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1 July 2021

PCAOB Rule 6100, Board Determinations Under the Holding Foreign Companies Accountable Act (PCAOB Rel. No. 2021-001; Rulemaking Docket No. 048)

Dear Office of the Secretary:

Ernst & Young LLP (EY US) is pleased to submit these comments to the Public Company Accounting Oversight Board (PCAOB or Board) on proposed Rule 6100. The proposed rule provides a framework for the Board to make determinations as required to implement the Holding Foreign Companies Accountable Act (HFCAA).

We recognize the important role of the PCAOB in strengthening audit quality, including through fulfilling its statutory mandate to inspect registered firms. We also recognize the value of the Board and other regulators reaching agreements to facilitate inspections, and the significant progress the Board has made in reaching such agreements. Because we believe increased economic integration and cross-border trade drives global growth and prosperity, we are hopeful that the Board and other regulators will continue to seek agreements that respect each regulator's mandate while avoiding the delisting of issuers in the US.

Our responses to selected questions in the proposal are set out below.

Q.a: Is it appropriate to limit jurisdiction-wide determinations to registered firms headquartered in the jurisdiction? If not, what should be the scope of jurisdiction-wide determinations under the proposed rule?

We believe it is appropriate for the Board to look to the location of a firm's headquarters for purposes of such a determination.

Q.b: Is it appropriate for the Board to look, in the first instance, at registered firms' required filings with the Board to determine where a firm is headquartered? If not, what information should the Board consider to determine where a firm is headquartered?

We believe it is appropriate for the Board to look to registered firms' required filings for this information.

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Q.c: Is the proposed rule's framework of jurisdiction-wide and individualized determinations an appropriate approach to Board determinations under the HFCAA? Does the proposed rule make sufficiently clear the distinction between the jurisdiction-wide determinations contemplated by subparagraph (a)(1) and the individualized determinations contemplated by subparagraph (a)(2)? If not, what additional guidance or clarity would be useful?

We believe the proposal makes sufficiently clear the distinction between jurisdiction-wide determinations and individualized determinations.

Q.d: Is it appropriate for the Board to look, in the first instance, at a registered firm's required filings with the Board to determine where the firm's offices are located? If not, what information should the Board consider to determine where a firm's offices are located?

We believe it is appropriate for the Board to look to registered firms' required filings for this information.

Q.e: As noted in footnote 83, although the HFCAA refers to a "branch or office" of a registered firm, subparagraph (a)(2) of the proposed rule refers only to an "office." Is it appropriate to refer only to an "office" in subparagraph (a)(2)? If not, what distinction should the Board recognize between a "branch" and an "office" in this context?

We believe it is appropriate to refer only to an "office" in subparagraph (a)(2). As noted in the Board's Proposal (p. 23, n. 83), there is no recognized distinction between the terms "branch" and "office" in the context of accounting firms. The Board's standards and forms use the term "office." For instance, AS 1215, *Audit Documentation*, sets out requirements in paragraphs .18 and .19 for offices issuing an auditor's report regarding the preparation, review, and retention of required documentation. Similarly, Form AP, Item 3.1, requires the disclosure of the office of the firm issuing the audit report in question. In contrast, the Board's standards and forms do not distinguish between "branches" and "offices" of a registered firm. We agree that introducing such a distinction for purposes of the HFCAA would not further the implementation of the legislation, and believe that the use of a superfluous term could introduce confusion. Accordingly, we believe the proposed focus on "office" is appropriate.

Q.m: Is subparagraph (e)(2)'s approach to confidentiality considerations clear and appropriate? Are there any other grounds upon which the publicly available copy of a Board report to the Commission might need to be redacted?

Subparagraph (e)(2) provides that, apart from redacting information as required the Sarbanes-Oxley Act, the Board also would redact contents to the extent required by "applicable laws relating to the confidentiality of

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proprietary, personal, or other information." We believe the Board should broaden this language, including by removing the reference to "laws" governing confidentiality and instead relying on broader concepts of confidentiality.

The focus of any public report should be on giving notice of a determination under the HFCAA, and providing such general supporting information as would be appropriate to substantiate the basis for the determination. This can be accomplished without including confidential information regarding an accounting firm, the identities of its clients, its clients' confidential financial and other information, or the personnel of either the firm or the client – without regard to whether such information is expressly covered by a confidentiality law. The Board can expand this definition to appropriately safeguard information covered by accountants' professional responsibilities of confidentiality, for example, without sacrificing its ability to publish relevant information regarding its determinations.

Q.n: Besides posting a copy of the Board's report to the Commission on the Board's website, should the Board notify stakeholders about Board determinations under the HFCAA by other means? If so, which stakeholders should receive such notice, and when and how should it be provided? Specifically, should registered firms that are subject to a Board determination receive notice of such determination, and if so, when and how should it be provided?

We believe the Board should provide a registered firm with non-public advance notice of the Board's preliminary determination that the firm is subject to a determination under subparagraphs (a)(1) or (a)(2), and identify a period of time in which the firm can submit information for the Board's consideration in reaching a final determination. This would promote due process for the firms impacted by such determinations. It also would enable such firms to initiate discussions with their clients to help those clients understand and plan for the impact of such a determination.

Q.p: Is it appropriate to have Board determinations become effective on the date the Board issues its report to the Commission? If not, when should Board determinations take effect?

We believe the Board should delay effectiveness of its determinations – for example, for 120 days. As noted above in response to question N, we believe firms' clients will benefit from an additional opportunity to understand and plan for the impact of such a determination.

Q.q: Should the proposed rule provide registered firms with a mechanism to provide relevant information to, or to seek reconsideration or reevaluation by, the Board with respect to a Board determination? If so, when should such a process be available, what procedures should it entail, and how could it be administered so as not to interfere with the ability of the Board and the Commission to discharge their responsibilities under the HFCAA on a timely basis?

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As noted above in response to question N, we believe the Board should provide a registered firm with advance notice of a preliminary determination and an opportunity to submit relevant information for the Board's consideration. Additionally, we believe it is appropriate for the Board to provide firms with the ability to request reevaluation by the Board of a prior determination under subparagraphs (a)(1) or (a)(2) outside of the normal annual reevaluation. The Board should clarify that information submitted by firms through either of these processes will be kept confidential.

Q.r: Is subparagraph (h)(1)'s annual consideration of changed facts and circumstances clear and appropriate? Should the Board consider changes in facts and circumstances more or less frequently than annually (e.g., semi-annually or biennially)? Should the Board publicly report the outcome of this process whenever the Board decides that reassessment of a prior determination is not warranted or that a prior determination should not be modified or vacated?

We believe the proposed annual reconsideration of changed facts and circumstances is an appropriate timeframe. Additionally, as noted above in response to question Q, we also believe it is appropriate for the Board to provide firms with the ability to request reevaluation by the Board of a prior determination under subparagraphs (a)(1) or (a)(2) outside of the normal annual reconsideration.

Q.s: Should the Board provide any additional guidance or clarity regarding the Board's process for modifying or vacating a prior determination? Should the Board's report regarding a modified or vacated determination contain any information not already specified in the proposed rule?

We believe it is appropriate for the Board to confirm in its rule that any potentially material development in the facts and circumstances as to a determination will result in a reconsideration of the determination. We do not believe that a report regarding a modified or vacated determination needs to contain any information not already specified in the proposal.

Q.t: Is the process described in paragraph (h) of the proposed rule sufficient to monitor the continued justification for a prior determination? Should the Board instead specify a termination date (e.g., three years, five years, ten years) prior to which the Board must formally renew or reissue a prior determination for that determination to remain in effect?

We believe that reconsideration at least annually of changed facts and circumstances is appropriate. Because the Board would be required under the proposal to consider any changed facts and circumstances regarding each determination at least annually, we do not believe it is necessary to specify a termination date for a determination.

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We would be pleased to discuss our comments with the Board or its staff at your convenience.

Ernst & Young LLP