularly useful for inspecting and investigating firm QC systems." As the PCAOB can – and in some instances does – currently request this information from the firms about their governance, it is not clear what added benefit would be obtained from this rule making.

The PCAOB acknowledges that this information may aid the audit committees in their oversight of the auditor. We agree that audit committees may find certain of the information proposed in this rule making relevant to their oversight of the auditor; however, audit committees currently have a channel to request this information, including the form or format in which to receive it. While the Board states that audit committees will still benefit from the Proposal because of the accessibility and comparability, the Proposal does not sufficiently analyze whether any incremental benefit would be outweighed by the cost to comply with the proposed rule.

Specific Areas of Comment

Fee Information

The Proposal would require, among other things, that firms report on Form 2 fees billed to audit clients on a dollar basis, broken down by the services for which the fees were paid, regardless of whether the audit of the client is subject to the PCAOB's oversight. This proposed change is an expansion of the current reporting requirement in which registered firms report fees billed to issuer clients as a percentage of total fees. The Proposal does not explain how mandating disclosures about a registered firm's private client audit practice represents an appropriate exercise of the Board's authority, and we believe it could contribute to misunderstanding about the extent of the Board's oversight.

In the PCAOB's recently proposed rule related to false or misleading statements concerning PCAOB registration and oversight, the Board noted:

> A mistaken belief that the PCAOB has oversight of all aspects of a registered firm's operations could produce a false sense of confidence in such firm's work. Therefore, it is important that PCAOB-registered firms refrain from disseminating false or misleading information concerning their registration status, including the extent of regulatory scrutiny by the PCAOB to which they are subject.

Despite this, and other clear statements about the Board's concerns about firms implying PCAOB oversight extends to engagements that are not subject to the PCAOB's jurisdiction, the Board is

proposing that fee information for each registered firm's private company audit practice should be publicly reported in the PCAOB's Form 2 report alongside information about the firm's issuer audit practice. We believe this disclosure could be misleading and contribute to misunderstanding about the scope of the PCAOB's oversight. We urge the PCAOB to reconsider this aspect of the Proposal, and to retain the existing fee disclosures related to a registered firm's issuer audit practice.

Special Reporting on Form 3

We have significant concerns about the proposed changes to Form 3 and are not supportive of the expanded requirements for special reporting. Overall, we are concerned that the events that would trigger special reporting are too broadly defined and inconsistent with the PCAOB's mandate.

The Proposal includes a non-exclusive list of events that would trigger reporting on Form 3, as well as a general requirement to report "any event or matter that poses a material risk, or represents a material change, to the firm's organization, operations, liquidity or financial resources, or provision of audit services." As noted above, the PCAOB was not established as a prudential regulator for the audit profession. Many of the items noted may be appropriate for a prudential regulator – or a shareholder – to be informed about timely; however, the PCAOB does not serve in either of those roles. The PCAOB should focus its disclosure requirements on those events that have a direct, demonstrated impact on the quality of issuer audits.

We also have concerns about reporting events before they have taken place. The proposed threshold of "substantially likely" as triggering reporting is judgmental. Many of the events listed in the Proposal may take some time to develop – perhaps months – and it may not be clear as to when the event was "substantially likely." We are concerned about whether and how the PCAOB staff may challenge those judgments during an inspection. Additionally, many of the events that would trigger reporting are highly confidential and known to a very limited group of individuals at the firm, to protect the sensitive nature of the information. To drive consistency and clarity in the timing of reporting, and to minimize the risk of inappropriate disclosure of the information, we recommend the PCAOB revise the reporting requirement to be triggered when an event occurs.

We also have concerns about the PCAOB's estimate of costs associated with accelerated Form 3 reporting. While the mechanism for providing the report to the PCAOB may be automated, the internal processes that will need to be developed to gather information and involve the necessary individuals will not be automated. The events that would trigger Form 3 reporting will likely involve senior leaders of the firm, in connection with the individuals who process PCAOB reporting. While these events may not happen routinely, the firm will need to develop and implement processes so that – should a triggering event occur – the right individuals are involved so that reporting to the PCAOB can occur timely. Depending on how broadly the PCAOB defines significant cybersecurity incidents (as discussed more below), we question if this special reporting will occur more frequently than the PCAOB has indicated in the Proposal. We believe the PCAOB has underestimated the cost and effort associated with both the expansion and acceleration of Form 3 reporting requirements.

Cybersecurity Incident Reporting and Policies and Procedures

The Proposal notes that "the PCAOB has no formal mechanism to receive prompt information about [cybersecurity incidents] and any responses." We question the PCAOB's authority or need to receive such information from registered firms, given the PCAOB's jurisdiction. In the discussion of cybersecurity policies and procedures, the PCAOB appears to equate a registrant's disclosures to shareholders and other investors with a firm's disclosures to the PCAOB ("The proposed item would instruct the audit firm to include: (i) whether and how any such policies and procedures have been integrated into the registrant's overall risk management system or processes…"). We question if this is an appropriate comparison. The PCAOB's relationship to audit firms is different than a shareholder's or investor's relationship to a registrant; it is not appropriate to prescribe the same type of disclosures for both relationships without clearly articulating the benefits that would be attained by those disclosures.

The Proposal would require disclosure of significant cybersecurity incidents. Given the broad definition that the PCAOB proposed for "significant cybersecurity incidents," we are concerned that firms may be

required to report a wide array of incidents, including incidents that have no effect on its ability to perform quality, timely audits of its issuer audit clients. For example, the Proposal would require the disclosure of cybersecurity incidents that are "reasonably likely to lead to unauthorized access…" We believe this threshold will result in reporting a significant number of incidents, many of which may not relate to or affect the firm's audit services. We recommend the Proposal be revised to clarify that, consistent with the Board's jurisdiction, required disclosure of cybersecurity incidents applies only to those incidents that impact a firm's public company audit practice and are only those events that are material.

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We appreciate the opportunity to share our perspectives on the Board's proposed amendments to its reporting requirements for registered firms. We would be pleased to discuss our comments with the Board or its staff. If you have any questions, please contact Jennifer Kary, Managing Partner Firm Quality at jennifer.kary@crowe.com.

Sincerely,

/s/ Crowe LLP

Crowe LLP